

## **NMC response to the consultation on *Leading the NHS – proposals to regulate NHS managers***

### **Introduction**

1. In November 2024, the Department for Health and Social Care (DHSC) launched a consultation seeking views on the regulation of NHS managers. This response is on behalf of the Nursing and Midwifery Council. We look forward to working with DHSC as they continue their work on increasing the accountability of leaders and managers in the NHS.

### **About the NMC**

2. We are the independent regulator of more than 826,000 nurses and midwives in the UK and nursing associates in England, who constitute the largest part of the NHS workforce. Our vision is safe, effective and kind nursing and midwifery practice that improves everyone's health and wellbeing, and we recognise our important role in making this vision a reality.
3. We're here to protect the public by upholding high professional nursing and midwifery standards, which the public has a right to expect. That's why we're improving the way we regulate, enhancing our support for colleagues, professionals and the public, and working with our partners to influence the future of health and social care.
4. We set and promote high education and professional standards for nurses and midwives across the UK, and nursing associates in England and quality assure their education programmes. We maintain the integrity of the register of those eligible to practise. And we investigate concerns about professionals – something that affects very few people on our register every year.

### **The case for change**

5. The consultation makes clear the importance of good management in the NHS, supporting better, safer care for patients and creating and sustaining a positive, inclusive and safe culture for professionals. We need to make the NHS is an attractive place to work, where people can develop, work flexibly and provide person-centred care in a supportive and inclusive environment.
6. There are well-evidenced cultural problems in health and care that can hold professionals back from being inquisitive, speaking up and collaborating. This can lead to professionals not being able to uphold the guiding principles of their NMC Code and the standards for their professions that we set. It's vital that managers and leaders do more to foster cultures in which every

professional feels able to work in line with the expectations for their role and professional standards, to feel supported, and can confidently raise issues and concerns, ask for help and support and work free from fear of discrimination and harassment.

7. Our recent registration data demonstrates the increasing diversity of the nursing and midwifery professionals on our register. And yet we know that racism and discrimination are common experiences for Black and minority ethnic professionals, and that the health and care sector is failing to provide a just, inclusive environment in which all Black and minority ethnic nurses, midwives and nursing associates can thrive and progress. This is detrimental both for professionals themselves and for the provision of care to people using services. We also have data showing other professionals experience abuse and discrimination, for example disabled professionals.
8. We therefore support the proposal to improve NHS leadership through strengthening the accountability of managers. However, we understand regulation alone is rarely the answer. We welcome the wider moves to support and develop leaders and managers, such as through the leadership and development framework. It is vital that regulation sits alongside clarity about expectations and learning and development opportunities.

### **Overall approach to the regulatory model**

9. The consultation helpfully draws attention to the Professional Standards Authority's Right Touch Regulation principles about balancing risk against regulatory force. Later, the consultation says that "The regulatory system must therefore be designed around the specific risks and requirements of NHS managers." This is a helpful framing and has informed our response.
10. We support the introduction of greater accountability for NHS managers as part of a wider journey towards increased professionalism. It is our view that, at the start of this journey, a lighter touch regulatory response would be most appropriate. Of the available options a voluntary register might serve, if the intent is to enhance professional standards through the promotion of good practice frameworks, rather than anything harder-edged. If the intent also embraces decisive action in response to poor manager practice, then a statutory barring system might be considered proportionate, particularly as a first step. This would enable the introduction of professional accountability and the corresponding establishment of standards. It would be relatively quick to set up compared to other options. And would enable a period of operation to build an understanding of the impact and any challenges, and work through some of the more complex issues with introducing new professional regulation.

### **Scope of managers to be included**

11. The consultation considers the seniority and roles of managers that a regulatory system should apply to and whether there are organisations outside the NