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NMC: Fitness to Practise Insight

Qualitative research by ICE for the Nursing
and Midwifery Council

Crafted especially for you by team

ice

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Executive summary

1 Executive summary

1.1 Background and objectives

The NMC are currently rethinking how FtP operates as they implement their 2015/20 corporate strategy. In April 2018, the NMC commissioned ICE to carry out qualitative research with key stakeholders including employers, registrants and members of the public to explore the future of the fitness to practise process. Stakeholder feedback will be used by the NMC to help them develop initiatives for each of the following four strategic work packages:

- 1) Prioritising effective local action by employers
- 2) Taking into account the context in which patient safety incidents occur
- 3) Enabling nurses and midwives to remediate regulatory concerns
- 4) Holding full hearings only in exceptional circumstances.

The NMC are also considering a fundamental shift in their current regulatory position (regulatory focus) and propose that:

- Removal from the register “should happen when the conduct complained about so seriously damaged public trust in the professions or undermines public safety that it can’t be remediated.”
- A regulatory concern needs to involve a breach of trust that is so serious that it would have a material impact on the likelihood of a member of the public using the services provided by nurses or midwives, generally, in the future.

The overall objective of this qualitative research was to gain feedback from stakeholders on the modification of the NMC regulatory focus and the four strategic work packages that are being undertaken.

The qualitative research had the following specific objectives:

- To understand stakeholders’ expectations of the NMC with respect to FtP.
- To understand perceptions of the current FtP process.
- To understand the acceptability of the potential modification of regulatory focus.
- To understand the acceptability of the initiatives being undertaken for the four work packages.
- To explore stakeholders’ perceptions regarding the potential benefits and challenges associated with the proposed changes – including whether or not the proposed changes would be expected to improve processes and outcomes in FtP.

1.2 Methods

The research framework (appendix 1) provides full details regarding recruitment methods, the target audience and the research methods (including the discussion topics) that were employed for this study.

SAMPLE CHARACTERISTICS

The sample for this project was recruited from across the UK and included representation from England, Wales, Scotland and Northern Ireland. The final sample of 206 included:

Registrants – 113 participants: A diverse sample of registrants were included in this study. This included representation from each of the 4 primary fields of practice for nurses (1. Adult, 2. Children, 3. Mental health and 4. Learning disabilities) and midwives (see Table 4), from a range of work settings (including non-NHS; see Table 5), registrants who work in rural and urban locations (achieved by attending a range of locations across the UK), registrants who are early career and established registrants (defined as individuals with under or over 3 years on the register; see Table 6) and registrants from a range of religions/beliefs and sexual orientations (see Table 8 and Table 9).

Employers – 41 participants (38 of whom were also registrants): Employers from a wide range of organisations and work settings were involved in this study and each of the set quotas were achieved (see Table 13). The participants were from a range of work settings including adult, children, corporate nursing, GP practices, learning disabilities, mental health, midwifery and private/non-NHS. They were also from varied levels of authority and included directors of Nursing and Midwifery, ward managers and specialist managers (including infection, surgery and intensive care).

Members of the public – 49 participants: MOP were defined as “any individual who has engaged with a service that employs registrants within the past 6 months”. This was to ensure that those involved in the study had recent experiences that they could reflect on during the discussions and to include those individuals most likely to interact with the services of registrants. The final study sample included 50% male, representation from all age groups, 15% BME and individuals who had long term conditions, learning disabilities

(including severe learning disabilities), physical disabilities and an individual who identified as transgender.

Members of the public who have been involved with FtP – 3 participants: These individuals were included to ensure that members of the public who have interacted previously with the FtP process were consulted as part of this research.

Importantly, as outlined in section 3.3 and demonstrated by the conceptual saturation analysis (appendix 2), it was concluded that the final sample included in this study was appropriate to answer the research questions.

RESEARCH ACTIVITIES (SEE APPENDIX 1 FOR FULL DETAILS)

A mixed method approach was utilised in order to take the research to the participants and increase opportunities to take part. ICE used three types of research activities: 1) Insight and co-design workshops (90 minutes), 2) Mini depth interviews (conducted in situ – lasting 20-45 minutes) and 3) Telephone depth interviews (45-60 minutes).

DATA ANALYSIS

The data collected from the research activities was analysed using an iterative and well-documented thematic analysis approach. A conceptual saturation analysis was conducted to determine if the sample size was appropriate to answer the research questions.

1.3 Key findings and considerations for implementing the NMC's FtP strategy

Section 4 of this report details the key findings from the qualitative research and outlines a number of key challenges that need to be overcome to ensure the successful implementation of the FtP strategy. This included the identification of key challenges for each work package. Section 5 discusses the key considerations that participants believed the NMC must take into account when developing its strategic programme of work and shifting its regulatory position. The following is a brief overview of the key findings and considerations for implementing the NMC's FtP strategy.

EXPECTATIONS OF THE NMC WITH REGARDS TO FtP AND PERCEPTIONS OF THE CURRENT FtP PROCESS

Stakeholders expect the NMC to: Protect the public using standards and policies consistently, be transparent about the process and be efficient. Importantly, it was accepted that to be robust and fair, the NMC needed to take time. Therefore, the expectation is to be as timely as possible, as opposed to fast.

The process is taking longer than expected: Across all stakeholder groups, participants who had experienced the FtP process or knew someone who had, reported that the process was "long-winded" and "time-consuming".

The process is unclear: Stakeholders' responses suggested that the FtP process is unclear to them, which causes uncertainty and means that manageable expectations are not being set.

The process does not feel efficient and/or joined up: Participants who had experienced FtP reported that the process did not feel efficient and/or joined up. MOP who had made a referral said they found it "frustrating" having to deal with multiple contacts as they often had difficulty getting in contact with the right person and found themselves having to repeat information. The worst experiences occurred when a case officer was changed during a case, with the lack of continuity this caused meaning stakeholders had to repeat information. There is a need to improve handovers (between stages of the process and when a case officer is changed) and how information is handled on NMC systems to avoid stakeholders having to repeat information and to ensure they feel like the NMC are in control of the case.

Effective communication and clear policies and guidance are required: It is clear that the NMC will need to ensure they have processes in place to effectively communicate with all stakeholder groups at all stages of the regulatory process. This will ensure that all parties are well informed of the FtP process and how a case is progressing, which will instil confidence that the NMC is following a robust and fair process. Of note, the employer link service is meeting this need for employers when it is being used.

PUBLIC CONFIDENCE POLICY STATEMENT

When this policy statement was introduced without additional context and/or explanation, it resulted in considerable confusion and a wide range of interpretations. **As policy statements are expected to clearly articulate an organisation's position regarding a subject, this level of confusion suggests that the statement will require reworking.**

Whilst terms such as “public safety” and “public protection” were considered easy to interpret based upon clinical determinations, the term “public confidence” was considered too subjective. Stakeholders wanted to know how the NMC will define and measure “public confidence”, a “serious regulatory concern” and “public being discouraged” from using services.

NMC public confidence policy statement

“The NMC will only take regulatory action to uphold public confidence if the regulatory concern is so serious that otherwise, the public would be discouraged from accessing the services of registrants.”

WORK PACKAGE 1: PRIORITISING EFFECTIVE LOCAL ACTION BY EMPLOYERS

Perceptions

96% of participants agreed that the proposed changes would improve the FtP process. Stakeholders believe local investigations should be prioritised in most cases because:

- Existing processes enable employers to conduct investigations
- Employers are the experts in the field of practice, context and remediation procedures

Stakeholders believed that NMC involvement is not required if a registrant accepts responsibility, demonstrates willingness to remediate and has had no previous similar concerns raised against them. **The tipping point: if a patient dies or if patient safety would continue to be at risk due to the FtP concern (needs immediate NMC intervention e.g. interim order).**

“

Every employer should have a set of policies which would come into play during these situations.

(Employer, England)

We should exhaust our internal processes. This is where the intelligence is.

(Employer, Wales)

There are processes that we can do initially to make that person safer and also it depends on the number of medication errors that person had previously, what support and input they've had... but you [NMC] wouldn't know that, that's for us to get that information which would inform whether we refer the case back.

(Employer, Wales)

”

Key challenges

Participants believed that *developing clear and actionable guidance will be challenging*.

Poor experiences of FtP typically involved dissatisfaction with communications – there is a clear need for improved communication.

Ensuring the public are reassured and confident regarding the quality of local action:

- MOP are likely to refer direct to NMC if they lack trust in employer
- Referrer will require feedback regarding what will happen and the outcome of local action
- MOP must accept that FtP is not about punishment
- NMC must normalise the fact that local action is key first step, even when regulatory action will be taken.

Developing a clear and transparent feedback loop between NMC, employer, registrant and referrer. Stakeholders reported that there needs to be a feedback loop with clear processes and standards for how:

- Concerns are referred over to employers
- Registrants are informed that a concern has been raised against them
- Employers inform the NMC of the outcomes of local actions
- Referrers are informed of the actions that will be taken to address the concern and the outcomes of local actions
- Data regarding concerns is handled on NMC systems.

Key considerations

How will the NMC determine whether or not a patient safety concern related to a registrant's fitness to practise is being managed effectively by an employer?

How will the NMC monitor concerns on NMC systems/databases?

What action will the NMC take if a MOP is dissatisfied with the outcome of local action?

WORK PACKAGE 2: TAKING INTO ACCOUNT THE CONTEXT IN WHICH PATIENT SAFETY INCIDENTS OCCUR

Perceptions

91% of participants agreed that the proposed changes would improve the FtP process.

Participants were largely in support of using the following guiding principle in decision making: **“Information about circumstances and context will always be relevant if it could show that an equally qualified nurse or midwife who found themselves in the same circumstances would have done something similar.”**

Participants believed that context should be taken into account because current work environments can significantly influence the potential for patient safety incidents to occur.

Employers identified themselves as the experts in context – MOP and registrants agreed. Employers will be required to provide contextual information during FtP investigations.

Employers stated that they would be dissatisfied with the NMC providing feedback regarding context to them as opposed to taking regulatory action if it was them who made the referral. They do support contextual factors being used in investigations and to determine severity of sanctions.

“

If you're relying on the employer, how truthful are they going to be? They're not going to want to take responsibility for difficult working conditions if they can potentially push it onto the individual.

(Registrant, Wales)

We've just had the Safe Staffing Act, it's a legal requirement now to ensure we have a safe number of nurses on shift, so we have to triangulate our acuity data, our patient safety incidents and professional judgement, so it's very much in our remit to look at all this.

(Employer, Lead Nurse, Wales)

I would expect that if there was a pattern of regular occurrences then that's an organisational issue and the NMC ought to recognise that and say 'you're not providing a safe enough environment for your nurses to practice' but I don't know what that would look like.

(Private Setting Manager, England)

”

Key challenges

Concerns were raised that registrants may *excuse their poor practice by blaming the wider context*.

Organisational culture and leadership may play a key role in patient safety incidents, but the NMC will find it challenging to investigate its impact on patient safety incidents.

Participants were *unclear who will decide if context is the main factor* in causing a patient safety incident: employers (considered experts) or the NMC?

The *NMC does not have power to hold employers to account* following the provision of feedback on contextual factors.

Key considerations

How will the NMC ensure that an employer acts on the feedback that they provide?

How will the NMC account for low staffing levels at the time of patient safety incidents? This needs careful consideration as this is an ongoing challenge across the sector and may require in depth investigations to understand how low staffing happened on the day of an incident and to understand if potential risks had been flagged by the registrant prior to the incident.

How will the NMC ensure that registrants will not use contextual factors to excuse their role in patient safety incidents?

How will the NMC track if similar incidents are occurring over time within the same organisation/trust in order to prevent future incidents from occurring? Feedback to employers and no further action from the NMC will not be considered an acceptable outcome if similar incidents are reoccurring over time. The NMC must consider how it will work with other regulators to ensure actions are taken.

WORK PACKAGE 3: ENABLING NURSES AND MIDWIVES TO REMEDIATE REGULATORY CONCERNS

Perceptions

94% of participants agreed that the proposed changes would improve the FtP process.

Registrants unanimously stated that it would be positive for the NMC to provide them with tailored remediation advice. Across the stakeholder groups, remediation was acceptable for the majority of patient safety and other concerns if:

- **Open and honest** – The individual was open and honest about what happened.
- **Acceptance of responsibility** – The individual accepts responsibility for their actions and showed remorse and a willingness to remediate concerns.
- **No similar previous concerns** – This is the first time the concern had occurred.

Remediation early in the regulatory pathway was deemed **unacceptable** if...(tipping points):

- The individual was dishonest or deceiving – e.g. they had tried to hide their mistake and lied about what happened.
- The individual did not accept that they were at fault and showed no remorse.
- It was the second, third or fourth time a similar concern had occurred.

“

You've got to put local actions in place and if it's the first time they've done it, it seems disproportionate to then refer to the NMC straight away before we have seen whether there are valid reasons and we've given that individual the opportunity to re-train.

(Employer, Scotland).

Where it is skill based and you can have training to improve the skill and competence that's fine, but not if it's a strong deep rooted attitudinal problem.

(Registrant, England)

What point in the process will this happen?! Screening? Investigations?

(Employer Northern Ireland)

”

- A death resulted from the incident that led to the FtP concern (MOP).

There was a clear difference in perceptions between concerns that resulted from a lack of competence vs misconduct/character. Lack of competence was considered remediable, whereas most misconduct/character issues were considered to be a major breach of professional standards, especially if the concern calls into question their trustworthiness. Stakeholders were uncertain that attitude/character can be remediated.

Key challenges

Developing a list of what types of concerns can/cannot be remediated was identified as a key challenge; stakeholders believed the NMC would have to produce a list of concerns that they would consider remediation for early in their regulatory process vs those that are “so serious as to be fundamentally incompatible with registration- they can’t be remediated”.

Stakeholders reported that the NMC *must communicate how other factors will be taken into account when considering offering remediation as an outcome*.

The individual’s previous conduct, previous opportunities for remediation, the acceptance of responsibility, a show of remorse and a willingness to remediate were all factors that stakeholders believed needed to be considered.

Ensuring remediation action(s) take place via a feedback loop was identified as a key challenge. This included how the NMC would maintain standards for remediation across different work settings.

Key considerations

What criteria will be used to establish that a case is non-remediable?

How will remediation actions be monitored?

How will the NMC monitor for repeated low level concerns?

How will the NMC handle a case if an employer refuses to oversee the remediation of a registrant because they do not believe remediation is an appropriate regulatory outcome for the concern that was raised?

WORK PACKAGE 4: HOLDING FULL HEARINGS ONLY IN EXCEPTIONAL CIRCUMSTANCES

Perceptions

92% of participants agreed that the proposed changes would improve the FtP process.

General understanding of the regulatory process was poor for registrants and employers – only a small number stated they would feel confident explaining the process to someone else. All stakeholder groups accepted that the NMC should hold full hearings only in exceptional circumstances and that this change would improve the FtP process for several reasons:

- It will speed up the FtP process and require less resources.
- It will avoid the negative impact full hearings can have on referrers, witnesses and registrants.
- It will avoid duplication of effort – particularly wherein criminal proceedings have produced clear outcomes.

MOP expressed an initial concern that shifting the focus to meetings would lead to less individuals being removed from the register. It was identified that this concern was based on a belief that sanctions are a form of punishment and that this concern may be addressed if the NMC communicate that this is not the case and by reassuring MOP that

“

What would be the difference between a meeting and a hearing? They're talking about having a meeting, having several people round a table looking at the evidence just like a hearing would, are they able to give as serious sanction, I'm not sure.

(Employer, private sector, England)

It could be similar to the situation with my dad, she admitted 2 of the 3 charges, now if she'd gone through the process and thought well actually if I just admit this third one I'm not going to have go through that full hearing.

(MOP who has been involved with FtP, England)

Full hearings should be avoided if possible because...A registrant can't be expected to work the same after an NMC investigation and full hearing, they'd be too afraid to make a mistake which would likely lead to more mistakes.

(Registrant, Northern Ireland)

”

the regulatory process will still involve a fair and comprehensive examination of the evidence before making a determination on the case at a meeting.

Key challenges

Registrants may decide not to dispute the facts of a case in order to avoid a full hearing – because it's the easier thing to do – meaning the full facts of a case are not established.

Registrants must maintain the option to opt in for a hearing – The NMC have already stated that “holding full hearings in exceptional circumstances would not prevent a registrant from requesting a full hearing at the appropriate point” in publicly available documents.

Increasing stakeholder understanding of the regulatory process – understanding is poor and results in misconceptions and unmet expectations. In particular, the stakeholders are uncertain regarding the differences between meetings and hearings and are not clear that the FtP panel are independent – this is resulting in a perception that the process is not transparent or fair.

Key considerations – *The participants wanted to know:*

How the initial investigation process will be conducted in cases that are concluded at meetings vs hearings.

When and how registrants will have an opportunity to dispute/resolve the facts of a case, and whether registrants can “opt-in” to a full hearing.

Whether a registrant can appeal a case if they are not satisfied with the outcome. It was reported that in order to avoid unnecessary appeals, the NMC will need to inform the registrant of the expected outcome of the case (draft determination of a case) prior to a meeting to ensure they are comfortable with the expected outcome.

How a meeting resolves cases. The participants wanted to know who is involved, what evidence is used, what sanctions can be given and whether the registrant can be present or if they just provide a statement.

Background & objectives

2 Background and objectives

The Nursing and Midwifery Council (NMC) exist to protect the public by regulating nurses and midwives in the UK. They do this by setting standards of education, training, practice and behaviour. They maintain a register of nurses and midwives who meet these standards and utilise their fitness to practise function to investigate nurses and midwives who fall short of their standards.

The NMC are entering the third year of their 2015–2020 corporate strategy which aims to rebalance their resources towards ‘upstream’ activities and commit within the fitness to practise (FtP) function to:

- Strike the right balance between the public interest and proportionate use of resources by making appropriate use of alternative means of disposal, in place of full hearings.
- Engage with employers to ensure that referral thresholds are understood and matters better handled locally do not result in referrals.
- Explore the benefits of other approaches to adjudication.

A number of change drivers have been identified, including:

- The Government’s regulatory reform agenda which may deliver legislative change in the medium term.
- An emerging consensus in the sector towards a more proportionate, consensual model of fitness to practise.
- An opportunity to ensure strong alignment between the regulatory process and the wider patient safety agenda.
- An opportunity to build on significant improvements in the directorate’s operating performance since 2012 and successful legislative change in 2015 and 2017.
- Learning lessons from the way they have handled sensitive cases and engaged with vulnerable stakeholders in the past.

The future of fitness to practise

Dealing effectively with FtP referrals enables the NMC to fulfil its statutory objective of protecting the public.

The NMC's new FtP strategy is fully focused on achieving this objective. The NMC are currently rethinking how FtP operates. The NMC propose that removal from the register "should happen when the conduct complained about so seriously damaged public trust in the professions or undermines public safety that it can't be remediated."

For the NMC, this means that they are reassessing whether they need to take FtP action in cases where the sole purpose is to uphold standards or maintain public confidence in the profession. They are considering a change wherein the regulatory

concern needs to involve a breach of trust that is so serious that it would have a material impact on the likelihood of a member of the public using the services provided by nurses or midwives, generally, in the future. This is a considerable shift away from the NMC's current position. In addition to this considerable shift in policy, four strategic work packages are being actively progressed:

- 1) Prioritising effective local action by employers.
- 2) Taking into account the context in which patient safety incidents occur.
- 3) Enabling nurses and midwives to remediate regulatory concerns.
- 4) Holding full hearings only in exceptional circumstances.

Each of these work packages involves a series of priorities that will be actioned in the next 12–18 months as part of the implementation of the NMC's FtP strategy. These work packages and their priorities are introduced fully in section 4 of this report.

In April 2018, the NMC commissioned ICE to carry out qualitative research with key stakeholders including employers, registrants and members of the

Definition of being fit to practise:

"Being fit to practise requires a nurse or midwife to have the skills, knowledge, good health and good character to do their job safely and effectively."

The NMC state that they will investigate if an allegation is made that a nurse or midwife does not meet their standards for skills, education and behaviour. If necessary, they will act by removing them from the register permanently or for a set period of time.

public (MOP; service users). Stakeholder feedback will be used by the NMC to help them develop initiatives for each of the four work packages.

2.1 Objectives

The overall objective of this qualitative research was to gain feedback from stakeholders on the modification of the NMC regulatory focus and the four strategic work packages that are being undertaken.

The qualitative research had the following specific objectives:

- To understand stakeholders' expectations of the NMC with respect to FtP.
- To understand perceptions of the current FtP process.
- To understand the acceptability of the potential modification of regulatory focus.
- To understand the acceptability of the initiatives being undertaken for the four work packages.
- To explore stakeholders' perceptions regarding the potential benefits and challenges associated with the proposed changes, including whether or not the proposed changes would be expected to improve processes and outcomes in FtP.

Methods

3 Methods

3.1 Research framework

The research framework (appendix 1) provides full details regarding recruitment methods, the target audience, and the research methods (including the discussion topics) that were employed for this study.

3.2 Sample size determination

The sample size for qualitative research is typically determined by the objectives of the study and whether or not new information related to the study objectives (themes) is likely to be found by adding additional participants. The point at which no new themes arise is known as the point of conceptual saturation (see 3.4.1 for overview). Conducting any further insight gathering activities beyond this point will lead to informational redundancy and results in unnecessary time and monetary cost.

Based on ICE's vast experience of conducting qualitative research – which includes two previous qualitative research projects conducted on behalf of the NMC – ICE anticipated that the following sample sizes would be appropriate to reach the point of conceptual saturation for each of the three stakeholder groups:

- Registrants: $n = 100$
- Employers: $n = 40$
- Members of the public: $n = 40$

As such, the research design and recruitment methods as outlined in the research framework (appendix 1) were developed to recruit these samples.

Of note, the sample size for registrants is significantly higher than for employers or members of the public because there was expected to be less homogeneity (i.e. more differences) in the registrant sample. Owing to the wide range of fields of practice and work settings that registrants work across and the day-to-day tasks that their roles involve, it was expected that their perceptions regarding the current FtP process and the proposed changes under each work package would vary moreso than for employers and/or members of the public.

Importantly, as outlined in section 3.3 and demonstrated by the conceptual saturation analysis (appendix 2), it may be concluded that the final sample included in this study was appropriate to answer the research questions as conceptual saturation was achieved and each stakeholder group included a diverse range of participants.

3.3 Sample characteristics

The sample for this project was recruited from across the UK and included representation from England, Wales, Scotland and Northern Ireland. The final sample of 206 included:

- Registrants – 113 participants
- Employers – 41 participants (38 of whom were also registrants)
- Members of the public – 49 participants
- Members of the public who have been involved with FtP – 3 participants

The following sections provide information regarding the characteristics of the final study sample.

3.3.1 Registrants

The NMC requested that a diverse sample of registrants were included in this study. As this project was interested in exploring registrant perceptions of proposed changes to FtP as outlined in the NMC's FtP strategy, it was considered important that the registrant study sample was representative of the individuals who interact with the FtP process.

Data presented in the 2016/2017 NMC diversity report was used to determine the demographics of individuals who were most likely to interact with the FtP process (determined using data of individuals referred for “new concerns”) and this data was used to develop quotas for important stakeholder groups. The data suggested that for the large part, the characteristics of registrants on the register is largely similar to those referred for new concerns (with <5% difference observed between the proportion referred for new concerns and the register as a whole), with the following notable exceptions:

Registrants who are male: A 13% difference (23.8% vs 10.8%) is observed between the proportion of individuals referred for new concerns who identify as male as compared to the proportion of individuals who identify as male on the register as a whole.

Registrants aged 40–60: A 7% difference (63.8% vs 56.8%) is observed between the proportion of individuals referred for new concerns in this age bracket as compared to the proportion of individuals in this age bracket on the register as a whole.

Registrants within ‘Black’ ethnic groups: A 6.7% difference (13.5% vs 6.8%) is observed between the proportion of individuals referred for new concerns who identify as ‘black’ as compared to the proportion of individuals who identify as ‘black’ on the register as a whole.

The ICE team applied the following recruitment quotas in order to ensure that these important groups were appropriately represented within the study sample:

- ≥ 15% of the study sample should be male.
- ≥ 50% of the study sample should be between the ages of 40–60.
- ≥ 10% of the study sample should identify as being within the ‘black’ ethnic group.

Each of these quotas were achieved. The registrant sample included 16% males (Table 1), 67% of the sample aged between 40–60 (Table 2) and 11% of the sample being within the ‘black’ ethnic group (Table 3).

In addition, in order to ensure that the final registrant sample was diverse and included representation from a range of backgrounds and work settings, ICE recruited registrants:

- from each of the 4 primary fields of practice for nurses (1. Adult, 2. Children, 3. Mental health and 4. Learning disabilities) and midwives (see Table 4).
- from a range of work settings (including non-NHS; see Table 5).
- who work in rural and urban locations (achieved by attending a range of locations across the UK).
- who are early career and established registrants (defined as individuals with under or over 3 years on the register; see Table 6).
- from a range of religions/beliefs and sexual orientations (see Table 8 and Table 9).

Please note that the percentages presented in each of the tables within this section have been rounded up to the nearest percentage point.

Although this was not captured in the demographic forms, during the research activities 11 of the registrants who participated spontaneously reported that

they have been involved with the FtP process. These individuals had either been involved as a witness, referred somebody (as an employer) or had been referred themselves. A number of other participants reported knowing somebody who had been involved in FtP and drew upon those experiences during the workshop.

Table 1: Registrants' gender

Gender (N = 113)	Percentage
Female	84%
Male	16%
Non-binary	0%
Prefer not to say	0%

The gender data presented in Table 1 demonstrates that ICE achieved the a-priori quota for $\geq 15\%$ of the registrants taking part in the study being male.

Table 2: Registrants' age

Age (N = 113)	Percentage
20-29	11%
30-39	17%
40-49	27%
50-59	40%
60 and over	4%
Prefer not to say	1%

The age data presented in Table 2 demonstrates that ICE achieved the a-priori quota for $\geq 50\%$ of registrants included in this study to be aged between 40-60.

Individuals from across a range of age groups took part, however, the majority of registrants who took part in this study were over the age of 40. This is consistent with the age breakdown of registrants on the register.

Table 3: Registrants' ethnicity

Ethnicity (N = 113)	Percentage
White – English/Welsh/Scottish/Northern Irish/British	56%
White – European	10%
Black – African	9%
White – Irish	6%
Asian – any other Asian background	5%
Asian – Indian	3%
Asian – Chinese	2%
Black – Caribbean	2%
Mixed – Any other mixed/multiple ethnic background	2%
Mixed – White and black African	2%
Mixed – White and Asian	1%
Mixed – White and Caribbean	1%
Prefer not to say	1%

Table 3 demonstrates that the registrant sample included in this study was ethnically diverse, with the final sample including only 56% “white British” and 27% of registrants who identified themselves as BME. The a-priori quota for $\geq 10\%$ of the registrant sample to be from the ‘black’ ethnic group was achieved, with 11% of the sample reporting to be either “black African” or “black Caribbean”.

Table 4: Registrants' field of practice

Field of practice (N = 113)	Percentage
Adult	50%
Mental Health	19%
Midwifery	12%
Children	5%
General	6%
Learning disabilities	4%
Specialist Community	3%
Other	2%

Table 4 demonstrates that the registrants who took part in this study were working across a range of fields of practice that included adult, mental health, midwifery, children, learning disabilities and specialist community. The individuals who responded as “other” were from the fields of prison health and education. included.

Table 5: Registrants' work setting

Work Setting (N = 113)	Percentage
Hospital or other secondary care	42%
Community setting (including district nursing and psychiatric nursing)	19%
Care home setting	19%
GP Practice or other primary care	6%
University or other research facility	4%
Maternity unit or birth centre	3%
Community setting, health visiting and school nurse team	1%
Mental Health Trust	1%
Occupational health	1%
Prison	1%
Public health organisation	1%
Rehabilitation	1%
Specialist or other tertiary care including hospice	1%
Voluntary or charity sector	1%

Table 5 provides an overview of the work settings wherein the study sample were currently practising and demonstrates that the participants of this study came from a wide range of work settings. Table 6 and Table 7 demonstrate that the study sample included both nurses and midwives, and that individuals with a range of time spent on the register were included. Table 8 and Table 9 demonstrate that the sample included individuals with a wide range of religions/beliefs and included representation from individuals who self-reported to be homosexual or bisexual.

Table 6: Time on register

Years on the register (N = 113)	Percentage
1-3 years	14%
4-9 years	19%
10 years +	67%
Retired	1%

Table 7: Registration type

Registration type (N = 113)	Percentage
Nurse	88%
Midwife	10%
Nurse and Midwife	2%

Table 8: Registrants' religion/belief

Religion/belief (N = 113)	Percentage
Christian	63%
No religion/belief	24%
Buddhist	1%
Hindu	1%
Jewish	1%
Muslim	1%
Other	1%
Prefer not to say	8%

Table 9: Sexual orientation

Sexual orientation (N = 113)	Percentage
Heterosexual or straight	87%
Bisexual	3%
Homosexual	1%
Prefer not to say	10%

3.3.2 Public

In order to include individuals from a range of socio-economic and ethnic backgrounds, activities were conducted with MOP in the following locations: Belfast, Liverpool, Cardiff and Edinburgh.

When recruiting participants for the purposes of this study, MOP were defined as “any individual who has engaged with a service that employs registrants within the past 6 months”. This was to ensure that those involved in the study had recent experiences that they could reflect on during the discussions and to include those individuals most likely to interact with the services of registrants.

Although no strict a-priori quotas were set, the NMC requested that the final study sample included individuals who had long term conditions, learning disabilities (including severe learning disabilities), physical disabilities and an individual who identified as transgender. The final study sample included representation from each of these important groups.

Table 10: MOP Gender

Gender (N = 49)	Percentage
Female*	50%
Male	50%

*Transgender individual identified as female.

Table 11: MOP Age

Age (N = 49)	Percentage
18-30	19%
30-40	25%
40-50	17%
50-60	23%
60-70	12%
Over 70	2%
Prefer not to say/unknown	2%

Table 12: MOP Ethnicity

Ethnicity (N = 49)	Percentage
White British	85%
Asian	6%
Black Caribbean	6%
Black British	2%

All 4 UK countries were visited for this study. The final sample was diverse and included representation from males and females and a wide range of age groups. As detailed in Table 12, 14% of the MOP sample were from BAME groups.

In order to ensure individuals who have previously interacted with the FtP process were consulted as part of this research, the NMC requested that up to 5 members of the public who had been through FtP were included as part of this sample. A total of three participants responded to the purposive sampling approach that was employed and were subsequently interviewed by telephone.

The demographics of these individuals is summarised below:

- 67% Female, 33% Male
- 33% aged 51-60, 67%, aged over 60 +
- 100% White British

3.3.3 Employers

The NMC requested that ICE engage with up to 40 employers as part of this project. A total of 41 employers participated in this project. Of these employers, 38 were also registrants. The remaining three included a manager of a private cancer clinic, a director of HR and a doctor (GP).

A range of quotas were agreed between the NMC and ICE and applied in order to ensure that the final employer sample reflected the diversity of employers of registrants in the UK. ICE employed a mix methods approach to engaging with employers as part of this study. By using face-to-face in-depth interviews, paired interviews, telephone interviews and insight groups, we were able to engage with employers from a wide range of work settings. As evidenced in Table 13, a wide range of organisations and work settings were involved in this study and each of the set quotas was achieved. The participants were from a range of work settings including adult, children, corporate nursing, GP practices, learning disabilities, mental health, midwifery and private/non-NHS. They were also from varied levels of authority and included directors of Nursing and Midwifery, ward managers and specialist managers (including infection, surgery, intensive care).

Table 13: A priori quotas for employer recruitment and total number recruited for each quota

Type of organisation	Country	NHS or non-NHS organisation	Number of employers asked to recruit (quota)	Number of employers recruited*
Acute Trust	England	NHS	At least 1	5
Acute Trust	Scotland	NHS	At least 1	3
Acute Trust	Wales	NHS	At least 1	12
Acute Trust	Northern Ireland	NHS	At least 1	7
Mental Health Trust	Any country in UK	NHS	At least 1	4
Community Health Trust (excl. Mental Health Trusts)	Any country in UK	NHS or non-NHS	At least 1	2
Employer of SCPHNs (Specialist Community Public Health Nurses or Midwives)	Any country in UK	NHS	At least 1	4
Care Home from a substantial chain	Any country in UK	NHS or non-NHS	At least 1	5
Employer of GP practice nurses	Any country in UK	NHS	At least 5	7
Large private healthcare provider	Any country in UK	Non-NHS	At least 1	2
Voluntary or private sector employer of midwives	Any country in UK	Non-NHS	At least 1	1

* please note that the total number included in the breakdown within this table is 52, not 41, because a number of the employers were employed across a number of different work settings and are therefore counted more than once.

3.4 Data analysis

The data collected from the insight groups, telephone interviews and in-situ interviews was analysed using an iterative and well-documented *thematic analysis* approach. This rigorous and transparent qualitative analysis approach is well suited to qualitative research conducted to explore participant perceptions and experiences. Thematic analysis is a foundational qualitative analysis method, and a common building block of many established theoretical approaches (e.g. grounded theory). However, as a theory-free approach, thematic analysis offers flexibility to provide a rich, detailed and complex synthesis of data that meets a very specific and applied aim (Braun and Clarke, 2006; Kerr, Nixon and Wild, 2010). The data was analysed using an induction-abduction approach to identifying themes (Kelle, 2005), with themes emerging directly from the data (inductive inference) and by applying prior knowledge (abductive inference). This enabled the analysis to remain firmly grounded in the data, with our participants identifying areas of importance for them, but also taking into consideration the work completed to date by the NMC and previous collaborations between ICE and the NMC. Example quotations are included within the body of the text of this report to provide evidence of the identified themes.

3.4.1 Conceptual saturation

Conceptual saturation is reached when researchers can demonstrate that they have covered their topic in-depth by having sufficient cases to explore their themes fully with additional data collection unable to add value, thus demonstrating that the sample size was appropriate to answer the research question (Morse, 1995; Guest et al. 2006).

To confirm conceptual saturation across each of the three stakeholder groups (registrants, employers and public), elicited themes were compared using a stepwise approach. Themes from each study location were compared. Appendix 2 contains a full conceptual saturation grid for each of the three stakeholder groups. The different key themes and sub themes are presented in rows. The study locations are plotted out in each column. A marker is placed in the column that represents the first time a theme was discussed (i.e. when the theme emerged). Scanning through the table, it is then possible to see when each theme emerged. If a number of themes were still emerging in study

location four, then an argument may be made that further themes may be elicited by increasing the sample size. Encouragingly, only a small number of markers appear in the columns of location three and none appear in location four. This suggests that the sample size was appropriate and that conceptual saturation has been reached for each target audience. This demonstrates that additional research activities would not add value.

A photograph of a woman with light brown hair, smiling and looking towards the right. She is wearing a light blue denim button-down shirt. She is seated at a table, and her hands are visible near the bottom of the frame. The background is slightly blurred, showing what appears to be a window or a wall with some structure. A large, semi-transparent orange overlay covers the entire image. Overlaid on the right side of the image is the text "Primary research findings" in a white, serif font.

Primary research findings

4 Primary research findings

The findings from the primary research are presented in the following sections. The findings have been pooled into the following 7 sub sections:

- Stakeholders' expectations of the NMC regarding the FtP process
- Stakeholders' perceptions of the current FtP process
- Feedback on public confidence policy statement
- Work package 1 – Prioritising effective local action by employers
- Work package 2 – Taking context into account
- Work package 3 – Enabling registrants to remediate regulatory concerns at the earliest opportunity
- Work package 4 – Holding full hearings only in exceptional circumstances.

Please note, if a theme was elicited consistently across the stakeholder groups then findings are pooled across the study sample. Differences between sub-groups are described only when they occur.

4.1 Stakeholders' expectations of the NMC regarding the fitness to practise process

In order to provide context for the findings of this research, it was important to first explore what stakeholders expected from the NMC regarding the FtP process. At the beginning of each workshop, ICE facilitators used a blink exercise to ascertain the participants' expectations from a regulator with respect to FtP and to explore current perceptions of the process.

We expect the NMC to protect the public, using standards and policies consistently

Registrants and employers described the FtP process as “essential” and clearly articulated that the main purpose of FtP was to protect patients and the public and uphold the standards of the nursing and midwifery profession. These were their clear expectations for FtP.

Across all stakeholder groups, participants discussed that they would expect the NMC to uphold standards and make judgements on registrants' practice by applying standards and policies in a consistent manner. They expected the NMC to be impartial and well-informed. Registrants and employers said they would expect the NMC to have a good understanding of the profession itself as well as the code of conduct, in order for the public to be confident that the NMC are equipped with the knowledge to make informed, accurate and impartial decisions.

There was also an expectation for fair, proportionate regulatory action based on the severity of the concern regarding the individual's FtP in the future as opposed to

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Everyone needs to be confident that they are regulating against the same standards, and there's transparency about what those standards are so that if anybody, a MOP, can go online and see how the NMC maintain the standards of our profession.

(Registrant, Wales)

The process needs to strike a balance between reviewing all the evidence to avoid any bias, while resolving the issue quickly.

(Employer, Director of Nursing Scotland)

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the severity of the outcome of the incident (e.g. no harm to patient, significant harm to patient, death). This expectation is discussed further in section 4.4.2.

We expect the NMC to be transparent about the process

Across all stakeholder groups, participants expect the NMC to follow a fair and robust process that reviews all the evidence and considers “all sides of the story”. It was suggested that the NMC must be open and transparent about the FtP process and explain what steps will be taken. MOP in particular stated that they would want to know “what’s going on” and would expect the NMC to communicate any progress in order for MOP who are less familiar with the process to know exactly what to expect. Of note, employers and registrants who had not previously interacted with the FtP process similarly required this ongoing effective communication.

We expect the process to be efficient

All stakeholders expected the process to be efficient because they expected the FtP process to result in negative impact for registrants, employers, patients and families. Registrants were expected to experience significant negative emotional impacts and potential loss of earnings. Patients and families were similarly expected to have negative emotional impacts whilst they await the outcome of an FtP case as they will be waiting to understand why the incident occurred and what is going to be done about it (regulatory action). Employers were expected to experience staffing challenges.

ICE facilitators asked a series of probing questions to explore the importance of efficiency vs a fair and robust process. Importantly, when challenged, the participants understood that the process would not be quick, but wanted it to be “as efficient as possible” whilst maintaining the robustness of investigations and fairness within decision making.

4.2 Stakeholders' perceptions of the current FtP process

Understanding stakeholders' perceptions of the current FtP process was a sub-objective of the insight activities. Therefore, during the insight group activities, stakeholders were asked for their perceptions regarding the current FtP process and a brief discussion was facilitated. The following key themes emerged:

The process is time-consuming and longer than we expect – it needs to be more efficient

Across all stakeholder groups, participants who had experienced the FtP process or knew someone who had, reported that the process was "long-winded" and "time-consuming". Many employers recalled that their experience of the process was "robust and fair" and recognised that this influenced the length of time it would take to carry out a thorough investigation. However, employers were concerned that during this time frame and despite a concern being raised, an individual may be free to continue practising and remain a risk to patient safety. Employers were aware that the NMC is able to enforce sanctions where necessary, yet they were uncertain as to what evidence the NMC would need to gather – and when this would happen – before making that decision. Employers were also concerned by the time initial screening of cases can take; they believed that it became more challenging to provide investigations with quality fact-based evidence the longer the time window between them raising a concern and a full investigation being opened.

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I get that these things take time, but the NMC really needs to work on balancing the opportunity for employers to present their evidence, and giving nurses the time to respond, with getting cases resolved efficiently and quicker.

(Employer, Northern Ireland)

People's lives are put on hold for months and months, I get that these things take time. but at least if they know 'okay in 2 months I'm going to hear something'.

(Registrant, England)

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MOP who had referred a registrant to the NMC also discussed that being involved in a FtP case was "extremely distressing". These feelings were exasperated due to the time it took for the case to be resolved being longer than expected.

An overview of the FtP process was presented to participants during the insight activities. Many participants noted that the timings associated with each stage are significantly longer than they would expect. Participants who had experienced the FtP process themselves, said this overview would have been "very useful" at the time they were going through the process. Across all stakeholder groups, participants suggested that for the FtP process to be improved, the NMC would need to set expectations for how long a case is expected to take to be resolved. Of note, at the end of the group sessions it was accepted that if the work packages are implemented successfully, this may significantly improve the time taken for cases to be resolved.

The process is unclear – this causes uncertainty and means that manageable expectations are not being set

The participants' responses suggested that the FtP process was unclear to them. This was the case even for those individuals who have interacted with FtP previously. They reported that they were unclear of what steps and procedures the NMC were taking throughout the process, who was responsible, what was expected of them personally and how long each step would take. They were also uncertain as to which sanctions would be taken in different instances, which added to a fear factor of dealing with the NMC. Employers

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The implementation of the liaison staff is a real bonus, to have her contact and the opportunity to discuss any issues if we have any issues. And we find that when you start to build up relationships with people you get a more productive outcome.

(Employer, Director of Nursing, Scotland)

My perspective would be to have people who are regular case handling officers, so you could get to know people, as opposed to getting anybody and everybody which is how it's currently done.

(MOP previously involved with the FtP process, England)

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reported that when they interacted with the employer link service, these challenges were overcome and their experience of the process was improved. However, smaller employers were unaware of the employer link service and were not clear on what a good quality submission to the NMC would need to involve.

The process does not feel efficient and/or joined up

Participants who had experienced FtP reported that the process did not feel efficient and/or joined up. Of note, the worst experiences occurred when a case officer was changed during a case – with the lack of continuity this caused meaning stakeholders had to repeat information. There may be a need to improve handovers (between stages of the process and when a case officer is changed) and how information is handled on NMC systems to avoid stakeholders having to repeat information and to ensure they feel like the NMC are in control of the case. Of note, there was significant uncertainty regarding the FtP process when a criminal case was ongoing, and what the employer would be required to do.

MOP who had made a referral said they found it "frustrating" having to deal with multiple contacts as they often had difficulty getting in contact with the right person and found themselves having to repeat information.

Participants across the stakeholder groups wanted there to be one NMC case officer who oversaw the whole process, who would be responsible for liaising with all parties including referrer, registrant and employer – when questioned, there was uncertainty regarding whether this currently happens or not. The participants suggested this would improve communication between parties and help manage expectations throughout the process.

The importance of effective communication and clear policies and guidance

To meet the expectations of registrants, employers and MOP with regards to what they want from the FtP process, it is clear that the NMC will need to ensure they have processes in place to effectively communicate with all stakeholder groups at all stages of the regulatory process. This will ensure that all parties are well informed of the FtP process and how a case is progressing, which will instil confidence that the NMC is following a robust and fair process.

Perceptions of the employer link service were positive. Where it is being used, the employer link service is meeting this need for better communication for employers. However, smaller and private sector employers were unaware of it and this awareness needs to be raised.

Clear needs were identified for actionable guidance and policies that demonstrate that the regulatory process will be fair, robust and consistently applied. Importantly, the work packages that are being undertaken (discussed in the following sections) have the potential to meet these needs if they are implemented successfully.

We expect the NMC to be supportive

As stated above, across all stakeholder groups, participants perceived that in many cases, the FtP process could be a negative and distressing experience for everybody involved. It was discussed that in order to reduce the negative impact of FtP cases, the NMC would be expected to provide appropriate support and guidance to the registrant, referrer, employer and others concerned.

MOP discussed that if they were making a referral, they would expect the NMC to appreciate that the FtP process may be distressing for the referrer, particularly if the case took a long time to resolve and was concerning a family/relative. An individual who had experienced the FtP process said that in many cases “people don’t do this lightly”, and the NMC will be expected to show respect towards the referrer and family/relatives concerned.

Many registrants said they would expect the NMC to provide some guidance on what can be expected from the process and advise registrants on where to access further support (e.g. union representative). It was also discussed that they would

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They need to properly take into account the views and the opinion of the people doing the referrals. People don’t do this lightly, it took over our lives for months on end and that’s something doesn’t really seem to be appreciated.

(MOP previously involved in FtP process, Scotland)

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expect the NMC to be flexible and recognise individual support needs for registrants who may have low-level English skills or mental health issues.

Employers said they expect the NMC to work with the employer more in order to build relationships with key contacts in the NMC and have an opportunity for the employer to discuss any issues or concerns.

4.3 Feedback on “public confidence” policy statement

The NMC have stated that they may need to reassess whether they need to take FtP action in cases where the **sole purpose is to uphold standards or maintain public confidence in the profession**. A small but significant part of the current NMC caseload is made up of registrants who don't pose any ongoing patient safety risks. The NMC state that they take these cases forward on a 'wider public interest' basis to uphold professional standards and maintain confidence in the professions.

Currently, the NMC has no defined threshold for which cases should be taken forward purely to uphold public confidence. The decision is made on a case-by-case basis, with reference to the particular facts of the case. This has led to the criticism that the FtP process is inconsistent. The NMC have stated that this approach becomes harder to justify for regulatory concerns that would result in less serious sanctions or case disposal. The NMC needs to be able to justify why they are taking regulatory action in these cases and if it is proportionate.

It is important to maintain public confidence in the profession because the risk of harm to the public increases if the public avoids using the services of registrants because they lack confidence in them. The NMC are considering introducing a threshold for regulatory concerns to need to involve a breach of trust **that is so serious that it would have a material impact on the likelihood of a member of public using the services provided by nurses or midwives generally in the future**.

The NMC consider this change in policy to be a considerable shift away from their current position and wanted to understand what the public and other stakeholders expect from them in this area. A policy statement has been drafted by the NMC to detail this shift. ICE were asked to gain feedback regarding the following statement:

“The NMC will only take regulatory action to uphold public confidence if the regulatory concern is so serious that otherwise, the public would be discouraged from accessing the services of registrants.”

ICE facilitators utilised a blink exercise to explore perceptions and understanding of this policy statement. Participants were presented with the policy statement and asked for their immediate thoughts.

Participant feedback

The majority of participants were initially confused by the policy statement. Many had to re-read the statement several times and even then had difficulty providing a coherent interpretation of what the policy statement means. Even registrants and employers struggled considerably with understanding the intent of the statement and these groups also suggested that the intended meaning of the statement would be inaccessible to a lay person and/or MOP.

Only a small number of participants immediately understood that the policy statement was solely discussing regulatory concerns wherein the NMC needed to uphold “public confidence” and did not distinguish such cases from other types of regulatory concerns related to public protection.

Few participants understood that the intent of the policy statement was to increase the threshold for regulatory action in instances of regulatory concerns wherein public confidence may be impacted. In many instances and particularly for the public, this statement was interpreted as lowering the threshold for regulatory action as public confidence was said to be impacted by many low level concerns.

A number of participants reported that the statement didn't make it clear whether or not it was concerned with changes in public

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How do you define public confidence?

(Employer, Northern Ireland)

Are we talking about a serious series of concerns about registrants? or would it have to be one catastrophic event?... It's ambiguous, you know I answered that with a question.

(Employer, Belfast)

It feels like it has to be incredibly, incredibly extreme for regulatory action to be taken, but quite often there can be a compounding of circumstances that presents a longer-term picture that needs to be taken into consideration.

(Employer, Scotland)

There can often be lots of noise about some cases but then not for others that are similarly or even more serious so how could they apply this.

(Employer, Northern Ireland)

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confidence that result from patient safety incidents. The phrase “serious regulatory concern” was considered too subjective, and participants reported that this can mean very different things to different people.

When the intent of the statement was explained to MOP, they were concerned with who would determine what a “serious regulatory concern” was. There was a perception that the NMC was trying to **avoid their responsibility** and were being “hands off”. The statement was described as “dismissive” and “restrictive”. It was stated that this may discourage people from contacting the NMC when people should feel encouraged to raise genuine concerns.

For those participants (mostly employers) that did immediately understand that the statement was increasing the threshold for regulatory action, there was considerable concern owing to the subjectivity of the terms “public confidence” and “serious regulatory concern”. Employers were concerned about what action the NMC would take with minor cases that happen over a period of time and across different work settings as these can often lead to more serious public protection issues.

Whilst concepts such as “public protection” and “patient safety” were considered easy to understand, the concept of “public confidence” was perceived as hard to quantify and transient (changeable), making it particularly difficult to understand when and how the NMC would act. In short, the concept of public confidence was believed to be too subjective.

Employers were clear that patient safety is always the primary concern and not just public confidence. There was concern that if public confidence is a guiding

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That phrase feels disconnected from the real world. There won't be many people that would never see a nurse again, if they'd been involved in an individual case.

(Registrant, Northern Ireland)

Who decides if the public are going to be discouraged? Who decides what cases are serious?

(MOP, previously involved with the FtP process, England)

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principle, this would need to be clearly quantified because it could be unduly influenced by public furore, the media and social media.

The threshold for what would reduce public confidence enough for a MOP to avoid using the services of a registrant was expected to be widely variable. This caused considerable unease for each of the stakeholder groups, but in particular for employers who believe that this could give the public opportunities to exploit the statement by saying “I am still discouraged”. For example, a number of employers stated that bad experiences with certain registrants due to language challenges that result in difficulty understanding instructions may cause an individual to no longer be confident to use the services of this registrant, even if the registrant’s practice is entirely safe, or a patient could experience severe bruising after a blood sample is taken and then lack confidence in that registrant. The participants were unsure if this would mean the NMC would take action.

Lastly, a number of participants didn’t believe a statement regarding public confidence was necessary because they were sceptical that public confidence could be dented to the extent that an individual would not use the services of registrants.

Key considerations regarding the development of a public confidence policy statement are discussed in section 5.1.

4.4 Prioritising effective local action by employers

Perceptions

96% of participants agreed that the proposed changes would improve the FtP process.

Stakeholders believe local investigations should be prioritised in most cases because:

- Existing processes enable employers to conduct investigations
- Employers are the expert in field of practice, context and remediation procedures

Key benefits identified by participants:

- Concerns against registrants may be resolved quicker to prevent further patient safety concerns – with remediation if required. Stakeholders expected this to improve public protection
- Reduced frivolous and/or malicious concerns raised.

Stakeholders believed that NMC involvement is not required if registrant accepts responsibility, demonstrates willingness to remediate and has had no previous similar concerns raised against them.

The tipping point – if a patient dies or if patient safety would continue to be at risk due to the FtP concern (needs immediate NMC intervention e.g. interim order)

Key quotes

We should exhaust our internal processes. This is where the intelligence is.

(Employer, Wales)

There needs to be parity between small and big organisations, parity and a set of standards produced by the NMC for employers to follow.

(Registrant, London)

Key identified challenges

Given the breadth of potential concerns and diversity within roles, the participants believed that developing clear and actionable guidance will be challenging.

Poor experiences of FtP typically involved dissatisfaction with communications – clear need for effective communication to set expectations and keep all parties informed of progress.

Ensuring the public are reassured and confident regarding the quality of local action:

- MOP likely to refer direct to NMC if lack trust in employer
- Referrer will require feedback regarding what will happen and the outcome of local action
- MOP must accept that FtP is not about punishment
- NMC must normalise the fact that local action is key first step, even when regulatory action will be taken.

Developing a clear and transparent feedback loop between NMC, employer, registrant and referrer. Stakeholders reported that there needs to be a feedback loop with clear processes and standards for how:

- Concerns are referred over to employers
- Registrants are informed that a concern has been raised against them
- Employers inform the NMC of the outcomes of local actions
- Referrers are informed of the actions that will be taken to address the concern and the outcomes of local actions
- Data regarding concerns is handled on NMC systems.

Key considerations (see section 5.2)

How will the NMC determine whether or not a patient safety concern related to a registrant's fitness to practise is being managed effectively by an employer?

How will NMC monitor concerns on NMC systems/databases?

What action will the NMC take if a MOP is dissatisfied with the outcome of local action?

The NMC has proposed to prioritise effective local action by employers. The NMC have stated that in many cases of concerns to patient safety, employers can more quickly manage risks associated with poor practice because employers are in a position that is closer to the day-to-day work of nurses and midwives than a regulator and have a range of ‘powers’ (including disciplinary and safeguarding policies) that enable them to intervene in order to help protect the public.

The NMC already has an employer link service that works closely with employers to offer advice and discuss potential referrals with employers. This ensures that employers can access support when deciding if they should make a referral.

A strategic work package is being undertaken to support changes that will enable the NMC to prioritise effective local action by employers. This work package has three identified priorities:

- **The development of referral guidance for employers** – this will set out what the NMC expect from a referral and will require an authorised signatory to confirm compliance.
- With the exception of those referrals that warrant interim order consideration, the NMC is seeking to **change how referrals from members of the public are handled**, with concerns that have not been investigated locally referred back for local complaints management.
- **Intelligence capability** will be developed for decision making and risk assessment.

The successful implementation of this work package is expected to produce the following benefits:

- **Improved public protection:** Issues will be resolved sooner and with better targeted interventions by employers.
- **Reduced volume of referrals:** This will result from a reduction in unnecessary referrals.
- **Improved efficiency:** This will result from an improved focus within referrals which will result from clear employer referral guidance.

ICE were asked to explore the following with registrants, employers and members of the public:

- The acceptability of concerns being referred for an initial local investigation that may result in no further involvement from NMC.
- The components of a good quality employer investigation.

Findings from these discussions have been themed and are presented in the following two sections. Key considerations for the NMC's strategic work programme are discussed in section 5.

4.4.1 Perceptions regarding work package 1

To explore the perceptions of registrants, employers and members of the public regarding the proposed potential changes that would result from the NMC prioritising effective local action, ICE facilitators:

- Provided participants with a brief presentation regarding the changes that are proposed under this work package.
- Provided an example of a scenario wherein the proposed changes may apply and the actions that the NMC would be likely to take (e.g. refer the case back to a local employer).
- Utilised a blink exercise to ascertain participants' immediate perception regarding the acceptability of the proposed changes – this consisted of a survey question which asked participants if they believed the FtP process will be improved by prioritising effective local action by employers.
- Asked a series of questions and ladder responses to fully explore the reasons for these perceptions.

ICE facilitators asked participants to indicate how much they agreed with the following statement: *I believe the FtP process will be improved by prioritising effective local action by employers*. Figure 1 provides a breakdown of participants' responses to this statement, split by stakeholder group.

Figure 1 – Participants' response to the statement 'I believe the FtP process will be improved by prioritising effective local action by employers' (total responses = 202)

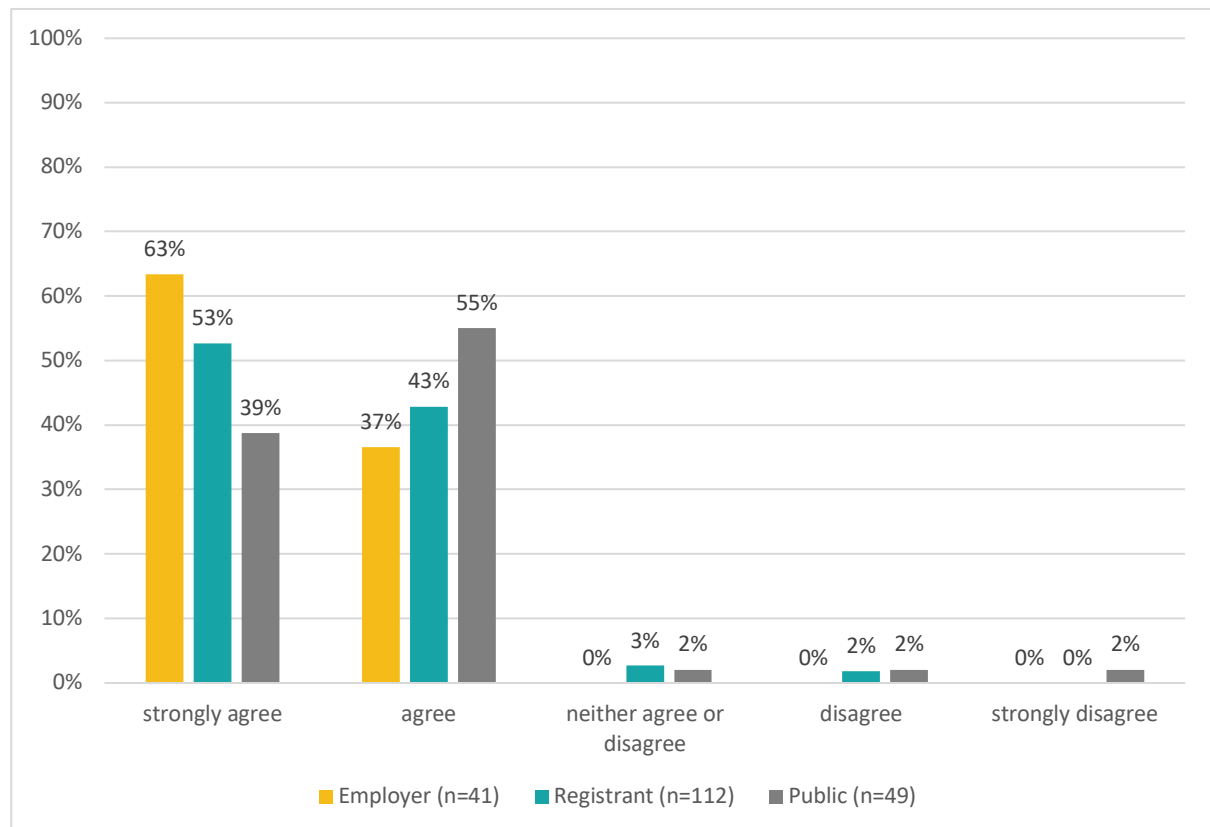


Figure 1 shows that out of a total of 197 participants who responded, **96% agreed that by prioritising effective local action, the FtP process will be improved**. This demonstrates that an overwhelming majority, across all stakeholder groups and countries, believe the proposed changes will improve the current FtP process.

Over half of all employers and registrants strongly agreed with this statement (63% and 53% respectively), which demonstrates that employers and registrants strongly believe that this policy change will positively impact the FtP process. In comparison, although the majority of MOP agree with this statement to a greater or lesser extent (combined total of 94%), the proportion of MOP who strongly agreed was much lower than that of employers and registrants, with only 39% of MOP

strongly agreeing. This suggests that MOP do believe that prioritising effective local action will improve the FtP process but may have some reservations that they will need the NMC to qualify. The key challenges raised by MOP are discussed in 4.4.2. The key themes that arose during the insight activities are discussed below.

Participants were in agreement that for most cases, the employer is best placed to conduct a thorough investigation and take action if required to protect patient safety and remediate concerns regarding a registrant's FtP. Registrants and employers reported that their local safeguarding and disciplinary processes are in place to protect the public and they were confident that these processes are robust, transparent and effective in most instances.

Each stakeholder group took part in an exercise designed to identify what patient safety and other concerns the different stakeholders believed should be handled: locally vs locally then a regulator vs a regulator immediately. Participants were given the opportunity to spontaneously discuss the types of patient safety and other concerns that may lead them to question a registrant's FtP. ICE researchers then utilised a series of “what if” statements to test the tipping point for when concerns should be addressed by the NMC.

Participants listed a wide range of examples that covered the five broad categories that NMC investigations typically involve: 1) misconduct, 2) lack of competence, 3) character issues, 4) language issues and 5) serious ill health. A list of the patient safety and other concerns that were discussed is presented

Establishing the tipping point for regulatory action:

In order to establish the ‘tipping point’ for regulatory action, ICE facilitators used a series of “what if?” statements to test the participants’ beliefs regarding who should be responsible for the different types of patient safety and other concerns. These included:

What if..

- The patient was you
- The patient was a member of your family
- The patient was a baby
- The registrant has made this mistake that caused the patient safety incident more than once
- The patient was seriously injured/ill as a result of the registrant's action
- The patient died

in Table 14. Whilst this list of concerns should not be interpreted as a definitive list of what concerns stakeholders want the NMC to investigate, they do demonstrate the types of concerns that come immediately to mind when stakeholders think about the concerns that bring into question a nurse or midwife's fitness to practise.

Table 14: Patient safety and other concerns that bring into question the fitness to practise of a registrant

Type of patient safety incident	Examples of salient low level concerns	Examples of salient severe concerns
Misconduct	<p>Not being respectful to patients and colleagues</p> <p>Bullying/ harassment</p> <p>Swearing</p> <p>Bad behaviour outside of work e.g. misuse of drugs/alcohol</p> <p>Poor timekeeping</p>	<p>Mishandling or verbal/physical abuse of a patient</p> <p>Misuse of drugs/alcohol in work</p> <p>Falsification of patient records</p> <p>Sharing personal and confidential information</p> <p>Claiming sick pay and going to work in a private setting</p>
Lack of competence	<p>Medication errors</p> <p>Record-keeping errors</p> <p>Not updating necessary skills or qualifications</p> <p>Not following instructions</p> <p>Not passing on important information</p>	<p>Repeated medication errors</p> <p>Repeated record-keeping errors</p> <p>Carrying out a task without the required skills or qualification</p>
Criminal behaviour	<p>Misuse of illegal drugs outside work</p> <p>Stealing outside of work</p> <p>Withholding information about previous criminal convictions</p>	<p>Physical assault</p> <p>Intending to mishandle or abuse a patient</p> <p>Stealing from patients</p> <p>Stealing drugs from workplace</p>
Not having the necessary knowledge of English	<p>Lack of communication skills to pass on information to patients or colleagues</p> <p>Not able to follow instructions</p> <p>Poor completion of patient records and other documents due to poor understanding of English</p>	<p>Mistakes emerging from an inability to read patient records. e.g. administering the wrong medication</p>

Type of patient safety incident	Examples of salient low level concerns	Examples of salient severe concerns
Serious ill health	Poor eyesight Back pain Other joint pain Stress	Severe mental illness not declared Severe physical illness not declared Severe alcohol or drug addiction

For the majority of patient safety and other concerns, participants believed the employer should be responsible for dealing with the concern first

Across the stakeholder groups, the clear tipping point for the majority of types of patient safety incident was if a patient died. It was reported that if a patient had died, even if it was the first time a registrant had made the mistake, there would likely be involvement from the police, a coroner and workplace regulators (e.g. Local Health Boards in Wales, the Scottish Government in Scotland, the CQC and NHS Improvement in England, and the Public Health Agency in Northern Ireland) and that there would need to be involvement from the NMC to provide an impartial investigation of what occurred in order to determine if the individual was FtP in the future. However, many participants did state that it would not be necessary to remove a registrant from the register as a result of a patient death if either:

- Mistakes occurred as a result of contextual factors.
- The individual took responsibility for their actions and showed remorse and a willingness to remediate concerns.

It was accepted that having involvement in the death of a patient would have serious negative emotional impacts on the registrant and that it was not necessary to prevent them from working in the future if they were able to remediate regulatory concerns.

The acceptance of responsibility, willingness to remediate concerns and the number of times the registrant has been involved in similar instances was considered critical to deciding whether or not the NMC should be involved, regardless of the type of patient safety or other concern and the seriousness of the impact of the incident. Registrants and employers reported that a clear feedback mechanism was required to ensure that the NMC becomes aware of repeated low

level concerns that have the potential to eventually lead to a serious patient safety incident.

It was noted by ICE facilitators that although each stakeholder group was able to rationally articulate that the NMC may not need to take action even in instances where they themselves, a family member or a baby were impacted by a patient safety or other concern, their responses were notably more emotive when responding to these types of “what if” statements. This highlights the need for clear, transparent and empathetic communication regarding regulatory decisions when referrers, their family and/or when a child’s safety has been impacted by a registrant’s FtP.

The following key themes related to perceptions of this work package emerged during the research activities:

We want concerns to be investigated locally by employers

Employers were confident that they have the local policies and procedures to effectively investigate the majority of patient safety concerns regarding a registrants FtP. They reported that they wanted the opportunity to deal with concerns internally if they have not had a chance to because a referral was made by a MOP direct to the NMC. In Wales specifically, employers and registrants reported that prioritising local action is clearly aligned to new legislation and processes regarding safeguarding and [putting things right](#).

It was reported that in many cases, a local investigation may have already taken place if the employer was made aware of the incident by the registrant involved or a colleague. It was also reported that as part of an NMC investigation, the employer would be required to provide significant levels of evidence regarding the incident and context, so it makes sense in most instances for a local investigation to be conducted before the NMC progresses with an investigation.

Owing to the severity of the sanctions that the NMC can impose on a registrant – including those that can effectively end their career – it is unsurprising that for most instances, a registrant would be happy for an effective local investigation to take place as opposed to the NMC investigating. Previous research that ICE have conducted with registrants regarding their relationship with the NMC has clearly demonstrated that they fear the NMC and are fearful of being contacted by them regarding FtP. Registrants who had been involved in the FtP process previously (either having been referred or as a witness) reported that the experience was

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Every employer should have a set of policies which would come into play during these situations.

(Employer, England)

We should exhaust our internal processes. This is where the intelligence is.

(Employer, Wales)

There are processes that we can do initially to make that person safer and also it depends on the number of medication errors that person had previously, what support and input they've had... but you [NMC] wouldn't know that, that's for us to get that information which would inform whether we refer the case back.

(Employer, Wales)

”

deeply distressing. Registrants reported that prioritising local action was acceptable to them as it would mean they would have contact with familiar faces as opposed to the NMC who they do not know and are afraid of.

A clear tipping point for all stakeholder groups regarding when the NMC must immediately take action was when a concern was so serious that patient safety would continue to be put at risk if the registrant continued to practise. When advised that for such concerns the NMC would continue to consider the use of an interim order, all stakeholder groups were in agreement that this was acceptable. However, a small number of challenges to implementing this successfully were raised and these are discussed in section 4.4.2.

The employer is an 'expert' regarding the registrant's role and local context that may influence FtP

All stakeholder groups reported that effective local action by employers should be prioritised in most instances as employers are experts in:

- The registrant's field of practice – they have the knowledge and skills in the registrant's field of practice and can make educated assessments of the individual's FtP.
- The current context in which patient safety incidents occur – they will clearly understand the local context within which incidents occur and have records/data that allows context to be investigated.
- Remediation procedures – they will understand if opportunities for remediation are available for the registrant and they will know if such opportunities have been afforded to the registrant previously.

It was reported that as the employer is an expert, they would often be best placed and able to resolve the issue in a timely manner to prevent further patient safety concerns that may result from concerns regarding a registrant's FtP.

There was an acceptance that local procedures can be utilised to establish the facts of a case (fact finding, root-cause analysis) and that the employer can then make a determination regarding whether a concern can be handled locally or whether it is necessary to refer the concern back to the NMC.

Prioritising effective local action may reduce the amount of frivolous or malicious concerns being investigated

It was noted that fair and impartial reviews by the NMC would require local evidence and thus would require effective local action first in order to address most concerns. However, both registrants and employers discussed experiences wherein they believed that a MOP had communicated frivolous or malicious concerns to the NMC. It was believed that such instances may be reduced by having clear guidance and transparent processes regarding the prioritisation of effective local action. It was believed that if MOP understood that local action will be prioritised, it may act as a deterrent to frivolous or malicious concerns being raised. It was also noted that it will be necessary to ensure that the public fully understand that FtP is about ensuring patient safety in the future, and not about punishment for mistakes.

Registrants want to be informed that a concern regarding their FtP has been made prior to NMC investigating

Of note, many registrants spontaneously discussed that they wanted to be notified that a concern has been raised regarding their FtP prior to an NMC investigation beginning. A number of registrants who had experienced being referred reported that they were frustrated and frightened when they received NMC notification of a concern regarding their FtP via the post, and that it had come as a surprise without prior warning from their employer.

Registrants believed that the prioritisation of effective local action would enable employers to investigate and discuss concerns with them so they were fully aware of them in advance of any potential regulatory action should the concern be referred on/back to the NMC.

4.4.2 Key identified challenges

Although the participants were in agreement that the proposed changes would improve the FtP process, a range of challenges to the successful implementation of this work package were identified.

Developing clear and actionable guidance for employers regarding the prioritising of effective local action

All stakeholder groups reported that it would be challenging to develop a clear guidance document that would enable employers to 1) be clear on NMC requirements of an effective local action, and 2) understand what is required in a referral. They also reported that it would be challenging for the NMC to produce this guidance given the breadth of potential concerns that may be raised – owing to the diversity within the roles they regulate – while remaining flexible and responsible to the individuality and complexity of some cases.

“

The NMC seems to operate on the basis of beyond reasonable doubt, our thresholds are often lower, so we may wish to dismiss someone, but they could continue working elsewhere if the NMC does not take action.

(Employer, Wales)

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During the insight activities, ICE facilitators asked both registrants and employers “what should an effective local action involve?” Participants’ responses may be grouped into 3 key themes: 1) fairness, 2) transparency and 3) comprehensiveness.

Fairness – Fairness was regarded to be a key element of a local action. This includes how an investigation is conducted and the outcomes of an investigation, with registrants and employers detailing that disciplinary or remedial actions must be proportionate to the severity of the concern regarding the individual’s FtP in the future as opposed to the severity of the outcome of the incident (e.g. no harm to patient, significant harm to patient, death).

Transparency – Registrants and employers reported that transparency was a key element and that transparency relied upon clear processes for local action and guidance regarding potential outcomes from local action. Most employers believed they currently have transparent processes because they are heavily regulated when it comes to patient safety, with strict safeguarding policies and procedures in place.

However, it was noted that smaller and non-NHS employers are less likely to have such clear and transparent processes.

Comprehensiveness – As the outcomes of disciplinary action can have significant impacts on registrants, it was reported that comprehensive investigations must take place, particularly when a registrant and an employer disagree regarding the facts of a case. It was reported that expedited processes are currently utilised when the facts of a case are accepted and when remorse for mistakes is demonstrated. It was reported that in order for local action to be comprehensive, it should include an appeals process. It was also noted that clear processes regarding when a case would be progressed for an NMC investigation need to be detailed. Many employers reported that as they themselves are registrants, they have a duty of care to ensure patient safety in order to keep their own PIN and that this motivates them to ensure local cases are comprehensive.

Importantly, despite many registrants, employers and MOP initially expressing that both local action and regulatory action should be fast and efficient, it was acknowledged that in order to be fair, transparent and comprehensive, investigations would take significant amounts of time. As noted in section 4.1, there is a clear expectation from registrants and MOP for both employers and the NMC to communicate with individuals involved in investigations regarding progress on a case and next steps/processes that will be involved. It was accepted that whilst speed and efficiency would still be important – owing to the fact that a number of impacts to registrants and employers are experienced during investigations – it was expected that effective communication will improve individuals' experience of being involved with a case and enable them to be prepared (including being emotionally prepared for potential challenges).

“

When you're on that panel and your making that decision, you need the reassurance as a professional that you're doing it right, because I've got to retain my pin as well and protect the public as well, so I'm held to account.

(Employer, The Surgery Clinical Board, Wales)

There needs to be parity between small and big organisations, parity and a set of standards produced by the NMC for employers to follow.

(Registrant, England)

”

Employers and registrants reported that the NMC must produce clear guidance regarding referrals and their expectations for effective local action. It was noted by a number of employers that they often struggled to understand what types of concerns should be immediately raised with the NMC prior to local investigations. It was considered extremely important for processes for local action and the NMC's FtP process to be closely aligned. Of note, in instances wherein a personal relationship had been established between

an employer and an individual at the NMC employer link service, the employers were significantly more confident regarding what is required from a referral and what types of concerns should be referred immediately vs investigated first locally. This demonstrates the importance of the employer link service establishing open and collaborative relationships with employers.

It was reported that clear guidance and expectations being set by the NMC would likely ensure that employers carry out robust investigations to meet the required standards. It was expected that this would result in some employers "raising their standards" and reported that it also has the potential to reduce variation in how different employers handle patient safety and other concerns. It was noted by a small number of employers that NMC policy may at times struggle to keep up with changes in employment law. Key considerations for this work package – in particular the guidance and policy documents that the NMC must produce – are discussed in section 5.2.

The NMC must ensure that the public are reassured and confident regarding the quality of local action (investigations) and that regulatory action will continue to occur when necessary

The public need to be reassured and confident that local action taken by employers follows a robust and transparent process that meets standards set by the NMC. Participants reported that there may be cases when there is a lack of trust between the employer and the referrer and in such instances, the NMC may experience a challenge from the referrer if they were to refer back for a local investigation.

“

We've established a relationship with the employer link service and that has really helped.

(Employer, acute trust, Northern Ireland)

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To limit the frequency with which this happens, it was reported that the NMC will need to ensure the employer provides feedback to the NMC regarding what action they have taken (in order to assess that an effective local action has taken place), while ensuring the referrer and others concerned are kept informed of the procedures being taken and the outcomes that occurred (see below for further details regarding the need for a feedback loop).

All stakeholder groups reported that clear expectations must be set with MOP. The prioritisation of effective local action must be normalised and expected by MOP, and the NMC will need to clearly demonstrate to MOP that local action is a key first step in most cases, even those that are eventually progressed for regulatory action. It was also noted that it will be necessary to ensure that the public fully understand that FtP is about ensuring patient safety in the future and not about punishment for mistakes, and that employers are perfectly placed to take action fast in response to patient safety concerns in order to remediate concerns and prevent future issues.

Developing a clear and transparent feedback loop between NMC, employer, referrer and registrant is essential

It was repeatedly discussed by each stakeholder group that in order for the prioritisation of effective local action to be successfully implemented and accepted, there needs to be the establishment of a clear and transparent feedback loop between the NMC, employers, MOP referrers and registrants who have been referred.

A number of MOP and registrants perceived that employers may wish to protect their own interests and “cover up” any shortcomings that may reflect on them badly. This may consequently increase the risk of future patient safety incidents if FtP concerns against a registrant are not addressed by a regulator.

The proposed feedback loop was considered essential to raise confidence in

“

I disagree, if I was making that complaint and they said ‘oh we’re not going to deal with it’, I’d feel dismissed almost, like it’s not worthy.

(MOP, England)

You’d want feedback later on to say ‘this is what we’ve done, this is what we’ve asked the employer to do, this is what the employer’s done’, so you get that loop.

(Registrant, England)

”

MOP referrers that their concerns are taken seriously and to guard against employers being able to “sweep things under the carpet”. Workplace cultures were identified as a key factor that may impact on the effectiveness of local actions and it was reported that registrants and MOP will require reassurance that employers are adhering to regulatory standards and being held to account when they are not. It was reported that this may require employers to notify and explain the outcomes of local actions to the NMC.

Participants stated that this feedback loop needed to have clear processes and standards for how:

- Concerns are referred over to employers.
- Registrants are informed that a concern has been raised against them.
- Employers inform the NMC of the outcomes of local actions.
- Referrers are informed of the actions that will be taken to address the concern and the outcomes of local actions.
- Data regarding concerns is handled on NMC systems.

A wide range of considerations that the NMC must take into account when undertaking the programme of work to successfully implement this work package – including establishing a feedback loop – were discussed by participants and are outlined in section 5.2.

4.5 Taking into account the context in which patient safety incidents occur

Perceptions

91% of participants agreed that the proposed changes would improve the FfP process.

Participants were largely in support of using the following guiding principle in decision making: “Information about circumstances and context will always be relevant if it could show that an equally qualified nurse or midwife who found themselves in the same circumstances would have done something similar.”

Participants believed that context should be taken into account because current work environments can significantly influence the potential for patient safety incidents to occur.

Employers identified themselves as the experts in context – MOP and registrants agreed. Employers will be required to provide contextual information during FfP investigations.

Employers stated that they would be dissatisfied with the NMC providing feedback regarding context to them as opposed to taking regulatory action if it was them who made the referral. They do support contextual factors being used in investigations and to determine severity of sanctions.

Key quotes

“If you’re relying on the employer, how truthful are they going to be? They’re not going to want to take responsibility for difficult working conditions if they can potentially push it onto the individual.”

(Registrant, Wales)

“We’ve just had the Safe Staffing Act, it’s a legal requirement now to ensure we have a safe number of nurses on shift, so we have to triangulate our acuity data, our patient safety incidents and professional judgement, so it’s very much in our remit to look at all this.”

(Employer, Lead Nurse, Wales)

“I would expect that if there was a pattern of regular occurrences then that’s an organisational issue and the NMC ought to recognise that and say ‘you’re not providing a safe enough environment for your nurses to practice’ but I don’t know what that would look like.”

(Private Setting Manager, England)

Key identified challenges

Concerns were raised that registrants may excuse their poor practice by blaming the wider context.

Organisational culture and leadership may play a key role in patient safety incidents – but the NMC will find it challenging to investigate its impact on patient safety incidents.

Participants were unclear who will decide if context is the main factor in causing a patient safety incident – employers (considered experts) or the NMC.

The NMC does not have power to hold employers to account following the provision of feedback on contextual factors.

Key considerations (see section 5.3)

How will the NMC ensure that an employer acts on the feedback that they provide?

How will the NMC account for low staffing levels at the time of patient safety incidents? This needs careful consideration as this is an ongoing challenge across the sector and may require in depth investigations to understand how low staffing happened on the day of an incident and to understand if potential risks had been flagged by the registrant prior to the incident.

How will the NMC ensure that registrants will not use contextual factors to excuse their role in patient safety incidents?

How will the NMC track if similar incidents are occurring over time within the same organisation/trust in order to prevent future incidents from occurring? Feedback to employers and no further action from the NMC will not be considered an acceptable outcome if similar incidents are reoccurring over time. The NMC must consider how it will work with other regulators to ensure actions are taken.

The NMC are seeking to develop a more structured approach to how they consider contextual factors that can help them to better understand the overall seriousness of referrals. This will help the NMC determine how much of any risk to patients is actually caused by the registrant's practice vs how much risk might actually be caused by the system or environment in which the registrant is working. This means that the NMC will always consider:

- Structural factors (staffing levels, workload)
- Systemic factors (task planning and allocation, working practices, access to I.T.)
- Cultural factors (management pressures, organisational culture)
- Personal factors (Stresses, illness)

A strategic work package is being undertaken to support changes that will enable the NMC to take into account the context in which patient safety incidents occur. This work package has three identified priorities:

- The NMC will introduce a policy that sets out the relevance of context and how it will be taken into account.
- The NMC will develop a tool to standardise the way in which they assess contextual factors – This will be embedded in all decision making stages.
- Intelligence about context will be shared with employers/other regulators.

The successful implementation of this work package is expected to produce the following benefits:

- Improved public protection: better identification and mitigation of patient safety risks.
- Reduced volume of case: with fewer cases progressed for investigation/adjudication.
- Improved efficiency: more focused investigations.

ICE were asked to explore the following with registrants, employers and members of the public:

- The acceptability of the context within which patient safety incidents occur leading to feedback for the employer or other stakeholders relating to contextual factors rather than FtP action against a registrant.
- The acceptability of the NMC providing other regulators with information related to concerns regarding contextual factors.
- The acceptability of the NMC using the following guiding principle when determining the relevance of contextual factors: "Information about circumstances

and context will always be relevant if it could show that an equally qualified nurse or midwife who found themselves in the same circumstances would have done something similar.”

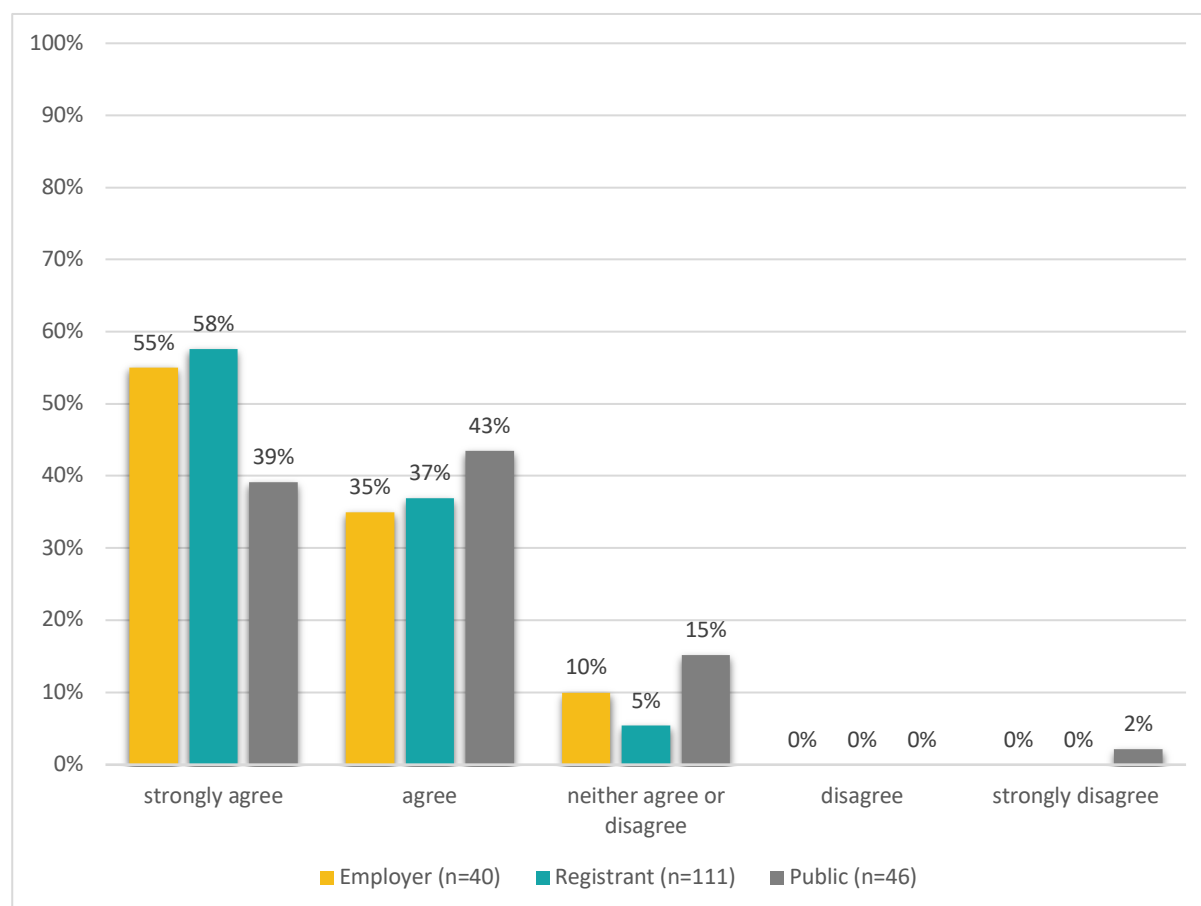
4.5.1 Perceptions regarding work package 2

To explore the perceptions of registrants, employers and members of the public regarding the proposed potential changes that would result from the NMC taking into account the context in which patient safety incidents occur, ICE facilitators:

- Provided participants with a brief presentation regarding the changes that are proposed under this work package.
- Provided an example of a scenario wherein the proposed changes may apply and the actions that the NMC would be likely to take (e.g. provide feedback to the employer).
- Utilised a blink exercise to ascertain participants’ immediate perception regarding the acceptability of the proposed changes – this consisted of a survey question which asked participants if they believed the FtP process will be improved by taking the context into account.
- Asked a series of questions and laddered responses to fully explore the reasons for these perceptions.

ICE facilitators asked participants to indicate how much they agreed with the following statement: *I believe the FtP process will be improved by taking into account the context in which patient safety incidents occur*. Figure 2 provides a breakdown of participants' responses to this statement, split by stakeholder group.

Figure 2 – Participants' response to the statement 'I believe the FtP process will be improved by taking into account the context in which patient safety incidents occur' (total responses = 197)



Out of a total of 197 participants who responded, 91% agreed that the FtP process will be improved by taking context into account. This demonstrates that there is a high level of acceptance of the proposed change from across the stakeholder groups and across countries.

Registrants had the highest proportion of participants who agreed with this statement (95%), followed by employers (90%) and MOP (82%). A key reason for why fewer MOP agreed with this statement was because they did not trust that all employers would ensure the feedback from the NMC regarding contextual issues would be addressed. Some employers themselves also neither agreed or disagreed

(10%) and had discussed that they were concerned registrants would excuse their bad behaviour by blaming contextual factors. The concerns that were raised and the key themes that arose during the insight activities are discussed below.

Across the stakeholder groups, the majority of participants agreed with the principle of looking at the “whole picture” when determining whether or not to take regulatory action as they believed patient safety incidents rarely happen in isolation of other contributing factors. It was discussed that taking context into account would ensure an NMC investigation is fair and leaves “no stone unturned”.

Guiding principle – Taking context into account

The NMC have reported that they may use the following principle as part of their decision-making:

“Information about circumstances and context will always be relevant if it could show that an equally qualified nurse or midwife who found themselves in the same circumstances would have done something similar.”

Participants were presented with the above guiding principle in order to determine if they would accept that this should be used to guide decision making. The majority of participants agreed that this guiding principle was a rational way to make decisions and that it would enable fair decisions to be made. However, some participants, mostly employers, reported that it would be challenging to implement this principle given the current working environments registrants are working in, as there are ongoing staffing challenges that could easily be used as an excuse for poor practice when in fact registrants need to be able to practice to the required professional standards within the current environment or they are not fit to practise (see section 4.5.2 for more details). Employers stated that they routinely collect contextual data and consider these factors internally if concern arises. Employers stated that they would be

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If another nurse in that same situation could have made that same error, then clearly, it's not that they are not FitP it's that we are not giving them the appropriate support to be able to practice safely.

(Employer, Lead Nurse, Wales)

”

frustrated if they themselves made a referral to the NMC and were simply given feedback as they will “have already considered this”.

When discussing this work package, employers identified themselves as the experts in contextual factors and reported that as well as the registrant, they themselves (as part of an effective local action) would need to be given the opportunity to provide evidence regarding contextual factors during an NMC investigation. As discussed in section 4.4.1, registrants and the public also agreed that employers are experts in context.

ICE facilitators asked a series of probing questions using “what if” statements in order to determine if there was a tipping point at which the participants did not believe that contextual factors should be taken into account. The participants answered this question whilst focusing on instances wherein it would not be acceptable for the NMC to simply provide feedback to an employer vs taking regulatory actions (sanctions).

The participants were clear that if there had been a patient death, then the regulator would need to consider taking regulatory action against the individual, although this didn’t necessarily mean they should be removed from the register or given a long term suspension order – it may simply mean a conditions of practice order is put in place until concerns are remediated, with an interim order utilised during the investigation. Participants believed the NMC would also need to communicate clearly with the family of the individual who died regarding the actions it will take to reassure them and other stakeholders that concerns are being taken seriously.

The participants were in agreement that if, over time, similar concerns were being raised about registrants from the same organisation/trust, then the NMC providing feedback may not be considered as a strong enough action (see section 5.3 for what participants believe needs to be considered).

4.5.2 Key identified challenges

Although the participants were in agreement that the proposed changes would improve the FtP process, a range of challenges to the successful implementation of this work package were identified.

Registrants may excuse their behaviour by blaming the wider context

Across all stakeholder groups, concern was expressed that registrants may excuse their behaviour to “get out of trouble with the NMC” by blaming a patient safety incident on wider contextual factors. Participants discussed that both registrants and employers have a professional responsibility to uphold their duty and standards within any given context. As ongoing nation-wide pressures and shortages related to staffing will not be easily remedied in the near future, the current context was considered one within which registrants would have to become accustomed to and that they would need to continue to care for and protect the public within it. Importantly, it was reported that if a registrant believes the working environment is a risk to patient safety, they have a responsibility to highlight that concern to a manager or via incident reporting software (e.g. Datix) in advance of an incident occurring. This was considered to be within a registrant’s duty of candour. Further, MOP who had experienced the FtP process specifically stated that registrants have a responsibility to “speak up” if they believe something to be wrong or working conditions to be inadequate.

“

I could quite see how that could be an excuse for bad practice if he or she was under so much pressure, but registrants, and we as employers, have a professional responsibility to keep patients safe no matter what

(Employer, Practice Manager, England)

If you’re in that situation, the pressure’s high and you’re just trying to get through dealing with what you’re dealing with, there’s a number of emergencies, then that has to be taken into consideration when you start to question why the nurse didn’t say anything.

(Registrant, England)

If they feel that things are as bad as they are, they have a responsibility to speak up about it.

(MOP who has been involved with FtP, Scotland)

If you’re relying on the employer, how truthful are they going to be? They’re not going to want to take responsibility for difficult working conditions if they can potentially push it onto the individual.

(Registrant, Wales)

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Organisational culture and leadership may play a key role in patient safety incidents – but this will be challenging for the NMC to investigate

A number of registrants who had worked for different trusts during their careers stated that organisational culture and leadership are key factors that influence patient safety incidents including how risks are discussed, how risks are addressed, how incidents are discussed, how incidents are prevented in the future and if registrants are enabled to remediate concerns. A number of registrants specifically stated that in some places of work, they had felt comfortable flagging potential issues, but not in others.

Registrants reported that understanding the role that organisational culture and leadership may play in patient safety incidents would be important, but would prove challenging for the NMC given that they do not regulate healthcare settings.

A number of registrants reported that an organisation may prefer for an individual to take responsibility for the outcomes of difficult working conditions, rather than taking responsibility as an organisation. When ICE facilitators asked probing questions to explore the reasons for these beliefs, the registrants reported that this was because in some organisations there is still a culture of blame and that it will take time for organisations to be fully transparent, particularly if it may impact on funding.

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The staffing levels and workload, they are all very different in different settings. The place where the incident occurred is also very important apart from looking at the ratios.

(Employer, Intensive Care Manager, Northern Ireland)

We've just had the Safe Staffing Act, it's a legal requirement now to ensure we have a safe number of nurses on shift, so we've have to triangulate our acuity data, our patient safety incidents and professional judgement, so it's very much in our remit to look at all this.

(Employer, Lead Nurse, Wales)

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Who should decide if the context is the main factor in causing a patient safety incident to occur – employers or the NMC? Employers queried that the same contextual factor (e.g. low staffing levels) could have a varying degree of influence on a patient safety incident, depending on the circumstances and the work place in which it occurred. Employers were unsure how the NMC would account for this variation during their initial investigation and when determining whether or not to take regulatory action or to provide feedback to an employer.

Employers suggested that as “experts” in the local context, they themselves would be best placed to make a judgement on the extent to which contextual factors caused an incident to happen. One employer who worked in the care home sector gave the example of how low staffing levels in a care home setting may cause less severe consequences than the same shortages in an acute hospital, but only an expert in the local setting would be able to make that judgement. The ongoing level of dependency/need from the individuals being cared for was considered a critical factor that only an expert could make a judgment on.

Employers want the opportunity to resolve patient safety issues internally and believe that they have robust and, in some countries, legal processes in place to consider contextual factors. For example, employers in Wales reported that the introduction of [The Nurse Staffing Levels \(Wales\) Act](#) has made it a legal requirement for employers to maintain nurse staffing levels in adult acute wards, as well as a broader duty to consider how many nurses are necessary to provide care for patients in all settings. It was discussed that this means that employers already routinely monitor and record staffing levels, and that this is data they would use as part of an internal investigation. Of note, they reported that they would be happy to share contextual data with the NMC during investigations of FtP concerns.

The NMC does not have the powers to hold employers to account after providing feedback on contextual factors A number of challenges were identified with what would happen next after the NMC provided feedback regarding contextual factors to an employer. There was concern expressed as to how, if at all, the NMC would monitor that the feedback they provided resulted in meaningful action. Participants suggested that an action plan would need to be put in place to hold employers to account and ensure employers can demonstrate what they have done to rectify the contextual

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It's about patient safety that's what the NMC are there for, and if the organisation is failing in that then I would expect the NMC will want a report back to see what that organisation has done to make the area safer, but I don't know what that would look like.

(Employer, England)

You'd want them to be really honest about what they're doing behind the scenes, to come back to you and say 'we believe this nurse is FtP but we have found cultural and structural issues which we are reporting to the CIW.

(Employer, care home setting, Wales)

With feedback should be the instruction from the NMC about what they need to do. Making sure they do it would be the responsibility of the CQC but I'm not sure how they will join the dots.

(Registrant, England)

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issues. However, it was also acknowledged that as the NMC do not regulate healthcare settings, it would have no regulatory powers to ensure these actions are undertaken. A number of participants from across the stakeholder groups believed that the NMC had a responsibility and vested interest to inform other regulators if there was an outstanding/ongoing concern to patient safety. Registrants in particular stated that if the NMC were aware of a persistent issue (e.g. multiple referrals about the same issue, from the same trust), they would have an obligation to communicate these concerns with other regulatory bodies to ensure they are solved.

The participants reported that they would expect employers to act upon feedback from the NMC and feedback on what actions they had taken. However, there was acceptance that this information wouldn't necessarily be fed back to the NMC.

During the insight activities, participants were informed of the regulatory role of the NMC (to regulate the practice of nurse and midwives, not the health care setting) and asked who they believed would be responsible for ensuring the employer acts upon the feedback given. Following this explanation, registrants and MOP accepted that this would not be the responsibility of the NMC, rather the responsibility of those regulatory bodies that regulate the healthcare settings (e.g. CQC, CIW). However, MOP and registrants believed that a feedback loop between the NMC, employers and other regulators would be the best way to monitor for repeated concerns arising. It was suggested that if the NMC communicated concerns to other regulators, this would ensure that the issues get resolved by the appropriate regulatory body and would also convey the seriousness of the issue to prompt the employer to act. This will rely on the establishment of a clear and transparent feedback loop between the NMC, employers and other regulators.

A key potential barrier to developing this feedback loop is whether or not employers will accept the NMC sharing data and concerns regarding contextual factors with other regulators should the employer provide them with such data during investigations. The NMC requested that ICE explored this issue with employers, therefore ICE facilitators asked employers how they would feel if the NMC was to report findings related to contextual factors to another regulator. In general, employers accepted that the NMC should communicate concerns regarding contextual factors with other regulators should there be serious or

repeated concerns. However, they expected the NMC to be “honest and open” with them and to notify them first before approaching a regulator, to give them an opportunity to remediate concerns and/or notify them that they were intending to pass on concerns to another regulator.

The key considerations for this work package are discussed in section 5.3.

4.6 Enabling nurses and midwives to remediate regulatory concerns

Perceptions

94% of participants agreed that the proposed changes would improve the FtP process.

Registrants unanimously stated that it would be positive for the NMC to provide them with tailored remediation advice.

Across the stakeholder groups, remediation was acceptable for the majority of patient safety and other concerns if:

- **Open and Honest** – The individual was open and honest about what happened
- **Acceptance of responsibility** – The individual accepts responsibility for their actions and showed remorse and a willingness to remediate concerns
- **No similar previous concerns** – This is the first time the concern had occurred.

Remediation early in the regulatory pathway was deemed unacceptable if...(tipping points)

- The individual was dishonest or deceiving
- The individual did not accept that they were at fault and showed no remorse.
- It was a multiple occurrence for a similar concern.
- A death resulted from the incident that led to the FtP concern (MOP).

There was a clear difference in perceptions between concerns that resulted from a lack of competence vs misconduct/character. Lack of competence was considered remediable, whereas misconduct/character issues were considered to be a major breach of professional standards, especially if the concern calls into question their trustworthiness.

Key quotes

“You’ve got to put local actions in place and if it’s the first time they’ve done it, it seems disproportionate to then refer to the NMC straight away before we have seen whether there are valid reasons and we’ve given that individual the opportunity to re-train.”

(Employer, Scotland)

“Where it is skill based and you can have training to improve the skill and competence that’s fine, but not if it’s a strong deep rooted attitudinal problem.”

(Registrant, England)

“What point in the process will this happen?! Screening? Investigations?”

(Employer Northern Ireland)

Key identified challenges

Developing a list of what types of concerns can/cannot be remediated was identified as a key challenge – stakeholders believed the NMC would have to produce a list of concerns that they would consider remediation for early in their regulatory process vs those that are “so serious as to be fundamentally incompatible with registration- they can’t be remediated”.

Stakeholders reported that the NMC must communicate how other factors will be taken into account when considering offering remediation as an outcome. The individual’s previous conduct, previous opportunities for remediation, the acceptance of responsibility, a show of remorse and a willingness to remediate were all factors that stakeholders believed needed to be considered.

Maintaining standards for remediation across different work settings was identified as a key challenge for the NMC to overcome.

Ensuring remediation action(s) take place via a feedback loop.

Key considerations (see section 5.3)

What criteria will be used to establish that a case is non-remediable?

How will remediation actions be monitored?

How will the NMC monitor for repeated low level concerns?

How will the NMC handle a case if an employer refuses to oversee the remediation of a registrant because they do not believe remediation is an appropriate regulatory outcome for the concern that was raised?

Remediation opportunities already exist both within employer processes and NMC regulatory processes. However, within NMC regulatory processes, this typically takes place in later stages of the FtP process. The NMC has proposed to enable nurses and midwives to remediate regulatory concerns earlier in the regulatory process. It is hoped that with earlier engagement and evidence of effective remediation, many cases could be resolved sooner to the benefit of all parties involved. The NMC has previously produced remediation guidance that is available via the NMC website at <https://www.nmc.org.uk/ftp-library/guiding-principles/remediation-and-insight/has-the-concern-been-remedied>.

A strategic work package is being undertaken to support changes that will facilitate the NMC to enable nurses and midwives to remediate regulatory concerns earlier in the regulatory process. This work package has three identified priorities:

- **The referral of non-remediable cases directly to the Fitness to Practise committee**
– The NMC will create pathways within the FtP process that enable cases to be referred direct to the Fitness to Practise committee wherein it has been identified that remediation is not a viable option.
- **The NMC will encourage early remediation** – The NMC will engage with registrants early in the regulatory process in order to identify and utilise opportunities for remediation.
- **The NMC will provide registrants and employers with tailored guidance on remediation pathways** – The NMC will produce guidance documents that will inform registrants and employers of pathways that may be utilised to remediate regulatory concerns early in the FtP process.

The successful implementation of this work package is expected to produce the following benefits:

- **Improved public protection:** Registrants remediate, or are removed from the register, sooner.
- **Reduced cost:** Fewer cases require full hearings/monitoring of sanctions as regulatory concerns are remediated earlier when possible.
- **Greater efficiency:** Clarity about remediation early in the process avoids cases progressing further than necessary.

ICE were asked to explore the following with registrants, employers and members of the public:

- The acceptability of closing cases and/or registrants continuing to practice if a registrant demonstrates required remediation: including what types of incidents this would not be acceptable for (e.g. clinical error leading to patient death).
- Who a registrant would seek remediation guidance from and the acceptability of receiving remediation advice from NMC.

Findings from these discussions have been themed and are presented in the following two sections. Key considerations for the NMC's strategic work programme are discussed in section 5.

4.6.1 Perceptions regarding work package 3

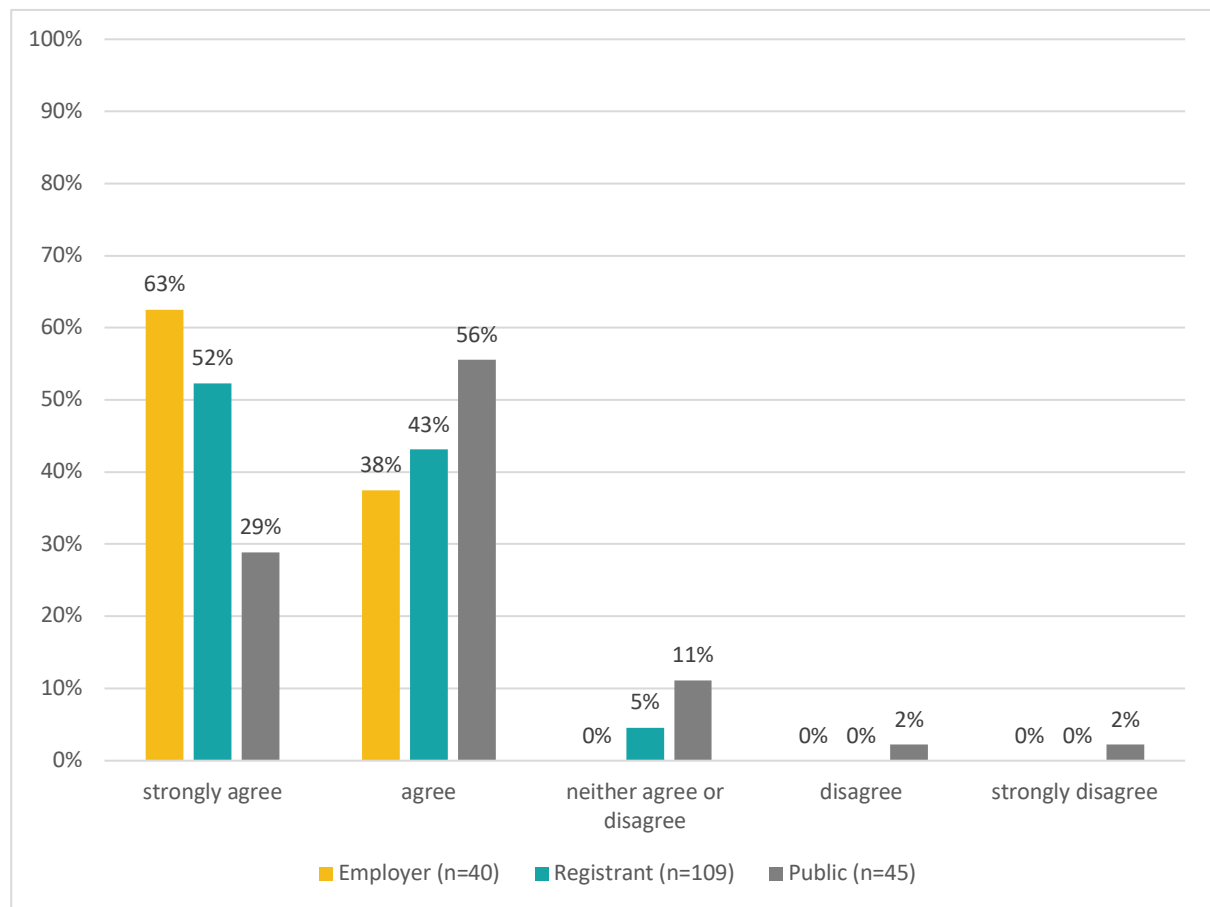
To explore the perceptions of registrants, employers and members of the public regarding the proposed potential changes that would result from enabling nurses and midwives to remediate regulatory concerns, ICE facilitators:

- Provided participants with a brief presentation regarding the changes that are proposed under this work package.
- Provided an example of a scenario wherein the proposed changes may apply and the actions that the NMC would be likely to take (e.g. the NMC decides to take no regulatory action).
- Utilised a blink exercise to ascertain participants' immediate perception regarding the acceptability of the proposed changes – this consisted of a survey question which asked participants if they believed the FtP process will be improved by enabling nurses and midwives to remediate regulatory concerns.
- Asked a series of questions and ladder responses to fully explore the reasons for these perceptions.

ICE facilitators asked participants to indicate how much they agreed with the following statement: I believe the FtP process will be improved by enabling nurses and midwives to remediate regulatory concerns.

Figure 3 provides a breakdown of participants' responses to this statement, split by stakeholder group.

Figure 3 –Participants’ response to the statement ‘I believe the FtP process will be improved by enabling nurses and midwives the remediate regulatory concerns’ (total responses = 194)



Out of a total of 194 participants who responded, 94% agreed with the proposed change. All employers agreed that this change would improve the FtP process (100%), with a high proportion of registrants (95%) and MOP (85%) also in agreement. The slightly smaller proportion of MOP agreeing with this statement may be explained by the fact that employers and registrants have hands-on experience within the healthcare industry, and that this has made them more aware that mistakes do happen and that there are processes in place to remediate issues effectively. MOP may be less accepting as they are unclear regarding the processes that are put in place to safeguard against mistakes and to remediate concerns when they occur. The key themes that arose during the insight activities are discussed below.

We want nurses and midwives to be able to remediate regulatory concerns

Participants were in agreement that nurses and midwives should be able to remediate concerns regarding their FtP at the earliest opportunity. Registrants, employers and MOP stated across the insight activities that “we all make mistakes” and remediation would be appropriate in instances where there is no outstanding concern to patient safety.

Across the stakeholder groups, participants believe that remediation would be appropriate for the majority of patient safety and other concerns if:

- The individual highlighted the concern to senior/manager immediately and was open and honest about what happened.
- The individual took responsibility for their actions and showed remorse and a willingness to remediate concerns.
- It was the first time the concern had occurred.

For each target audience group, the acceptance of responsibility, openness about what happened, willingness to remediate concerns and the number of times a registrant had been involved in similar instances were considered important factors in determining whether remediation would be appropriate. Employers in particular

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You’ve got to put local actions in place and if it’s the first time they’ve done it, it seems disproportionate to then refer to the NMC straight away before we have seen whether there are valid reasons and we’ve given that individual the opportunity to re-train.

(Employer, Scotland).

If the nurse – if she is open, she has realised what has happened and tried to take an action and is willing to undergo any training, then you can be sure nothing like this will happen again.

(Employer, Care home sector, Wales)

I still believe there are nurses who are fearful of speaking up because of the potential consequences, and having something like this in place would help to reassure people – where a genuine mistake has occurred, and they’ve recognised it immediately – it can be sorted out.

(Registrant, England)

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noted that it would be disproportionate for a registrant to face regulatory action if it was their first mistake because mistakes do happen and there are processes in place to deal with them.

Registrants believe this change will encourage nurses and midwives to “open up” about honest mistakes if they understand that the issue can be remediated without serious sanctions from the NMC. Employers believe it would be disproportionate for a registrant to be referred to the NMC before local action had been taken to remediate the concern. Many employers have robust procedures in place to deal with issues and mistakes and thus they are able to provide opportunities for remediation before they would consider making a referral.

Therefore, if a member of the public made a referral to the NMC, it would be considered acceptable to pass the concern back to the employer (as part of prioritising local action) as they are well placed to explore opportunities for remediation and would do so by following local procedures and considering the influence of wider personal and structural factors.

Being open and honest when things go wrong:

In 2015, in collaboration with the General Medical Council, the NMC published joint guidance for registrants on the professional duty of candour which builds on the requirements in the Code for registrants to be open and honest when things go wrong. Creating a working environment wherein being open and honest when things go wrong is important to the successful implementation of this guidance.

When is remediation early in the regulatory pathway deemed to be unacceptable?

ICE facilitators used a series of probe questions to determine the factors that would make it unacceptable for the NMC to offer remediation and close a case without taking regulatory action. Participants identified the ‘tipping points’ as being factors that directly opposed the factors that would permit remediation as detailed above.

The key tipping points are as follows:

- The individual was dishonest or deceiving – e.g. they had tried to hide their mistake and lied about what happened.
- The individual did not accept that they were at fault and showed no remorse.
- It was repeated occurrence of a similar concern.
- A death resulted from the incident that led to the FtP concern (MOP).

When explaining why, in these instances, remediation would not be acceptable, participants made clear distinctions between concerns that had to do with a lack of competence (e.g. if the error had to do with medication management, dressing wounds or poor record keeping), and those that involved misconduct or character issues that would call into question a person's trustworthiness. Participants believed that if a patient safety or other concern was made regarding a competence issue, it would be appropriate for the registrant to undergo training to improve a specific skill and thus improve their competence and remediate the concern. However, it was unclear how issues regarding a person's attitude or character could be remediated in the same way and thus participants reported that it was less acceptable for such concerns to be remediated when a registrant's attitude or character was called into question.

A number of employers reported that they had experienced incidents in the past wherein an individual refused to accept responsibility for an incident and therefore refused to engage with remediation that the employer believed was required. ICE facilitators asked probing questions to explore if it would be acceptable for the NMC to offer opportunities for remediation if the registrant demonstrated a willingness to remediate concerns at the point at which the NMC became involved. Employers reported that as their main aim was for the concern to be remediated, it was acceptable for the NMC to offer remediation if they had escalated the concern to them as part of their local action. However, if there had been clear dishonesty from the registrant and/or this was a repeated concern, they would be less likely to accept remediation. They would expect the NMC to put in place an interim order whilst the concern was being addressed and a conditions of practice order to restrict the individual's practise until the concern had been remediated. This was considered important in

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Where it is skill based and you can have training to improve the skill and competence that's fine, but not if it's a strong deep rooted attitudinal problem.

(Registrant, England)

If somebody's default position is to lie, how do you remedy dishonesty?

(MOP, Scotland)

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case the registrant moved employment before the employer could work with them to remediate concerns.

Across the stakeholder groups, participants discussed that instances where a registrant is dishonest or deceiving (e.g. tried to hide the issue or lied about what happened), would call into question their trustworthiness. Participants considered this to be a major breach of professional standards and duty, and would raise concerns as to what else that individual may have lied about in the past and what else they could lie about in future. Therefore, they would expect regulatory action to be taken without opportunities for remediation being facilitated early in the regulatory pathway.

Across all stakeholder groups, another tipping point that was identified was if the patient safety concern in question had happened before and the registrant had previously had an opportunity to remediate the concern. Participants said that remediation would not be appropriate if a mistake happened on repeated occasions, even if the nurse or midwife showed remorse and willingness to remediate. The public expressed their uncertainty about how the NMC would deal with “serial offenders” and consider repeated low level concerns when making a decision to offer remediation or take further regulatory action.

Employers and registrants believed the NMC would need processes in place to be able to consider a registrant’s previous conduct and opportunities for remediation when making a decision. One employer reported an instance where they had dismissed a nurse for making the same error four times and even though the nurse showed remorse and willingness to change, the number of times the error had occurred was the tipping point for undisputed dismissal because they deemed they were simply not competent to continue in their role. It was discussed that the NMC would need to ensure that their guidelines and procedures made it clear to registrants how many times remediation would be offered for similar/related concerns before regulatory action was taken. Employers and registrants believed this was necessary to ensure remediation is taken seriously and that opportunities for remediation were “given for the right reasons”.

If a registrant has been open about what went wrong and can demonstrate that they have learned from it, is it acceptable for the NMC to take no regulatory action regarding a clinical mistake, even where there has been serious harm to a patient?

During the research activities, the participants were presented with the following statement once they had discussed the proposed changes related to work package 3:

“This could mean that the NMC may not need to take regulatory action for a clinical mistake, even where there has been serious harm to a patient or service-user, if the registrant has been open about what went wrong and can demonstrate that they have learned from it.”

Employers and registrants believed that the principle of offering remediation opportunities as opposed to sanctions would still be acceptable, even if a patient had died. As discussed above, in order for remediation to be an acceptable outcome, employers and registrants would require the registrant to:

- Notify colleagues that a mistake had occurred and to have taken appropriate steps to address patient safety if they were aware of their mistake whilst the incident was ongoing.
- Accept their mistake and show remorse.
- Demonstrate a willingness to remediate concerns.

However, it was noted that opportunities to offer remediation may be limited if there was involvement from the police and coroners during the investigation of an incident that resulted in a patient death as NMC regulatory action would be impacted and unable to progress.

Among MOP, a clear tipping point for whether they believed remediation was an acceptable outcome was if the patient had died and particularly if the patient was a member of their family. MOP consistently reported that if a patient had died, even if the registrant had shown remorse and a willingness to remediate, they would not be satisfied if the NMC decided to take no regulatory action. When explaining their opinions, MOP often gave examples wherein the patient was a member of their own family. MOP responses to this question were particularly emotive, and ICE facilitators believe that MOP found it challenging to rationalise between the need for registrants to be given opportunities to remediate concerns and continue to practice, and a need for them to be punished for causing harm to their family member.

When MOP were repeatedly reminded that FtP was not about punishing past mistakes, their responses changed somewhat. In summary, they would expect the NMC to restrict the registrant's ability to practice whilst a robust investigation into the cause of death took place (i.e. enforce an interim order on the registrant). If at that point, the investigation found that the death was due to a genuine mistake that may be remediated to prevent future occurrence, MOP accepted that remediation may be appropriate. However, MOP were clear that they would need to trust that a thorough investigation had taken place into whether the registrant's mistake was honest or not.

To increase public acceptance of a remediation approach, the following is required:

- MOP must believe that FtP is not about punishment for past mistakes – FtP must be clearly differentiated from criminal justice.
- MOP must be confident that NMC FtP investigations are thorough.

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If we're talking about loss of life or serious harm, to say to the family, "The nurse made a mistake, sorry about that, but she's having this training now" I don't know if it would be enough.

(MOP, England).

If someone in my family died, then no, I wouldn't just accept it, I would want to know exactly what happened and why it happened.

(MOP, Mencap Liverpool, England).

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Who would registrants seek remediation guidance from?

Registrants and employers believed that the employer would play a key role in overseeing the remediation of a nurse or midwife under their employment. Registrants were asked who they would seek remediation from if a concern regarding their FtP was raised against them. The majority stated that they would approach their line manager and expect remediation to happen as part of personal development plans. Employers stated that they have internal procedures that they would follow to ensure opportunities for remediation are explored and carried out adequately. However, participants recognised that not every employer has robust processes in place for dealing with staff issues and providing remediation. Further, not all employers have a sufficient level of scrutiny over individuals' practice, (e.g. registrants whose practice is not overseen on a regular basis such as those who work in community settings), which limits an employer's ability to ensure the terms of the remediation have been carried out adequately. Employers said the NMC will need to provide a clear set of expectations and guidelines for employers to ensure remediation is carried out adequately.

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We need some clarity from the NMC about what their expectations are because some smaller organisations possibly won't have robust HR advice and guidance, or robust policy.

(Employer, Director of Nursing, Scotland).

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Across the stakeholder groups, some participants acknowledged that in certain instances, the registrant may not have a good relationship with their line manager/employer and thus will need to seek alternative ways to remediate regulatory concern (as there is an assumption that the employer plays a key role in remediation). This would also be true for registrants who are self-employed or work for more than one employer. Participants said the NMC will need to provide support and guidance to these registrants about how they can remediate concerns without an employer.

Registrants were asked “how would you feel if the NMC were to provide specific remediation advice for common remediable regulatory concerns?” Unanimously, across research activities, the registrants reported that it would be a positive thing if the NMC produced such advice as they considered their regulator ideally placed to provide such advice.

4.6.2 Key identified challenges

Although the participants were in agreement that the proposed changes would improve the FtP process, a range of challenges to the successful implementation of this work package were identified.

Developing a list of what types of concerns can/cannot be remediated

Across the stakeholder groups, it was reported that remediation was appropriate for many patient safety or other concerns (e.g. dealing with a competence issue that had happened once), but was not applicable to every type of concern. Participants said that the types of conduct that will/will not be considered for remediation need to be clearly defined by the NMC in order for there to be transparency around what types of conduct the NMC will consider for remediation versus those that are “so serious as to be fundamentally

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They need to divide and prioritise the types of conduct – the misconduct, the character – where they see they can apply remediation and where they cannot.

(Registrant, England)

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incompatible with registration – they can’t be remediated” ([NMC, 2018](#)). Further work is required to develop a full list of the types of concerns wherein early remediation would be an acceptable outcome from NMC involvement.

However, all stakeholder groups reported that it would be a challenge to develop a clear list of the types of conduct that would/would not be considered for remediation, because it would be crucial to consider other factors including: an individual’s previous conduct, previous opportunity for remediation, the acceptance of responsibility, show of remorse and willingness to remediate concern. Therefore, the NMC would need to make sure they communicate how they will take other factors into consideration when making a decision.

Maintaining standards for remediation across different work settings

Registrants and employers said the definition of remediation is “woolly” and may mean different things to different employers. It was discussed that one employer may interpret remediation as an informal chat, and another as a formal meeting as

part of a disciplinary process, whilst another may consider it formal training whilst an individual has restrictions placed against their current practise. It was reported that this will create inconsistencies across the system without clear and actionable guidance. The NMC will need to ensure that standards of remediation are consistent across different fields of practice and work settings. Registrants suggest that to do this, the NMC would need to produce a standardised framework for remediation.

Ensuring adequate remediation takes place

In instances wherein remediation actions (with or without sanctions being imposed) were the outcome of involvement from the NMC, leading to remediation being overseen by an employer, participants were uncertain about what evidence would be sent back to the NMC regarding the remediation that had taken place. Registrants themselves suggested that a clear and transparent feedback loop between employer and the NMC needs to be in place to evidence that adequate remediation has taken place. The NMC will have to set clear expectations regarding what remediation must take place and when, and will need to be clear regarding how ongoing remediation impacts a registrant's registration.

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In one area you might just get a chat with your ward manager and you say ‘yeah I know I did wrong I won’t do it again’ somewhere else it might be a process of meeting with the senior nurse going through a process of shadowing and signing off various objectives. Whatever it is, the format needs to be consistent nationwide.

(Registrant, England)

It depends on what information the NMC were given about the remediation that took place, again if a standardised framework was in place, having that loop, you’d be assured it’s been done properly.

(Registrant, England).

If you know no regulatory action will be taken against you if you do this, you could just do it so it’s done. It’s quite easy to say ‘Oh I’ve done this training’ but you’ve not necessarily proved yourself.

(Registrant, England).

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A number of registrants expressed that they were concerned that nurses and midwives may comply with the conditions of remediation only as a “tick box exercise” and not use the opportunity to remediate as a time to reflect and learn. For example, one registrant said it would be easy to evidence that a nurse or midwife had completed an online medication management course (for instance), but would be more challenging to evidence whether the training had translated into a change in behaviour.

Registrants suggested that it will be important that the NMC uses sanctions when appropriate to reinforce the severity of concerns regarding a registrant’s FtP. For example, the NMC may impose a conditions of practice order to certain aspects of a registrant’s practice and recommend a period of monitoring be undertaken, whereby a registrant can only practice under supervision so that a member of senior staff can witness that the registrant has learnt and remediated the regulatory concerns. However, there were concerns as to the feasibility of carrying out remediation procedures, such as shadowing or attending a training session, given the current pressures and staff shortages nationwide. Of note, midwives expressed most concern about this given the recent changes in legislation and the removal of supervision from NMC regulatory legislation (discussed further in section 5.4).

A wide range of considerations that the NMC must take into account when undertaking the programme of work to successfully implement this work package were discussed by participants and are outlined in section 5.3.

4.7 Holding full hearings only in exceptional circumstances

Perceptions

92% of participants agreed that the proposed changes would improve the FtP process.

General understanding of the regulatory process was poor for registrants and employers.

All stakeholder groups accepted that the NMC should hold full hearings only in exceptional circumstances and that this change would improve the FtP process for several reasons:

- It will speed up the FtP process and require less resources.
- It will avoid the negative impact full hearings can have on referrers, witnesses and registrants.
- It will avoid duplication of effort – particularly wherein criminal proceedings have produced clear outcomes.

MOP expressed an initial concern that shifting the focus to meetings would lead to less individuals being removed from the register. It was identified that this concern was based on a belief that sanctions are a form of punishment and that this concern may be addressed if the NMC communicate that this is not the case and by reassuring MOP that the regulatory process will still involve a fair and comprehensive examination of the evidence before making a determination on the case at a meeting.

Key quotes

“What would be the difference between a meeting and a hearing? They’re talking about having a meeting, having several people round a table looking at the evidence just like a hearing would, are they able to give as serious sanction, I’m not sure.”

(Employer, private sector, England)

“It could be similar to the situation with my dad, she admitted 2 of the 3 charges, now if she’d gone through the process and thought well actually if I just admit this third one I’m not going to have to go through that full hearing.”

(MOP who has been involved with FtP, England)

“Full hearings should be avoided if possible because...A registrant can’t be expected to work the same after an NMC investigation and full hearing, they’d be too afraid to make a mistake which would likely lead to more mistakes.”

(Registrant, Northern Ireland)

Key identified challenges

Registrants may decide not to dispute the facts of a case in order to avoid a full hearing – because it's the easier thing to do – meaning the full facts of a case are not established.

Registrants must maintain the option to opt in for a hearing – the NMC have already stated that “holding full hearings in exceptional circumstances would not prevent a registrant from requesting a full hearing at the appropriate point” in publicly available documents.

Increasing stakeholder understanding of the regulatory process – understanding is poor and results in misconceptions and unmet expectations. In particular, stakeholders are uncertain regarding the differences between meetings and hearings and are not clear that the FtP panel are independent – this is resulting in a perception that the process is not transparent or fair.

Key considerations (see section 5.5)

Stakeholders wanted to know the following:

How the initial investigation process will be conducted in cases that are concluded at meetings vs hearings.

How will remediation actions be, when and how registrants will have an opportunity to dispute/resolve the facts of a case, and whether registrants can “opt-in” to a full hearing.

Whether a registrant can appeal a case if they are not satisfied with the outcome. It was reported that in order to avoid unnecessary appeals, the NMC will need to inform the registrant of the expected outcome of the case (draft determination of a case) prior to a meeting to ensure they are comfortable with the expected outcome.

How a meeting resolves cases. The participants wanted to know who is involved, what evidence is used, what sanctions can be given and whether the registrant is present, or if they just provide a statement.

Whilst it is inevitable that some cases will always require a full substantive hearing to take place (e.g. if the registrant is engaged in the case, wishes to attend their hearings and denies the factual allegations), the NMC believe that it may not be necessary to go through the entire FtP process, even where there is a risk to safety or a concern that is so serious that removal from the register is required. The NMC currently holds full hearings in cases where there is no engagement from the registrant and no obvious denial of factual allegations. The NMC believe that they can use existing powers to resolve cases at an earlier stage in the process. For example, case examiners may agree undertakings, issue warnings or give advice if a registrant accepts a regulatory concern. Further, the NMC has the power to request that the FtP committee decide cases on paper at a private meeting, and would like to extend this to every case where the registrant does not disagree with their assessment of the case. The NMC intends to remain transparent and accountable by publishing the panel's reasons for the determination on a case.

A strategic work package is being undertaken to support changes that will enable the NMC to hold hearings only in exceptional cases. This work package has three identified priorities:

- **Shift the focus to meetings rather than hearings:** The NMC will widen the meeting criteria to include complex cases and those where there is a public interest in the outcome.
- **Draft determinations** will be produced in every case that is referred for adjudication. Draft determination will include provisional findings on charges, impairment, sanction and (if necessary) interim orders.
- **Virtual meetings:** These meetings will involve remote decision making by quorum of three within a strict timeframe.

The successful implementation of this work package is expected to produce the following benefits:

- **Reduced volume and cost of cases:** This is expected to result in a significant reduction in the number of cases requiring a full hearing.
- **Improved efficiency:** It is expected to be quick to complete hearings.

ICE were asked to explore the following with registrants, employers and members of the public:

- Expectations regarding cases wherein the facts are not disputed.
- Expectations regarding the publication of information regarding cases.

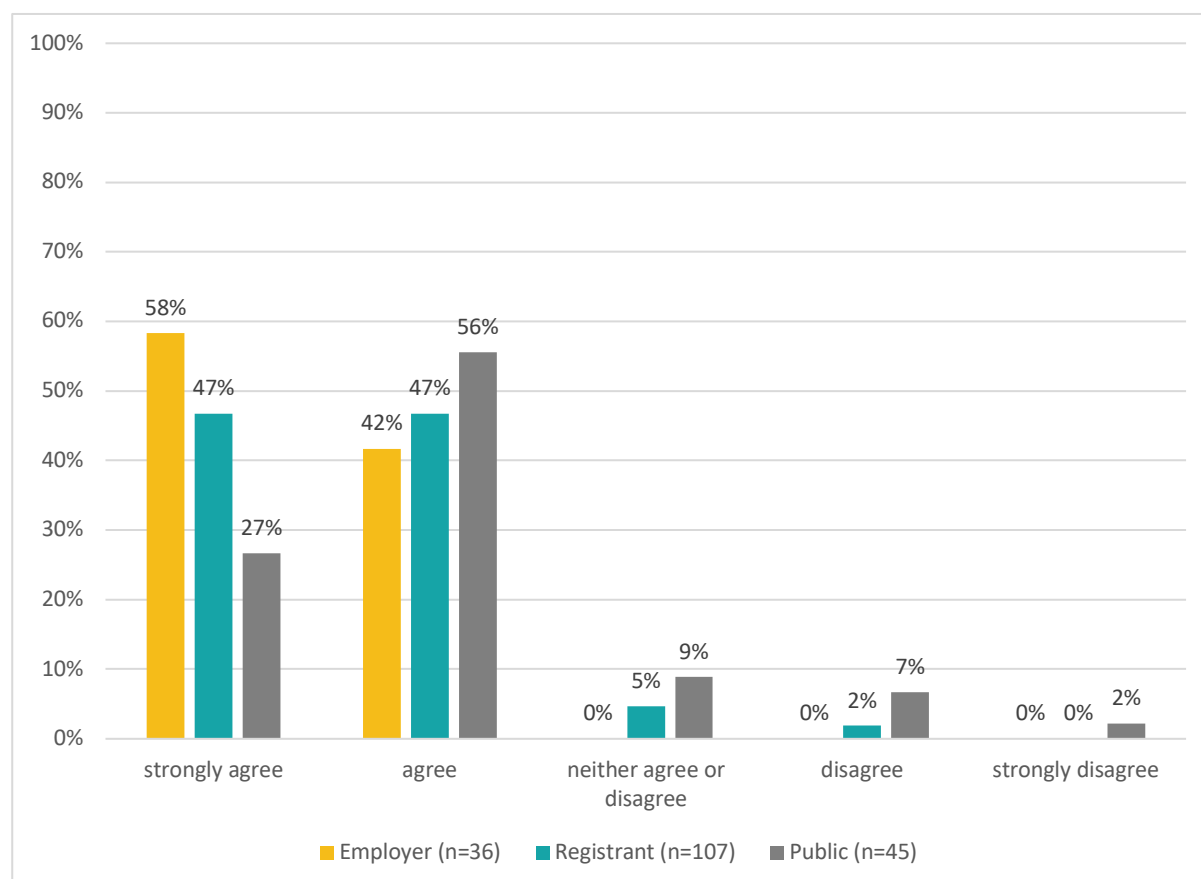
4.7.1 Perceptions regarding work package 4

To explore the perceptions of registrants, employers and members of the public regarding the proposed potential changes that would result from the NMC holding hearings only in exceptional cases, ICE facilitators:

- Provided participants with a brief presentation regarding the changes that are proposed under this work package.
- Provided an example of a scenario wherein the proposed changes may apply and the actions that the NMC would be likely to take (e.g. the NMC decides not to hold a full hearing).
- Utilised a blink exercise to ascertain participants' immediate perception regarding the acceptability of the proposed changes – this consisted of a survey question which asked participants if they believed the FtP process will be improved by holding full hearings only in exceptional circumstances.
- Asked a series of questions and laddered responses to fully explore the reasons for these perceptions.

ICE facilitators asked participants to indicate how much they agreed with the following statement: I believe the FtP process will be improved if the NMC only holds full hearings in exceptional circumstances. Figure 4 provides a breakdown of participants' responses to this statement, split by stakeholder group.

Figure 4 – Participants' response to the statement 'I believe that the FtP process will be improved if the NMC only holds full hearings in exceptional circumstances' (total responses = 188)



Out of a total of 188 participants from across the stakeholder groups who responded to this question, 92% agreed with the proposed change. All employers agreed that this change would improve the FtP process (100%), with a high proportion of registrants (94%) and MOP (83%) also in agreement. We believe that a higher proportion of employers and registrants agreed with the proposed changes as they have more experience and knowledge of the FtP process than MOP. They believed this change would speed up the process and avoid the stress of a full hearing for registrants and witnesses where possible. Although the majority of MOP agreed, a small proportion neither agreed or disagreed (9%) or disagreed (9%). MOP were concerned that they would not be able to publicly see the outcome of cases

that did not go to a full hearing and/or that an investigation would not be as robust if a full hearing was not conducted, and therefore the full facts of a case would not be established. The key themes that arose during the insight activities are discussed below.

Understanding of the FtP regulatory process is poor

In order to provide context that would help to understand stakeholders' perceptions of the proposed changes for work package 4, it was important to first determine their understanding of the FtP regulatory process. During the workshops and depth interviews, ICE facilitators asked registrants and employers to rate their understanding of the FtP regulatory process and found that current understanding of the process was poor. Only a small number of participants stated that they would feel confident explaining the regulatory process to someone else. This lack of understanding clearly leads to expectations not being met and a lack of understanding as to why the process can take so long.

Importantly, there was limited understanding of the difference between a meeting and a hearing.

We want the NMC to only hold full hearings in exceptional circumstances

Participants from all stakeholder groups agreed that a full substantive hearing would not be required to reach a decision in cases where there were no outstanding matters in dispute. The participants believed this proposed change would improve the FtP process for several reasons:

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You hear a lot of stuff in the media about things taking so long for cases to come before a fitness to practise panel, and I think this is a good example where you can expedite that to avoid unnecessary delay for everyone.

(England, Registrant)

If there is criminal issues involved then the police will have carried out a full investigation into the situation as well so it doesn't seem like a good use of resources to do two investigation.

(Registrant, England)

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It will speed up the FtP process and require less resources: In line with the NMC's anticipated benefits for this work package (to reduce volume and cost), the participants believed that this change would reduce the volume of cases taken to full hearings by "filtering out" cases that can be dealt with elsewhere. This was considered important because participants' current perceptions of the FtP process were that FtP takes too long (see section 4.2). By reducing the volume of cases taken to a full hearing, the participants expected that the NMC could ensure that those cases that do require a full hearing are dealt with more efficiently – consistent with the NMC's anticipated benefit of improved efficiency.

It would avoid the negative impact full hearings can often have on referrers, witnesses and registrants: MOP who have experienced the FtP process described the hearing as "traumatic and distressing", stating that using alternative ways to resolve the issue would be positive when it is appropriate. Employers and registrants who had been involved in FtP hearings (either as referrers, witnesses or having been referred) also discussed how intimidating hearings were and that they had negative emotional impacts on them before, during and after the hearing. They too believed that avoiding hearings when possible would be a positive change.

Those participants who had no prior experience of being involved with FtP hearings expected hearings to be similar to being in a court of law, and they expected individuals involved in them to experience negative emotional impacts. For registrants in particular, as they feared being involved in the FtP process and expected negative experiences at a hearing, it was unsurprising that they would prefer not to be involved in a hearing if possible.

It would avoid duplication of effort wherein criminal proceedings have produced clear outcomes: The majority of participants were unclear regarding how the NMC handle cases wherein there are also criminal proceedings, but they did expect that any judgments made in a criminal case could be utilised within the FtP process to make determinations on cases and that this would enable the NMC to avoid a duplication of effort. For example, all stakeholder groups agreed that if there was an admission of guilt in a criminal case for an offence – even if this offence was commensurate with regulatory action that would consist of removal from the register – a full hearing would not be required. When ICE facilitators probed participants' responses, they determined that this was still acceptable even if the

criminal case had attracted significant media attention and/or if the participant was the patient or the patient was their family member.

A number of participants reported that the NMC needs to clearly communicate how it will handle cases that involve criminal proceedings in general, regardless of the need for hearings. In particular, there was significant uncertainty as to how the NMC may handle cases wherein an individual has pleaded ‘not guilty’ but been found to be guilty during criminal proceedings, and regarding what regulatory action the NMC may take for minor to moderate offences that may call into question the character of a registrant.

We want to understand what the full FtP regulatory process entails – including what range of sanctions are possible as a result of a meeting and a full hearing

As discussed above, the participants poorly understood the regulatory process and wanted the NMC to clearly communicate what the different stages entail and what range of sanctions may be applicable at each stage.

A key theme that emerged for each stakeholder group was that a registrant is likely to require assurance regarding the implication to potential sanctions that having their case heard at a meeting rather than a hearing will have.

Employers and registrants suggested that registrants who have been referred may be less likely to request a hearing if they knew the potential sanctions beforehand, and in particular if they knew that being removed from the register was not a potential outcome.

Of note, a number of MOP were concerned that shifting the focus to meetings instead of hearings would limit the range of sanctions that the NMC may apply. They were concerned that registrants would be less likely to be removed from the register if less hearings took place, and that this may lead to individuals who were

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What would be the difference between a meeting and a hearing? They're talking about having a meeting, having several people round a table looking at the evidence just like a hearing would, are they able to give as serious sanction, I'm not sure.

(Employer, private sector, England)

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not FtP continuing to be able to practice. However, it's important to note that it was ICE facilitators' belief that this perception was based on MOP initially perceiving sanctions to be a form of punishment as opposed to a process designed to ensure public protection. This led to MOP expressing their concern that registrants may be punished with being removed from the register less frequently if less hearings are held. This concern may be addressed by clearly communicating and normalising the fact that FtP processes are focused on public protection as opposed to punishment, and by ensuring MOP are reassured that the regulatory process will still involve a fair and comprehensive examination of the evidence before making a determination on the case at a meeting.

Participants from each target audience group reported that they would accept the proposed change once ICE facilitators had explained that regardless of whether the FtP process is concluded with a meeting or full hearing, the same regulatory process will be followed to investigate the case and that the process will provide a registrant with the opportunity to understand the concern (with the registrant fully informed of the facts of a case) and dispute the facts of the case if required.

It was noted by some participants that registrants may be less likely to request a hearing if a draft determination on a case

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If it's your livelihood on the line and you're not certain then I think you have to be able to defend yourself. We've sat there on panels and you've got the evidence that people have given you but to actually see someone face-to-face and for them to give you their mitigation or letter of support is very different

(Employer, Midwives, Wales)

If it's the different between struck off the register and not, then I think you need to have that opportunity.

(Registrant, Care home sector, Cardiff)

Some people might want to go to a full hearing if they feel that will have an impact on the sanction.

(Registrant, Swansea)

As long as the nurse or midwife is clear that these are the findings that will be presented to the NMC and they will base their judgement on this, that kind of gives them the opportunity to be clear that, if I don't dispute the facts, this is what's going to be presented to the NMC on my behalf.

(Registrant, Wales)

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suggested that disputing the facts of the case may not change the regulatory action taken (sanction). However, other participants reported that the NMC must not be seen from deterring individuals from requesting a full hearing. If the NMC can provide assurance that the draft determination has been produced by following a robust process and the NMC engages with registrants to not only seek to resolve as many aspects as possible, but provide an opportunity to dispute the facts, the proposed change to only hold full hearings in exceptional circumstances is likely to be accepted in the majority of cases. Importantly, there was a clear acceptance that for the majority of cases, if the registrant does not dispute the facts of the case, there would be no need for a full hearing – meaning that in line with the proposed shift in focus, hearings would only be required in exceptional circumstances.

4.7.2 Key identified challenges

Although the participants were in agreement that the proposed changes would improve the FtP process, a small number of challenges to the successful implementation of this work package were identified.

Registrants want to maintain the option to opt in for a hearing

It was consistently reported across stakeholder groups that it was acceptable to shift the focus to meetings where possible, so long as registrants maintain the option to opt in for a hearing. When ICE facilitators probed as to why this was important, the participants reported that registrants should be able to opt in to a hearing – even if they do not dispute the facts – if they were uncertain regarding the potential sanction or disagreed with a draft determination regarding the potential sanction. There was a perception that a FtP committee may impose a lesser sanction if it was to hear direct from a registrant and hear first-hand that they accept what happened and are willing to remediate the concern. Registrants themselves said that if they feared losing their PIN, they may request a full hearing if they believe the level of sanction will be lessened and their PIN will be protected by being heard by “an independent panel who do not have preconceived ideas about the case”. Employers who had witnessed an NMC hearing believed it was very different to read a statement than to hear somebody speak in person, and believed registrants should be provided with a choice to ‘opt in’ to a full hearing.

During their ongoing consultation, the NMC have stated that they will “As early as possible, produce a draft determination, including provisional findings on charges, impairment, and sanction. We will use this as the basis for engaging with the

registrant and seeking to resolve as many aspects as possible of the case by consent” (NMC, 2018.) Importantly, the NMC have also stated that they will provide opportunity for a registrant to request a full hearing: “holding full hearings in exceptional circumstances would not prevent a registrant from requesting a full hearing at the appropriate point.” Therefore, the identified challenge concerning the ability to “opt in” to a full hearing has already been addressed.

How will cases that are resolved in a meeting be publicised?

Registrants and employers reported that they were concerned that if there is a reduction in the number of full hearings, there would also be a reduction in the number of publicised cases. Participants said it would still be important for the NMC to publish the findings from cases that are resolved without a full hearing because registrants and employers use the publication of these cases to learn from mistakes and to understand how the NMC handles certain types of cases. Further, it was reported that the publication of cases following meetings would continue to give the public reassurance that cases are being conducted in a comprehensive manner. It will also enable the NMC to control the narrative of a case based on factual evidence if a case attracts media attention.

The NMC have stated that in order to ensure that the FtP process remains transparent, the findings from cases that are resolved at meetings will be published. Therefore, this challenge will be resolved as part of current plans.

“

If they don't do any hearings and nobody hears about this, how do we know what's going on? Is there still a way nurses and the public can see what things go wrong and also learn from that?

(Registrant, England)

If the case attracts significant public interest, it's already in the public domain then the NMC should comment on the facts of the case to show that its been dealt with properly.

(Registrants, Wales).

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Registrants may decide not to dispute the facts in order to avoid a full hearing

A number of registrants expressed that they were concerned that a nurse or midwife may decide not to dispute the facts because they “believe it is the easier thing to do” if it enables them to avoid a full hearing, even if this results in a sanction against them that may have been avoided if they had engaged with a case and disputed the facts. When explaining why they believed this may be the case, a number of participants discussed how they had experiences of colleagues that were talking about retiring early or leaving the profession when revalidation was introduced because they perceived the process would be too challenging. It was discussed that the individual may accept responsibility in order to avoid a full hearing, even when they believe other contextual factors contributed to the case in hand (e.g. low staffing level). This challenge may be overcome if the NMC successfully implement work packages 1 and 2 and ensure that effective local action takes place and that contextual factors are identified and utilised when making determinations.

“

It could be similar to the situation with my dad, she admitted 2 of the 3 charges, now if she'd gone through the process and thought well actually if I just admit this third one I'm not going to have go through that full hearing.

(MOP who has been involved with FtP, England)

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One MOP who had been involved with the FtP process expressed their concern that if an individual didn't dispute the facts of a case in order to avoid a full hearing, the whole truth regarding an incident may not be learnt.

To overcome this challenge, the NMC will need to communicate that robust initial investigations take place prior to meetings in order to fully establish the facts of a case before a meeting is used to finalise a determination on the regulatory action that will take place.

A wide range of considerations that the NMC must take into account when undertaking the programme of work to successfully implement this work package were discussed by participants and are outlined in section 5.5.

Key considerations for implementing the NMC's FtP strategy

5 Key considerations for implementing the NMC's FtP strategy

Section 4 detailed the key findings from the qualitative research and outlined a number of key challenges that need to be overcome to ensure the successful implementation of the FtP strategy. This included the identification of key challenges for each work package. This section discusses the key considerations that the participants identified that the NMC must take into account when developing the programme of work that will be undertaken.

5.1 Public confidence policy statement

A statement on how the NMC will handle cases where the **sole purpose is to uphold standards or maintain public confidence in the profession** was tested with all stakeholders. The NMC are considering introducing a threshold for regulatory concerns to need to involve a breach of trust **that is so serious that it would have a material impact on the likelihood of a member of the public using the services**

NMC public confidence policy statement

“The NMC will only take regulatory action to uphold public confidence if the regulatory concern is so serious that otherwise, the public would be discouraged from accessing the services of registrants.”

provided by nurses or midwives generally in the future. The NMC consider this change in policy to be a considerable shift away from their current position.

When this policy statement was introduced without additional context and/or explanation, it resulted in considerable confusion and a wide range of interpretations. **As policy statements are expected to clearly articulate an organisation's position regarding a subject, this level of confusion suggests that the statement will require reworking.**

As the term public confidence was considered “too subjective”, its use in policy statements introduces a range of challenges and questions. If plans for introducing a policy statement that details the threshold for when the NMC will take forward a case to uphold public confidence continue following the ongoing consultation, the NMC will need to answer the following questions that were asked by stakeholders:

- How will the NMC define and measure (quantify) public confidence?
- How will the NMC define a “serious regulatory concern”?
- How will the NMC define and measure the “public being discouraged from using the services of registrants”? For example, how many members of the public need to display a lack of confidence before the NMC would act?

The quantification of “public confidence” and the “public being discouraged” in a meaningful and reliable manner may be expected to require considerable time and effort and prove challenging to apply to each case.

Employers and registrants acknowledged that whilst public confidence in the profession is important, they expected the NMC remit to continue to focus on public protection and patient safety.

As detailed in sections 4.4 and 4.6.1, with the exception of referrals related to cases wherein a patient died, the public consistently reported that they will accept the prioritisation of local action and opportunities for remediation if:

- The individual was open and honest
- Demonstrated a willingness to remediate concerns so that no further patient safety concerns persist
- It was the first time the concern occurred.

When the context behind the proposed changes to the FtP process (the 4 work packages) were introduced and explained to the public, there was no clear expectation from the public for cases related to public confidence to be taken forward to an investigation or for regulatory action (sanctions) to be taken if the priorities under the 4 work packages had been successfully implemented, even when scenarios were given regarding media attention to specific cases. However, it must be noted that individuals within insight groups will often provide very rational reasons for why they may behave in certain ways based on a set of circumstances when in the real world their behaviour may be different; this is because human behaviour is strongly affected by automatic functions of the brain

that are influenced by emotions. During the insight activities, ICE utilised methods that provide insights into the emotional responses of participants to different subjects, and found in this study that a number of the topics discussed during the insight groups produced significant emotional responses that may produce different behaviours if experienced in real life. However, the findings suggest that if stakeholders' perception of FtP is normalised to accept that FtP is not about punishment, it may be expected that there will be less expectation for cases related to public confidence to be actioned.

If further testing of this change in regulatory focus is to be conducted, ICE recommend the following is taken into account when introducing a policy statement:

In order to aid reader understanding, ICE recommend that the policy statement is prefixed with a greater explanation of the context wherein the statement applies. For example, "In cases where the sole purpose is to uphold standards or maintain public confidence in the profession..."

The policy statement will need to more clearly link back to the NMC's statutory obligation of public protection – if the NMC only intends to present the public confidence statement alongside other policy statements, this challenge will inherently be resolved. However, in order to help the reader understand that public confidence is an important factor in public protection (demonstrating the importance of public confidence), ICE recommend that this policy is always introduced alongside a statement that demonstrates that public safety is negatively affected if public confidence is affected in a way that results in the public not wanting to use the services of registrants.

5.2 Work package 1 – Prioritising effective local action by employers

Based on the findings from the insight activities, this section details the key considerations for the strategic programme of work that need to be addressed for the prioritisation of effective local action by employers to be implemented successfully.

How will the NMC determine whether or not a patient safety concern related to a registrant's fitness to practise is being managed effectively by an employer?

Developing clear and actionable guidance was identified as a key challenge to successfully implementing this work package. For all stakeholders, a key question that must be answered is “how will the NMC determine whether or not a patient safety concern related to a registrant's fitness to practise is being managed effectively by an employer?” The policy principles upon which the NMC will develop solutions for this work package

NMC policy principles

“Employers should act first to deal with concerns about a registrant's practice, unless the risk to patients is so serious that we need to take immediate action”

“We will always take regulatory action when there is a risk to patient safety which is not being effectively managed by an employer”

require the NMC to develop clear standards and guidance regarding their expectations for “effective local action”. Any guidance documents produced by the NMC will have to detail how the NMC will monitor local action following a concern being raised and explain the process by which the NMC will take over a case should they be unsatisfied with how the case is being managed. In addition to clear and actionable guidance, a transparent feedback loop (discussed further below) will play a critical role in this process, as ongoing communication and how each party handles data and information related to the case will be important to ensure the case is effectively managed locally and monitored by the NMC. This will be necessary to uphold public (referrer) confidence that effective local action is taken and regulatory action will be taken if not.

Key considerations for developing a feedback loop

The participants reported that when establishing a feedback loop between the NMC, employers, MOP, referrers and registrants who have been referred, the NMC needs to consider the following:

The NMC must consider introducing standards/guidelines that set expectations for employer feedback to the NMC regarding the actions they took to address a concern.

Participants reported that in order to ensure that employers are conducting effective local investigations, it may be necessary for employers to feed back the outcome of their investigations to the NMC so that the NMC can be satisfied that

effective action took place. In instances

where the NMC is not satisfied, MOP and registrants would expect the NMC to investigate the concern. NMC guidance and policies must clearly demonstrate how the NMC will monitor that effective local actions are being undertaken. Two key questions that employers want answering are:

- How, if at all, will the NMC want an employer to inform them of the results of local action?
- What will happen if the NMC is not satisfied with the effectiveness of the local action?

The NMC must consider how they will provide a referrer with feedback regarding what actions were undertaken by the employer and what the outcomes were.

There were a number of participants who stated that they may feel like they were not taken seriously if the NMC were to refer a case back to an employer, rather than taking the investigation up themselves. Providing feedback to the referrer regarding NMC decision making was considered important as it would demonstrate to referrers that their concerns have been taken seriously. Of note, the NMC has stated that it will provide feedback to the individual who raises a concern when they decide to take no formal regulatory action, outlining the reasons for not taking action.

“

We know the importance of keeping our decision-making process transparent, and so where we decide not to take formal regulatory action, we will provide the person or employer raising the concern with our reasons for not taking action – NMC

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A number of employers and registrants reported that due to confidentiality issues, the NMC would be limited in what it would be able to share regarding the outcome of local actions, and therefore the NMC would have to engage with employers in order to understand what they can and can't share.

The NMC must develop and communicate feedback procedures that outline how concerns (including low level concerns) are monitored on NMC systems/databases. Employers and MOP were largely in favour of the NMC storing information related to a concern on their systems whilst a local action is undertaken. It was reported that this would enable the NMC to prompt the employer to feed back the outcomes of local actions and to monitor for repeated concerns being raised against a registrant. This was considered particularly important for employers given that registrants may move employment frequently or before a local investigation can be concluded. This topic caused significant debate within registrant group sessions. For similar reasons to those discussed above, in each of the sessions the majority of individuals were in favour of the NMC storing information related to a concern on their systems whilst a local action is undertaken. However, a number of registrants were strongly opposed to this. Those who were not in favour typically had concerns regarding:

- Whether or not potential future employers may have access to this information as this may impact upon their ability to gain future employment, even if a local action found no case to answer.
- How long this information would be stored for and what needed to happen before this information was removed.
- How the NMC would use this information during revalidation.
- How frivolous or malicious concerns may impact them if information regarding such claims was being stored by the NMC, especially if such information remained on file even after a concern was investigated and dismissed. One registrant reported that they had previously wanted to be involved in FtP investigations as a lay person, but were refused because a concern was previously raised against them, even though it was dismissed.

Employers and registrants wanted clear and transparent information regarding how information related to FtP concerns will be handled on NMC systems following the prioritisation of effective local action.

The NMC must consider what actions they will take if a MOP is dissatisfied with the outcome of a local action. It was reported by all stakeholder groups that a MOP may go direct to the NMC if they do not trust the employer or if they want to ensure an impartial judgment is made regarding the concern. Therefore, the MOP may challenge the outcomes of local action if they do not get the outcome they expect. In order to set manageable expectations, the NMC must provide clear guidance to MOP regarding how different types of concerns are investigated and what actions are likely to be taken by employers. Example scenarios will need to be developed and utilised in communications.

The following additional key questions were raised by participants:

- How can the NMC ensure that all employers conduct effective local investigations? What action will be taken if they do not?
- How will the NMC educate MOP regarding the fact that FtP is about future patient safety concerns – and not about punishment – in order to limit dissatisfaction when no formal regulatory action is taken?
- How will the NMC support employers to protect the public when registrants change jobs during a local investigation?
- How will the NMC handle concerns regarding individuals who work for more than one organisation or are self-employed when a concern is raised against them?

How much detail is required by the NMC (from the referrer) in order to pass a case on for local action?

Employers reported that their ability to conduct an effective investigation would depend on the level of detail given to them regarding the evidence and context of the incident. Employers said the NMC and employer would need to work together to ensure the employer has enough details to carry out an effective local action when details regarding the concern were provided first to the NMC.

A key question for the NMC to answer is:

What level of detail will be passed back to an employer when a concern has been raised directly with the NMC?

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It would be very difficult for an organisation to actually investigate if they didn't know the date, time and patient detail, whereas if something had been reported and there was a process that should have been followed and it hadn't, then absolutely the organisation should investigate.

(Employer, Director of Nursing, Edinburgh)

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How will interim orders be used while maintaining the prioritisation of effective local action?

A need was identified for clear communication regarding how the interim order process will be handled following the prioritisation of effective local action. For moderate to severe FtP concerns, employers were worried about how a registrant can be prevented from practising whilst an effective local action takes place. Various employers from different work settings reported that they had powers such as suspension orders to prevent a nurse or midwife from practising under their employment. However, this was a particular concern for employers of registrants who are employed by multiple employers (e.g. bank or agency nurses) and those who move jobs during an investigation. There was a perception amongst various employers that the NMC is reluctant to enforce interim orders despite employers expressing clear concerns. When probed, the employers were unable to provide clear examples of when this may be the case, but did perceive that the burden of evidence for an interim order was high and that the speed at which they are issued is too slow. The NMC may address these concerns by communicating information that demonstrates the proportion of interim order requests that are

upheld and the average time taken to enforce an interim order. Employers wanted to know **how the NMC will support employers to restrict an individual from practising elsewhere whilst a local investigation is ongoing.**

The NMC have stated that under existing processes, their screening team will conduct an initial risk assessment for each concern they receive and if they believe an interim order is warranted, the case does not get referred back to the employer. Employers wanted to know if it **will be possible for the NMC to enforce an interim order and refer a case back for the employer to undertake local action if effective local action is prioritised.**

It was also reported by employers that interim orders may be required in some cases in order to uphold public confidence, even if concerns regarding the registrant's FtP are low to moderate. However, a number of employers reported that interim orders can prevent opportunities for remediation as they prevent registrants from undertaking tasks that will enable them to learn and improve.

Ensuring referrer anonymity

Participants from across stakeholder groups reported that in many instances, a MOP will want to remain anonymous as they may be concerned that their future treatment or the treatment of someone they care about may be negatively impacted by a referral being made. Therefore, a key question for the NMC to answer is: **What support will the NMC provide individuals who want to remain anonymous or are concerned that their anonymity will be lost if a case is referred back to an employer because a local investigation is yet to take place prior to the referral?**

5.3 Work package 2 – Taking account of the context in which patient safety incidents occur

Based on the findings from the insight activities, this section details the key considerations for the strategic programme of work that need to be addressed by the NMC when taking account of the context in which patient safety incidents occur.

How will the NMC investigate contextual factors?

Participants from across the different stakeholder groups expressed that they were unclear how the NMC would investigate and take into consideration contextual factors – largely because they suggested it would require a level of detail that would rely upon thorough investigations. The NMC have stated that they will develop a policy that sets out the relevance of context and how it will be taken into account. The NMC will also develop a tool to standardise the way in which they assess contextual factors. Importantly, all stakeholder groups wanted to understand how the NMC will take account of context both when making decisions regarding whether to take regulatory action or feed back to employers, and when deciding upon the level of sanction to take if regulatory action is taken. The following sections discuss the key concerns that the participants believed the NMC will need to consider during the development of this policy and tool.

“

You have to always look at the context to establish were there things we could have done to avoid it and if there were, the employer has to take responsibility for that or was it that three people went off sick in the morning and it was completely unplanned?

(Employer, Wales)

We have a daily meeting to go through staffing levels across all the wards in the hospital, so that in itself is a demonstration of where we've balanced risk and made a judgement on safety.

(Employer, Wales).

”

How will the NMC account for low staffing levels at the time of patient safety incidents?

A key concern that was raised by registrants and employers was in relation to how the NMC would account for staffing levels during its investigations. Employers reported that contextual factors such as low staffing levels at the time of a patient safety incident may require in depth investigations to uncover the reasons for the low staffing occurring. For example, one employer stated that a patient safety incident may occur on a day wherein three individuals called in sick on the morning of the incident, and the employer was concerned that the NMC would not investigate in sufficient depth in order to identify such issues. The following are key questions that participants wanted answers to:

- At what stage in the regulatory process will the NMC request contextual data from employers?
- What level of data will the NMC require from employers?
- Will the NMC request statements regarding contextual factors from individuals who are referred?
- If during an investigation the NMC identifies that staffing levels were low, will the NMC also investigate the causes of why staffing was low, or simply provide feedback to the employer?
- How will the NMC act in the following type of scenario: An employer conducts a local investigation and states that it believes it is not contextual factors that caused an incident. For example, staffing levels were low but the employer believed they were sufficient for the current dependency within a ward. The employer believes that the competence of the registrant was the key factor and therefore questions the individual's fitness to practise. However, the registrant who has been referred is adamant that contextual factors contributed to the incident.
 - Will the NMC conduct a full investigation and hearing?
 - Will the NMC provide feedback to the employer?
 - Will the NMC request involvement from a healthcare setting regulator to determine the impact of context?
- Who has the final say on whether staffing levels were a contributory factor to a patient safety incident? (employer, NMC, other regulator)

How will the NMC investigate organisational culture and leadership issues that may result in patient safety incidents?

How will the NMC take account of whether a registrant flagged/discussed contextual challenges prior to an incident occurring?

An organisation's culture and leadership were identified as key contextual factors that would influence the occurrence of patient safety incidents (see section 4.5.2).

Participants wanted to know how the NMC would investigate an organisation's culture and leadership when taking into account contextual factors?

Across the stakeholder groups, participants reported that whether or not a registrant had flagged/discussed contextual challenges prior to an incident occurring needed to be taken into account when deciding whether or not to take regulatory action against them or provide feedback instead to the employer. Employers and MOP stated that the NMC should consider regulatory action if the registrant has not flagged concerns prior to an incident occurring. However, as organisational culture and leadership issues could create an environment wherein a registrant does not feel comfortable raising potential issues, the NMC will have to carefully consider how it will account for this within its investigations and outline this in its policies and within its decision making tools.

“

As long as it's based on fact not opinion, so it's not used as a get out of jail free card by registrants.

(MOP, Northern Ireland)

”

How will the NMC ensure that registrants will not use contextual factors to excuse their role in patient safety incidents?

Employers were concerned that registrants may use contextual issues to excuse their role or avoid taking responsibility for their role in patient safety incidents. Accordingly, employers stated that the NMC needs to ensure that the decision to provide feedback to the employer about context, as opposed to regulatory action against a registrant, is based on **fact not opinion**. Employers stated that the NMC should do this by ensuring the initial investigation follows a robust process and that this process is clearly communicated to the public, registrants and employers to give reassurance that they are “looking at the whole picture”. MOP stated that they would be most likely to accept the decision to provide feedback to an employer rather than take regulatory action against a registrant if these decisions were fact based and made after a robust initial investigation had taken place.

How will the NMC ensure that an employer acts on the feedback that they provide?

As discussed in section 4.5.2, a key challenge to successfully implementing this work package will be determining how the NMC can ensure that an employer acts on the feedback that they provide. There was a lack of trust from some registrants and MOP that employers would carry out actions suggested by the NMC. Without the assurance that employers will act upon the NMC's feedback, MOP are unlikely to accept feedback to an employer as a satisfactory outcome from a regulatory investigation. Participants believed that this will require the NMC to produce an action plan for the employer to follow and/or make contact with the regulator of the healthcare setting who can monitor and evaluate if the employer was taking actions to avoid future patient safety incidents.

In particular, there were concerns raised about how smaller employers would be able to act upon feedback from the NMC, as they are less likely to have robust safeguarding processes in place and/or the resources to remediate concerns.

How will the NMC track if similar incidents are occurring over time within the same organisation/trust in order to prevent future incidents from occurring?

The participants in this study agreed that if the same incident occurs, in the same organisation/trust, related to the same contextual factors on more than one occasion, then continuously providing feedback is not the right thing to do as it will not prevent further patient safety incidents. This is why there is an expectancy that the NMC is able to create relationships with other regulators to enforce action from employers. Participants wanted to know:

- How will the NMC track incidents to identify if they are happening more than once, over time? (employers stated that Datix helps record and track incidents over time)

“

I would expect that if there was a pattern of regular occurrences then that's an organisational issue and the NMC ought to recognise that and say 'you're not providing a safe enough environment for your nurses to practice' but I don't know what that would look like.

(Employer, Private sector, England)

”

- What will be the threshold for contacting another regulator regarding contextual concerns?

5.4 Work package 3 – Enabling nurses and midwives to remediate regulatory concerns

Based on the findings from the insight activities, this section details the key considerations for the strategic programme of work that need to be addressed for this work package in order for it to be implemented successfully.

Across the stakeholder groups, participants reported that the NMC must produce clear and actionable remediation guidance that enables the NMC, employers and registrants to understand under what circumstances remediation will be an acceptable outcome, and at what stages in the regulatory pathway remediation will be available. Clear expectations must be set for both employers and registrants. The development of guidelines must be supplemented with a wide variety of case scenarios that detail the common regulatory concerns that remediation will be enabled for.

When developing guidance on remediation pathways, participants reported that the NMC will need to consider the following:

How will remediation actions be monitored?

All participants stated that they expect the NMC to have thorough processes for FtP in order to ensure public safety. Therefore, it was important for them to understand how the NMC will establish a feedback loop between themselves, employers and registrants to ensure that required remedial actions are undertaken. Further, as with work package 1, the participants wanted to understand what information would be shared with a referrer should the referral come from a MOP.

Participants reported that the NMC will need to produce a standardised framework for how remediation is to be carried out and that this framework would need to be used by the person responsible for overseeing the remediation (e.g. line manager, NMC case officer or registrants themselves). It was reported that this would enable responsible individuals to set out remediation actions against a set of objectives

that can be monitored and evaluated to identify if remediation criteria have been fulfilled to a standard that ensures a registrant's FtP.

How will the NMC ensure that registrants take remediation seriously?

Employers and registrants were concerned that certain registrants may engage in remediation as a “tick box exercise” and that it would be difficult to evidence if remediation resulted in behaviour and/or attitudinal change. It was reported that the NMC must set clear expectations regarding the actions required to remediate regulatory concerns. Further, the NMC must utilise sanctions where necessary to demonstrate the severity of concerns and what will be required for an individual to demonstrate their FtP and continue as a registrant. For example, conditions of practice orders may demonstrate the severity of regulatory concerns whilst giving a registrant an opportunity to remediate concerns. However, a number of employers reported that conditions of practice orders and interim orders can at times prevent opportunities for action learning as part of remediation. Additionally, employers reported that sanctions such as interim orders and conditions of practice can impact on their ability to staff their workplace as they may have to continue to employ an individual who is unable to undertake activities that their role requires – creating additional human or financial cost if other individuals need to take on these activities or additional staff need to be recruited. Therefore, it is important for the NMC to work closely with employers so that it's clear how concerns can be remediated without an individual acting against an imposed sanction and to ensure that sanctions are utilised only when necessary to enforce a remedial action that would not be possible without the severity of the concern being demonstrated.

How will the NMC support employers to oversee remediation?

All stakeholder groups acknowledged that employers will have a key role to play in remediation. A number of employers expressed their concern that remediation action often involved actions such as shadowing and supervised practice that were time consuming and becoming increasingly difficult given current staffing pressures. **Employers were interested as to if and how the NMC may support them to oversee remediation.** This will be particularly important given that the successful implementation of work package 3 may result in an increase in instances of remediation.

*Establishing a feedback loop between NMC, employers, registrants and referrers:
How will the NMC monitor for repeated low level concerns? How will previous
concerns be handled on the NMC systems and fed back to employers?*

Each target audience group reported that it was important for the NMC to take account of whether or not this was the first time a concern had been raised against an individual when deciding if remediation was an appropriate action – with remediation becoming a less acceptable outcome of NMC involvement if similar concerns had been raised previously. It was repeatedly discussed during the insight activities that the NMC would need to ensure that their guidelines and procedures made it clear to registrants **how many times remediation would be offered for similar/related concerns before regulatory action was taken.**

“

Previous incidents should be on that person's registration, there should be an entry to alert NMC, so that when I have a new allegation against that person, the NMC have a history of what has happened.

(Employer, Care home sector, Wales)

”

Of note, as registrants may move around employment, employers were interested in understanding how the NMC would monitor for repeated low level concerns that may have previously been remediated when deciding if remediation should be the outcome in this instance. This was considered even more important for individuals who had frequently changed employment. For example, **employers wanted to know if the NMC will contact former employers to assess if similar concerns had arisen, and whether or not local remediation attempts were made before progressing with regulatory action?**

As MOP reported that remediation may not be an acceptable outcome in instances wherein severe consequences were experienced by a patient due to a clinical error made by a registrant, it will be important to establish how remediation actions will be fed back to MOP referrers in order to build trust and confidence that remediation is a proportionate and appropriate action.

How will the NMC ensure that remediation is carried out to the same standard across different work settings?

Employers reported that because significant differences exist between the work settings within which registrants practice, it was necessary for the NMC to communicate how it intends to ensure that standards of remediation are consistent across settings.

What criteria will be used to establish that a case is non-remediable?

A number of employers reported that they would attempt to remediate concerns through their own disciplinary, safeguarding and personal development pathways before making a concern known to the NMC. Therefore, they were interested to understand how the NMC will establish that a case is non-remediable given that they would be unlikely to progress a case to the NMC if they believed they could resolve it within their own processes.

Given that effective remediation will likely require an employer to oversee it, how will the NMC handle a case if an employer refuses to oversee the remediation of a registrant because they do not believe remediation is an appropriate regulatory outcome for the concern that was raised? For example, because the employer doesn't believe the registrant is willing to remediate the concern despite them claiming that they are or the employer believes the registrant's competence is so poor that remediation will not be possible. How will the NMC seek to enable a registrant to remediate regulatory concerns if an employer is not involved? How will this apply to an individual who is self-employed, a bank or agency worker or someone who is currently unemployed?

How will the NMC ensure that by introducing remediation pathways into Ftp processes, employers will remain confident to make decisions regarding remediation themselves as part of effective local action without needing to notify the NMC?

Employers reported that it was business as usual for them to consider remediation within their disciplinary, safeguarding and personal development processes. They felt confident to do this as they were experts in their field of practice. However, it is plausible that if the NMC introduce remediation guidance and remediation pathways into its regulatory processes, employers may lack the confidence or

authority to make decisions regarding remediation without checking the view of the NMC. This could result in an increase in queries and/or concerns being raised with the NMC if employers do not feel confident to remediate concerns locally without the NMC being involved. Therefore, it is important for the NMC to maintain employer confidence to remediate concerns without regulatory involvement when appropriate.

How will an employer's right to dismiss a registrant under their own policies and procedures be aligned to NMC's remediation pathways?

A range of employers reported that even if the NMC are satisfied with remediation actions that are undertaken by a registrant, the employer would still have the right to dismiss a registrant if they believed a serious concern remained. Employers reported that it will be important for the NMC to communicate to registrants that although there may be opportunities to remediate the regulatory concern, and avoid regulatory action, the employer would still hold the right to dismiss a registrant from their employment if they do not believe they are FtP within their current role.

How will remediation actions be addressed during revalidation?

A number of employers and registrants expressed a need to understand how opportunities for remediation will be captured during the revalidation process given that this is an established process for ensuring that registrants continue to meet professional standards and enable them to demonstrate that they are living the standards set out within the code.

Reassuring midwives following the removal of supervision from NMC regulatory legislation

During 2017, the NMC made changes to how it regulates midwives with the changes, meaning that the NMC were now solely responsible for all aspects of the regulation of midwives following the removal of supervision from the NMC regulatory legislation. This led to a change in the model of midwifery supervision in the UK. Each of the four UK countries are implementing new models of supervision and this has resulted in some ongoing uncertainties for midwives with respect to FtP and remediation. Accordingly, midwives will require reassurance regarding how they will be supervised to remediate regulatory concerns within the new models of

supervision. Although new supervision models are being implemented, midwives feel like they have lost a key part of their support system. In particular, they want to know who will be responsible for overseeing their remediation and how the NMC will monitor that remediation actions have been taken.

5.5 Work package 4 – Holding full hearings only in exceptional circumstances

Based on the findings from the insight activities, this section details the key considerations for the strategic programme of work that need to be addressed for this work package in order for it to be implemented successfully.

The NMC needs to clearly communicate to all stakeholders what the investigation process will entail – including the differences between meetings and hearings

In order to reassure all stakeholders that a transparent and comprehensive investigation will be conducted, the NMC needs to increase understanding regarding what's involved in the FtP regulatory process and, in particular, the purpose of a meeting vs a hearing. This will be of particular importance for individuals who become involved with the process as a referrer, witness or an individual who has been referred. In particular, there is a clear need to communicate what is the difference between a meeting and a full hearing? Across the stakeholder groups, there was a clear lack of knowledge regarding the difference between a meeting and a full hearing. The stakeholders had a number of key questions in order to increase their understanding of how a meeting resolves cases, including:

- What happens at a meeting? – Participants wanted to know what evidence is used and what sanctions can be given.
- Who is involved in the meeting? – Participants wanted to know who is involved, including who makes the decision and whether the registrant can be present or if they just provide a statement.

The participants of this study were also interested in understanding:

- How the initial investigation process will be conducted in cases that are concluded at meetings vs hearings. Participants wanted to feel confident that the process will remain robust.
- When and how registrants will have an opportunity to dispute/resolve the facts of a case.
- Whether registrants can “opt-in” to a full hearing. – As stated, the NMC does plan to enable registrants to request a full hearing.
- Whether a registrant can appeal a case if they are not satisfied with the outcome. It was reported that in order to avoid unnecessary appeals, the NMC will need to inform the registrant of the expected outcome of the case (draft determination of a case) prior to a meeting to ensure they are comfortable with the expected outcome.

As a minimum, registrants will want to know if the case is likely to result in their PIN being removed, which was often discussed as the reason for why a registrant would want to request a full hearing.

How will an appeals process be implemented for cases handled by meetings?

A number of participants suggested that registrants may be more willing to resolve their case in a meeting if there was still an opportunity to appeal the case afterwards, should they disagree with the final sanction that was imposed. However, a number of employers stated that if the nurse or midwife accepted the facts of the case early on and the investigation followed a robust process, then the outcome of the case should be final. As there is some disagreement as to how an appeals process may be conducted following a meeting, the NMC will need to clearly define its position.

The NMC needs to clearly define what it considers to be “exceptional circumstances”

A MOP who had experienced the FtP process believed that having a clear legal definition of “exceptional circumstances” would ensure that all cases would be investigated in relation to a shared definition that could ensure “fairness and parity”. This individual was concerned that sanctions may be lessened and that the full facts of a case may not be discovered (e.g. contextual factors that contributed to a patient safety incident) if a meeting was held rather than a full hearing. A range of other participants also reported that it was important for the NMC to define what it considered to be “exceptional circumstances”. It was suggested that the NMC needs to provide clear guidance and examples of what cases would/would not be considered “exceptional circumstances”.

“

Who decides what are exceptional circumstances? To me the things that these two individuals did was severe and exceptional, I'd hate to think that there were many nurses like that but the NMC didn't seem to think it was exceptional.

(MOP who has been involved with FtP, Scotland)

”

5.6 Additional general considerations

5.6.1 Normalising that FtP is not about punishment

When participants discussed scenarios that detailed how the NMC may handle cases in the future – following the implementation of the four work packages – ICE

facilitators believed that a number of perceptions regarding the potential work packages were somewhat shaped by a belief that FtP was about punishment for past events. Whilst this was most noticeable for MOP, it was noticeable for a small number of registrants also and suggests that FtP is still considered a form of punishment by key stakeholders. During the discussions, when ICE facilitators reminded participants that FtP was about ensuring public protection through managing risk of future patient safety as opposed to punishment for past events, their responses changed somewhat and participants were more accepting of the proposed changes. This demonstrates the importance of normalising the fact that FtP is not about punishment in order to increase the acceptability of the proposed changes across the work packages.

At the time of writing this report, in addition to this qualitative research, the NMC have implemented an online survey which asks participants the following questions:

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

When analysing the survey data, it will be important for the NMC to identify which, if any, stakeholder groups do not agree with these statements. **Targeted communication and engagement campaigns** may be required to normalise the fact that FtP is not about punishing people for past events in order to ensure that clear expectations are set for how the NMC will handle FtP cases and impose sanctions.

5.6.2 Increase knowledge regarding the independence of the panel – Who are they?

Across stakeholders groups, there was a clear lack of knowledge regarding the panel who adjudicate on FtP cases. For many stakeholders, including some employers, there was a misconception that the panel were not independent and that they were employees of the NMC. In order to increase confidence in the transparency and fairness of the NMC FtP process, it is recommended that the NMC produce and disseminate communications that provide stakeholders with knowledge of who is on the panel and how the panel is put together (including recruitment strategy).

5.6.3 The impact of the publication of the PSA “Lessons Learned Review”

During week three of data collection (four weeks data collection in total), the Professional Standards Authority (PSA) published its *Lessons Learned Review* into handling by the NMC of concerns about midwives’ fitness to practise at the Furness General Hospital (FGH). These concerns date back to 2004. This review, commissioned by the Secretary of State for Health and Social Care and supported by the NMC, concluded that although the NMC's performance as a regulator is improving, it continues to make some mistakes and must develop a more respectful and open culture.

Importantly, the conceptual saturation analysis conducted to assess if the sample size for this study was appropriate (appendix 2) also demonstrates that no new negative themes were arising in the final two weeks of data collection. Further, ICE facilitators did not notice any obvious signs of increasing negativity in the perceptions of participants during the final two weeks of data collection, following the release of the review. Therefore, we conclude that the release of the review during data collection did not alter the findings of this study.

Appendices

6 Appendix 1 – Research framework

This research framework details the recruitment strategy, the research methods (including questioning techniques) and the data analysis techniques that will be employed during this project.

6.1 Recruitment strategy

During the implementation meeting (attended by ICE and the NMC team), the proposed recruitment strategy was discussed for each of the three stakeholder groups: registrants, employers and service users. The following sub sections outline the strategy for recruiting each of these groups, the anticipated sample size, the cohort characteristics required and any sample quotas that will be utilised.

6.1.1 Registrants

ICE will conduct **10 workshops** with registrants. 8–10 participants will take part in each workshop, for a total sample between **80 and 100** registrants. This sample will be supplemented by in situ research that will boost the overall sample size (see section 6.1.1.1).

The table below outlines the key stages of the recruitment procedure and who is responsible for each action.

Step	Detail	Responsible
Step 1 – Study locations agreed	ICE to provide recommendations regarding study locations. NMC will review and sign off on finalised locations.	NMC + ICE
Step 2 – Development of invitation text, contact form and informed consent form.	ICE will develop text for an invitation email that will be posted to potential participants. ICE will develop an online contact form in order to manage the	ICE

Step	Detail	Responsible
	responses. The contact form will capture key demographic details regarding the sample in order to track progress towards recruitment quotas.	
Step 3 – NMC send invitation to potential participants	The NMC will send the developed invitation text to potential participants. The NMC will mine the register and send the invitation to individuals whose registered address is within 30 miles of the agreed study location.	NMC
Step 4 – Interested participants complete contact form	Interested participants must click a link within the invitation and then complete an online contact form wherein they will give consent to be contacted using the contact details that they provide.	ICE
Step 5 – ICE contact interested participants (using preferred communication method email/phone) and provide them with an informed consent form which must be completed and sent back to ICE.	ICE will contact interested participants using their preferred communication method. In each location, an initial 12 potential participants will be contacted. ICE will provide the participant with an informed consent form that outlines the objectives of the project and what participation in the project will entail, including the benefits and risks to participation. This form will be produced based on World Health	ICE

Step	Detail	Responsible
	Organisation guidelines on informed consent.	
Step 6 – ICE confirm attendance	<p>If having read the informed consent form and been given the time to ask any questions the participant accepts the invitation to take part, this will be considered their verbal informed consent and their place on a workshop will be confirmed. Participants will be given up to 48 hours to confirm attendance following initial contact. If they do not confirm attendance, their place will be offered to another individual from the original interested pool of potential participants.</p> <p>A copy of a signed and completed consent form will be requested and may be provided to ICE electronically in advance of the workshop or in person before a workshop commences. No participants will be able to start their participation in a workshop unless they have signed an informed consent form.</p>	ICE
Ongoing	ICE will continue to monitor who is being sent invitations and who has accepted in order to track recruitment against agreed recruitment quotas. If necessary, in order to meet recruitment quotas, the recruitment of	ICE

Step	Detail	Responsible
	individuals with certain demographic profiles will be prioritised.	
Step 7 – Reminders	A series of reminders will be sent to ensure attendance. Two reminders will be sent as a minimum, one 48 hrs prior to the session and one on the day of session. If an individual confirms that they will be unable to attend, we will attempt to recruit a replacement from a list of reserves.	ICE

6.1.1.1 In situ recruitment

The NMC have requested that this research is made accessible to registrants who work in hard to reach settings such as registrants who work for mental health trusts, private care homes and private health care providers. Accordingly, ICE will conduct research in situ at up to 8 employer sites (2–3 per UK country, with the exception of Scotland where 1 employer site will be targeted). This affords ICE researchers the opportunity to take the research to harder to reach populations. Where possible, ICE will engage with registrants on site during each of these in situ days by spending time in common areas (e.g. break rooms, canteens) and meeting with registrants in locations convenient for them. Recruiting participants, gaining informed consent and conducting mini depth interviews will all take place in situ. ICE will obtain permission from employers to conduct research on site and will provide communication materials to the employers to inform employees that ICE will be on site.

The in situ interviews will boost the total sample size to over 110. It is expected that this sample size will be sufficient to achieve conceptual saturation (see section 6.5.1).

6.1.1.2 Contact form

The contact form will be developed using Survey Monkey. The contact form will include a series of questions that will be used to track progress against agreed recruitment quotas. These questions will include:

- Age
- Gender
- Field of practice
- Work setting
- Time on register
- Ethnicity
- Sexual orientation
- Religion/belief

These questions will enable us to track the recruitment of individuals against agreed quotas and to ensure the inclusion of individuals with protected characteristics. Individuals will be provided with a “prefer not to say” response for religious beliefs and sexual orientation. In order to be fully inclusive, the gender question will include an “other, please specify” response option.

6.1.1.3 Sample characteristics

This project is focused on exploring registrant perceptions of proposed changes to FtP as outlined in the NMC’s FtP strategy. Therefore, it is important that the registrant study sample is representative of the individuals who interact with the FtP process. Accordingly, we recommend using demographic data regarding individuals referred for “new concerns” to FtP in order to recruit a representative sample for this study.

Data taken from the 2016/17 NMC diversity report suggests that for the large part, the characteristics of registrants on the register is largely similar to those referred for new concerns (with <5% difference observed between the proportion referred for new concerns and the register as a whole), with the following notable exceptions:

Registrants who are male: A 13% difference (23.8% vs 10.8%) is observed between the proportion of individuals referred for new concerns who identify as male as compared to the proportion of individuals who identify as male on the register as a whole.

Registrants aged 40–60: A 7% difference (63.8% vs 56.8%) is observed between the proportion of individuals referred for new concerns in this age bracket as compared to the proportion of individuals in this age bracket on the register as a whole.

Registrants within ‘Black’ ethnic groups: A 6.7% difference (13.5% vs 6.8%) is observed between the proportion of individuals referred for new concerns who identify as ‘black’ as compared to the proportion of individuals who identify as ‘black’ on the register as a whole.

Accordingly, we recommend using the following 3 recruitment quotas to ensure that each of these groups are well represented within the research study sample:

≥ 15% of the study sample should be male.

≥ 50% of the study sample should be between the ages of 40–60.

≥ 10% of the study sample should identify as being within the ‘black’ ethnic group.

Please note that the study sample will be pooled across all 4 countries when considering the set quotas.

In addition to the set quotas, the ICE team will endeavour to recruit participants, using the demographic details provided to us in the contact form, in order to ensure a diverse mix of registrants take part in this research. Through the invitation process and ongoing tracking of invite acceptances, we will endeavour to ensure that the overall sample includes:

- Registrants from each of the 4 primary fields of practice for nurses (1. Adult, 2. Children, 3. Mental health and 4. Learning disabilities) and midwives.
- Registrants who work in a range of settings (including non-NHS).
- Individuals who work in rural and urban locations.
- Early career and established registrants (defined as individuals with under or over 3 years on the register).
- Individuals from a range of religions/beliefs and sexual orientations.

Based on the short timescale for recruitment, it is not recommended that specific quotas are applied regarding these characteristics.

6.1.1.4 Incentives

Each registrant who takes part in a workshop will be reimbursed for their invested time and effort with a £40 shopping voucher. This will be presented to the

individual at the end of the workshop at which time they will be required to sign an incentive form to confirm they have received their incentive payment.

6.1.1.5 Registrants referred to FtP

At the implementation meeting, the inclusion of individuals who have been referred to the FtP in this study was discussed. The NMC has taken an action to decide if these individuals will take part in this study and to explore how they may be contacted to take part. ICE advised that if these individuals were to take part, they would need to be engaged with via telephone interviews owing to sensitivities regarding their personal experiences with the FtP process.

Currently, the provision for additional interviews with individuals who have been through the FtP process has not been made within the current budget. How these interviews are costed and rolled out within the study period would require further discussions if NMC would like to proceed with these interviews.

6.1.2 Employers

ICE will recruit employers using a number of methods. ICE will aim to engage with up to **40 employers using depth interviews by telephone** and **in situ** at employer sites. The following recruitment methods will be used to identify both employers for telephone interviews and employers sites for in situ research.

Method 1: In situ recruitment. ICE will conduct research on site at a total of 8 employer sites (2–3 per UK country, with the exception of Scotland wherein 1 will be targeted). ICE will attempt to engage with employers during each of these in situ days. Recruiting participants, gaining informed consent and conducting mini depth interviews will all take place in situ. ICE will engage with employers to agree access to the employer sites in advance of the study days.

Method 2: Recruitment using ICE existing contacts. Due to our ongoing and previous work across the health and care sector, ICE have established a wide network of stakeholder contacts with individuals who employ registrants. ICE will recruit employers to take part in this study using our stakeholder networks.

Method 3: Recruitment using publicly available contact details. If required, ICE will utilise publicly available contact details to make contact with employers and

invite them to take part in telephone interviews and/or for use of their site for in situ research.

6.1.2.1 Sample characteristics

The table below provides an overview of the types of organisations from which we will attempt to recruit employers:

Type of organisation	Country	NHS or non-NHS organisation	Number of employers we will aim to recruit
Acute Trust	England	NHS	At least 1
Acute Trust	Scotland	NHS	At least 1
Acute Trust	Wales	NHS	At least 1
Acute Trust	Northern Ireland	NHS	At least 1
Mental Health Trust	Any country in UK	NHS	At least 1
Community Health Trust (excl. Mental Health Trusts)	Any country in UK	NHS or non-NHS	At least 1
Employer of SCPHNs (Specialist Community Public Health Nurses or Midwives)	Any country in UK	NHS	At least 1
Care Home from a substantial chain	Any country in UK	NHS or non-NHS	At least 1
Employer of GP practice nurses	Any country in UK	NHS	At least 5
Large private healthcare provider	Any country in UK	Non-NHS	At least 1
Voluntary or private sector employer of midwives	Any country in UK	Non-NHS	At least 1

6.1.3 Service users

A total of **4 workshops** will be conducted with service users. Each workshop will include between 10 and 12 service users, for a **total sample of between 40 and 48**. Service users will be recruited using an opportunistic sampling approach with the following on-street recruitment methods:

- Two weeks in advance of the scheduled workshop dates, ICE researchers will be deployed at the agreed study locations, in areas of heavy footfall near to services that employ registrants.
- Potential participants will be provided with an informed consent form and given the opportunity to read it fully and ask any questions. Participants will be advised that if they require, they may take the informed consent form away and contact the researcher using provided contact details.
- Potential participants will sign informed consent forms and complete a demographic questionnaire. This data will be captured electronically using Survey Monkey and anonymised, with participants' data assigned a participant number.
- The project lead will monitor acceptances of invites and will communicate with the field researchers to ensure that the overall study sample is representative of the UK population and includes the sample characteristics as outlined in.
- ICE researchers will send reminders to participants 48 hours prior to and on the day of planned workshops.

6.1.3.1 Sample characteristics

For the purposes of this study, service users are defined as any individual who has engaged with a service that employs registrants within the past 6 months. ICE will endeavour to ensure that the overall study sample is representative of the UK population. The NMC has stated that it is important to include individuals from hard to reach populations in this research, including elderly, individuals with learning disabilities and a transgender member of the public. Obtaining consent for research participation is a key challenge for these individuals, and it is likely that carers would need to consent and be involved in the interviews.

Accordingly, if the on street recruitment does not identify such participants, ICE will attempt to recruit these individuals by utilising publicly available contact details to make contact and invite them to take part in telephone interviews and/or for use of their site for in situ research.

The NMC asked ICE to recruit an additional 5 service users who had been through FtP. This will be conducted through telephone depth interviews.

6.1.3.2 Incentives

Each service user who takes part in a workshops will be reimbursed for their invested time and effort with £40 cash. This will be presented to the individual at the end of the workshop, at which time they will be required to sign an incentive form to confirm they have received their incentive payment. Individuals who take part in mini depths in situ will not be offered reimbursement.

6.2 Recommendations regarding study locations

The table below provides an overview of recommended study locations for workshops and in situ data collections. **Please note** – Employer telephone interviews will not be ring fenced to particular locations – participants for the telephone interviews will be recruited to meet the sample characteristics for employers outlined in section 6.1.2.

Country	Overview	Rationale
Northern Ireland	<p>Day 1: Londonderry/Derry</p> <p>2 x Registrant workshops</p> <p>Day 2: Belfast area</p> <p>1 x Public group</p> <p>1 x mini depths location</p> <p>Day 3: Belfast area</p> <p>Up to 2 x mini depths locations</p>	<p>Londonderry is the second largest city in Northern Ireland and has a population of 100k plus. It is a location that will enable registrants who work in urban and rural environments to attend. Londonderry is home to the Western Health and Social Care trust which has a number of hospitals located around Northwest Ireland and also provides adult learning disability services.</p> <p>We recommend that mini depth locations are chosen in the Belfast area owing to the wide range of services provided in this region. We recommend that service user research is also conducted in Belfast. Service user research has not previously been conducted in Belfast by ICE on behalf of the NMC. The urban environment and significant number of young people and students will allow for a diverse sample to be recruited.</p>

Country	Overview	Rationale
Wales	<p>Day 1: Swansea</p> <p>2 x registrant workshops</p> <p>Day 2: Cardiff</p> <p>1 x public group</p> <p>1 x mini depths location</p> <p>Day 3: Cardiff area</p> <p>Up to 2 x mini depths locations</p>	<p>Swansea is a coastal location that will enable registrants who work in urban and rural environments to attend.</p> <p>We recommend that service user research is conducted in Cardiff. Cardiff has an ethnically diverse population due to its past trading connections, with more than 50,000 non-white ethnic group residing in the city. It also has strong public transport links which is important for increasing opportunities for workshop attendance. Service user research has not previously been conducted in Cardiff by ICE on behalf of the NMC.</p> <p>Cardiff also has a range of primary care, secondary care and independent employers of nurses/midwives for conducting mini depth interviews on site.</p>

Country	Overview	Rationale
England	<p>Day 1: Exeter</p> <p>2 x Registrant workshops</p> <p>Day 2: Wirral/other North West</p> <p>1 x public group</p> <p>1 x mini depths location</p> <p>Day 3: London</p> <p>Registrants x 2 groups</p>	<p>The city of Exeter has a large inner city population of over 100k. It also has high numbers of Asian citizens. Exeter is surrounded by many rural areas and has good transport links that would enable registrants who live and/or work in rural areas to attend groups.</p> <p>We recommend conducting service user research and employer research in the North West of England. This will include a day of mini depths in Wirral, north west England, as ICE have strong relationships with employers in Wirral and will be able to access both NHS and independent employers of nurses and midwives. We recommend that the service user workshop is conducted in either Wirral, Liverpool or Manchester. Each of these locations has a diverse population with a range of socio-economic and ethnic groups.</p> <p>London has been added to provide a further urban study location that has a diverse ethnic population of registrants, and registrants who have entered the register via all 3 registration routes.</p>
Scotland	Day 1: Edinburgh	Edinburgh will provide a study location that will enable us to access

Country	Overview	Rationale
	2 x Registrant workshops Day 2: Edinburgh 1 Public group 1 mini depth location	registrants working in a wide range of settings and a diverse public sample. ICE have not conducted research in Edinburgh with registrants or the public on behalf of the NMC previously. As a day of registrants workshops has been added in London, to keep costs within the agreed budget we have removed 1 in situ day from Scotland. We will endeavour to speak with additional Scottish employers during the telephone interviews.

6.3 Logistics and timings

Following the agreement of proposed study locations, ICE will develop a proposed schedule for research activities, with dates and the locations of workshops included. We plan to share this with NMC w/c 9th April. Based on how recruitment activities develop, this schedule may require amendments to the specific dates in each location, however, primary research activities will be completed in line with the provided timelines.

To ensure that the workshops are accessible, all workshops will be held in locations that have good public transport links and parking available.

6.4 Research Methods

ICE will use 3 types of primary research activities during this qualitative project: 1) Insight and co-design workshops, 2) Mini depth interviews (conducted in situ) and 3) Telephone depth interviews. A brief overview of each type of activity is provided below. Of note, the discussion topics and research methods (i.e. questioning

techniques) will be similar – regardless of the research activity – and are described in sections 6.4.1 and 6.4.2.

Insight and co-design workshops – These workshops will be conducted with both registrants and service users. They will be up to 90 minutes long. These workshops will encourage participants to explore and debate the work packages and to be creative, work together, co-design and generate ideas.

Mini depth interviews (conducted in situ) – These interviews will enable ICE researchers to take the research to participants, increasing the accessibility of this project. These interviews will be largely targeted at employers, however they will also be conducted with registrants and service users. The interviews will last between 20–45 minutes. These interviews will enable ICE researchers to explore acceptability of the proposed changes as outlined in the work packages and the impact these changes may have.

Telephone depth interviews – These interviews will be between 30–45 minutes long, will be targeted at employers and will enable ICE to engage with employers at times that are convenient to them. Prior to each interview, ICE will share materials with the employer which outline the proposed changes across the work packages in order to provide the employer with time to digest the proposed changes before the interview. During the interview, the ICE researcher will explore each work package with the employer to explore acceptability of the proposed changes as outlined in the work packages and the impact these changes may have.

6.4.1 Discussion guides

A discussion guide will be developed for each of the 3 types of research activities. Each guide will include questions tailored to the specific stakeholder groups, and not all questions included in each guide will be asked to all stakeholder groups.

The NMC have provided ICE with specific research questions for each of the 3 stakeholder groups. These questions may be grouped into the follow key topic themes:

Service users

- Expectations of a regulator with regards to FtP.
- Types of patient safety concerns that require FtP.
- Work package 1 – Prioritising local action by employers – Exploring the acceptability of concerns being referred for an initial local investigation that may result in no further involvement from NMC.
- Work package 2 – Taking into account the context in which patient safety incidents occur – Exploring the acceptability of the context within which patient safety incidents occur leading to feedback for the employer or other stakeholders relating to working environment rather than FtP action against a registrant.
- Work package 3 – Enabling registrants to remediate regulatory concerns – Exploring the acceptability of closing cases and/or registrants continuing to practice if a registrant demonstrates required remediation, including what types of incidents this would not be acceptable for (e.g. clinical error leading to patient death).
- Work package 4 – Holding cases only in exceptional circumstances – Exploring expectations regarding cases wherein facts are not disputed and the publication of information regarding cases.

Employers

- Expectations of a regulator with regards to FtP.
- Types of patient safety concerns that require FtP.
- Expectations regarding standards in light of current working environments.
- Work package 1 – Prioritising local action by employers – Exploring the acceptability of concerns being referred for an initial local investigation that may result in no further involvement from NMC. Exploring the components of good quality local investigations.
- Work package 2 – Taking into account the context in which patient safety incidents occur – Exploring the acceptability of the context within which patient safety

incidents occur leading to feedback for the employer or other stakeholders relating to working environment rather than FtP action against a registrant.

- Work package 3 – Enabling registrants to remediate regulatory concerns – Exploring the acceptability of closing cases and/or registrants continuing to practice if a registrant demonstrates required remediation, including what types of incidents this would not be acceptable for (e.g. clinical error leading to patient death).
- Work package 4 – Holding cases only in exceptional circumstances – Exploring expectations regarding cases wherein facts are not disputed and the publication of information regarding cases including the NMC not publishing charges prior to a hearing but with the final sanction still published.

Registrants

- Expectations of a regulator with regards to FtP.
- Types of patient safety concerns that require FtP.
- Expectations regarding standards in light of current working environments.
- Work package 1 – Prioritising local action by employers – Exploring the acceptability of concerns being referred for an initial local investigation that may result in no further involvement from NMC. Exploring confidence that an employer would carry out a thorough investigation.
- Work package 2 – Taking into account the context in which patient safety incidents occur – Exploring the acceptability of the context within which patient safety incidents occur leading to feedback for the employer or other stakeholders relating to working environment rather than FtP action against a registrant.
- Work package 3 – Enabling registrants to remediate regulatory concerns – Exploring the acceptability of closing cases and/or registrants continuing to practice if a registrant demonstrates required remediation, including what types of incidents this would not be acceptable for (e.g. clinical error leading to patient death). Exploring who a registrant would seek remediation guidance from and the acceptability of receiving remediation advice from NMC.
- Work package 4 – Holding cases only in exceptional circumstances – Exploring expectations regarding cases wherein facts are not disputed and the publication of information regarding cases including the NMC not publishing charges prior to a hearing but with the final sanction still published.

6.4.2 Questioning techniques

ICE utilise a number of techniques that enable our researchers to a) tap into individuals' attitudes, beliefs and values, b) to understand what individuals need and what they find acceptable and c) to understand why they need it, what having it will give them and why they believe it is acceptable. The techniques we use are

designed to minimise the opportunity for the bias of introspection and human nature's tendency to rationalise our thoughts and behaviours. The human brain has evolved in a way that enables it to process large amounts of information automatically/subconsciously; we therefore develop stereotypes and biases that drive our decision making and behaviours. Our techniques are designed to work with the brain's limbic system and tap into salient thoughts and emotions and when necessary, access the rational thought processes by managing emotional reactions. This will be particularly important when discussing topics such as FtP.

6.4.2.1 Clean language, laddering and projective techniques

The ICE researchers will utilise clean questioning, laddering and projective techniques (e.g. sentence completion or word association) during all research activities.

Clean questioning is a technique developed by David Grove, a practising psychotherapist whose techniques have been adopted in the USA, NZ and UK. 'Clean' questioning uses simple clarifying questions that gather fresh information, without the researcher shaping the resulting answers. Clean language is a questioning and discussion technique used especially for discovering, exploring and working with people's own metaphors to uncover their most salient and subconscious thoughts, feelings and beliefs. Clean language helps to increase the authenticity and rigour of qualitative research for eliciting naturally occurring metaphors and insight, without influencing the respondent. It also enables us to manage the limbic system and work with the rational, irrational, conscious and subconscious beliefs and emotions that drive behaviours.

Example - The current FtP process is like what?

This question would be utilised to explore beliefs regarding the current FtP process. This would enable us to understand how oppressive the current system may be.

Projective techniques such as sentence completion and word association also enable researchers to work with the natural tendencies of the brain and explore emotional responses which are crucial to understanding behaviours and decision making.

Example – Please state the first 3 words that come to mind when you think about FtP...

Example – The current FtP process is....

We will use a combination of clean questioning and projective techniques to bypass rational thought processes and explore the root causes of perceptions – their beliefs, values and emotions. This is important because an individual's perceptions may be based on beliefs that are not rational and have been formed based on stereotypes or hearsay.

6.4.2.2 *Constructed scenarios*

As participants may have limited knowledge of the FtP process, scenarios will be utilised to explore each of the 4 work packages. This will enable our researchers to provide context and case studies in order to explore acceptability and beliefs.

6.4.2.3 *Co-design and journey mapping*

We will use co-design and journey mapping techniques in order to explore acceptable changes across the 4 themes. This will involve mapping the FtP process, who is involved and what role they will play. We will also explore the impact of the proposed changes on specific case studies.

6.5 Data analysis

A wide range of data will be collected during the course of the qualitative phase of the research project. The final data set will consist of transcribed insight and co-design group sessions and data capture forms. Data will be analysed using the qualitative analysis software ATLAS.ti, which has the functionality to allow researchers to code and analyse transcripts and data captured in a range of mediums including text, images and videos.

The data collected will be analysed using an iterative and well-documented ***thematic analysis*** approach. Thematic analysis is a foundational qualitative analysis method, and a common building block of many established theoretical approaches (e.g. grounded theory). However, as a theory-free approach, thematic analysis offers flexibility to provide a rich, detailed and complex synthesis of data that meets a very specific and applied aim (Braun and Clarke, 2006; Kerr, Nixon and Wild,

2010). The data will be analysed using an induction–abduction approach to identifying themes (Kelle, 2005), with themes emerging directly from the data (inductive inference) and by applying prior knowledge (abductive inference). This will enable the analysis to remain firmly grounded in the data, with our participants identifying areas of importance for them, but also taking into consideration the work we have previously completed on behalf of the NMC.

6.5.1 Conceptual saturation

Conceptual saturation is reached when researchers can demonstrate that they have covered their topic in-depth by having sufficient cases to explore their themes fully with additional data collection unable to add value, thus demonstrating that the sample size was appropriate to answer the research question (Morse, 1995; Guest et al. 2006).

To confirm conceptual saturation across each of the 3 stakeholder groups (registrants, employers and public), themes that are elicited will be compared using a stepwise approach. Themes from each study location will be compared. A full conceptual saturation grid for each of the three stakeholder groups will be provided.

7 Appendix 2 – Conceptual saturation grid

Table 15: Conceptual saturation grid: E = employer, R = registrant, M = member of public

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
Expectations of a regulator	We expect the NMC to protect the public using standards and policies consistently	•	•	•									
	We expect proportionate regulatory actions (R and M only)		•			•							
	We expect the NMC to be transparent about the process	•	•	•									
	We expect the process to be efficient	•	•	•									
	We expect the NMC to be supportive	•	•	•									
Current perceptions of FtP process	Process unclear – stakeholders don't feel like they understand the process or whats expected of them	•	•						•				
	Process does not feel efficient and/or joined up	•	•						•				

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Employer - Experience improved when interact with ELS (E only)	•											
	Continuity of NMC contact reduced repetition, improved communication and improved experience (R and M only)		•						•				
	Process perceived to be too slow	•	•						•				
	Acceptance that fair and robust process takes time – but still considered too slow	•	•						•				
	Experience caused negative emotional impacts	•	•						•				
Feedback on public confidence policy statement	Difficult to understand	•	•	•									
	Intent of statement unclear	•	•	•									
	Public confidence is too subjective	•	•	•									
	NMC avoiding their responsibility (M only)						•						
	Stakeholders wanted to know:												

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	How will the NMC define and measure “public confidence”?	●	●	●									
	How will the NMC define a “serious regulatory concern”?	●	●	●									
	How will the NMC define and measure the “public being discouraged from using the services of registrants”?	●	●	●									
Work package 1 - perceptions	We want local investigations first - Employers should conduct an investigation first in most cases	●	●	●									
	Existing local processes enable employers to conduct investigations (E and R only)	●			●								
	Employer is an expert in context	●	●	●									
	Employer will be required to provide evidence anyway	●			●								
	NMC involvement not required if...												
	Registrant accepts responsibility	●	●	●									

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Registrant demonstrates willingness to remediate	•	•	•									
	Tipping point - NMC must open investigation if patient dies as a result of FtP concern	•	•	•									
	Tipping point –NMC must open investigation and take action if patient safety would continue to be at risk due to the FtP concern	•	•	•									
	Effective local action may reduce frivolous or malicious concerns (E and R only)	•	•										
	Registrants want to be informed of FtP concerns before the NMC investigate (R only)				•								
Work package 1 – key challenges	Developing clear and actionable guidance	•	•	•									
	Effective local action involves...												
	Fairness	•	•	•									

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Transparency	●	●	●									
	Comprehensiveness	●	●	●									
	Clear actionable guidance will ensure employers conduct robust investigations (E and R only)	●			●								
	Reassure the public that regulatory action will occur when necessary	●	●	●									
	Developing a clear and transparent feedback loop between NMC, employer, registrant and referrer.	●	●	●									
Work package 1 – Key considerations	How NMC will ensure FtP concerns are managed effectively by employers?	●	●	●									
	NMC must introduce guidelines regarding employer feedback from local action	●	●	●									
	NMC must consider how they will feedback the outcomes of local action to a referrer	●		●	●								

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	NMC must communicate how raised concerns that are passed back for local action are managed on their systems	•	•							•			
	What actions will be taken if MOP as dissatisfied with the outcomes of local action?	•				•	•						
	How much evidence do NMC require before referring back for local action? (E only)	•											
	How will interim orders be handled whilst prioritising effective local action? (E only)	•											
	How will referrer anonymity be maintained when required?	•	•				•						
Work package 2 - Perceptions	We want context to be taken into account when:												

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	The NMC decide whether to feedback to an employer as opposed to taking action against the registrant	•	•	•									
	When deciding on the severity of a sanction	•	•				•						
	Employers – Frustration if have already considered context before a referral and NMC decides to provide them with feedback rather than take regulatory action (E only)	•											
	Tipping points for required regulatory action:												
	Patient death	•	•	•									
	Repeated concerns from same employer/trust	•	•	•									
Work package 2 – key challenges	Concern that registrants may excuse poor practice by blaming wider context	•	•	•									

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Employers – Registrants are required to be able to remain FtP despite ongoing contextual issues (E only)				•								
	Organisation culture and leadership play a key role in patient safety incidents – NMC will find it challenging to investigate	•	•	•									
	Who will decide if context is the main factor in causing a patient safety incident (NMC, Employer (considered expert), other?) – (E and R only)	•	•										
	The NMC does not have power to hold employers to account following the provision of feedback on contextual factors (E and R only)	•	•										
	Key barrier – Will employers accept the NMC providing data regarding context to other regulators (E only)				•								

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Employers will accept the NMC providing data regarding context to other regulators if:												
	NMC are open and honest – approach employer first and give opportunity to remediate concern (E only)				•								
	And/or notify employer if will pass on concerns to other regulator (E only)				•								
Work package 2 – key considerations	How will the NMC ensure that an employer acts on the feedback that they provide?	•	•	•									
	How will the NMC account for low staffing at the time of patient safety incidents? (E and R only)	•	•										
	How will the NMC ensure that registrants will not use contextual factors to excuse their role in patient safety incidents?	•	•	•									

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	How will the NMC track is similar incidents are occurring over time within the same organisation/trust in order to prevent future incidents from occurring?	●	●	●									
	How will the NMC work with other regulators to ensure actions?	●	●	●									
	How will the NMC develop and maintain a feedback loop between NMC, employer and other regulators?	●	●	●									
	At what stage in the regulatory process will the NMC request contextual data from employers? (E only)	●											
	What level of data will the NMC require from employers?	●											
Work package 3 – perceptions	Remediation is an acceptable regulatory action if:												
	Registrant is open and honest	●	●	●									

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Registrants accepts responsibility	•	•	•									
	Registrants has willingness to remediate	•	•	•									
	No similar previous concerns	•	•	•									
	Remediation not acceptable if												
	Individual was dishonest or deceiving	•	•	•									
	Individual did not accept that they were at fault	•	•	•									
	Concern was a repeated occurrence	•	•	•									
	A death resulted from the incident that led to the FtP concern	•	•	•									
	Misconduct considered more severe than lack of competence – with respect to potential for remediation	•	•	•									
	Concern full details of cause of incident wont be established if remediation offered early in process (M only)									•			

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
Work package 3 – key challenges	Defining types of concerns that are “so serious as to be fundamentally incompatible with registration they can’t be remediated” (E and R only)	•				•							
	The following factors must be taken into account when determining if remediation is the correct regulatory action												
	Previous conduct	•	•	•									
	Previous opportunities for remediation	•	•	•									
	Acceptance of responsibility	•	•	•									
	Show of remorse	•	•	•									
	Willingness to remediate	•	•	•									
	Maintaining standards for remediation across different work settings	•		•		•							
	Ensuring adequate remediation actions take place	•	•				•						

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
Work package 3 – key considerations	How will remediation actions be monitored? (E and R only)	•	•										
	How will the NMC monitor for repeated low level concerns?	•	•				•						
	How will the NMC ensure that registrants take remediation seriously? (E and M only)	•					•						
	How will the NMC handle a case if an employer refuses to oversee the remediation of a registrant? (don't believe concern can be remediated)	•	•	•									
	How will the NMC support employers to oversee remediation? (E only)	•											
	What criteria will be used to establish that a case is non-remediable?	•				•							
	How will remediation actions be addressed during revalidation? (E and R only)				•	•							

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
Work package 4 - perceptions	Poor understanding of regulatory process	•	•	•									
	Acceptance that NMC should only hold full hearings in exceptional circumstances	•	•	•									
	Reasons why this will improve regulatory process												
	Speed up FtP process and require less resources	•	•	•									
	Avoid the negative impact full hearings can have on referrers, witnesses and registrants	•	•				•						
	Avoid duplication of effort (e.g. criminal proceedings)	•				•	•						
	Concern from public that this may lead to less removals from register – punishment (public)			•									

Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
Work package 4 – key challenges	Registrants may decide not to dispute the facts of a case to avoid a full hearing (E and R only)	•	•										
	Registrants must maintain the option to opt in for a hearing	•	•	•									
	Registrants may request a hearing if believe that being heard in person would reduce sanction	•	•				•						
	Need to increase understanding of regulatory process	•	•	•									
Work package 4 – key considerations	How will the initial investigation process be conducted in cases that are concluded at meetings vs hearings?	•	•	•									
	When and how registrants will have an opportunity to dispute/resolve the facts of a case? (E and R only)	•	•										
	Can registrants can opt in to a hearing?	•	•	•									




Theme type	Theme	Location 1			Location 2			Location 3			Location 4		
		E	R	M	E	R	M	E	R	M	E	R	M
	Can a registrant appeal a case if they are not satisfied with the outcome? Draft determinations prior to meetings may reduce appeals (E and R only)	•	•										
	How does a meeting resolve a case? Who is involved, what evidence is used, what sanctions can be given and whether or not a registrant can be present?	•	•	•									

make
better
happen

ice

Head Office
2-3 Abbots Quay, Monks
Ferry
Wirral CH41 5LH

+44 (0)845 519 423
ideas@icecreates.com
www.icecreates.com

 @ice_creates
 ice creates ltd
 ice

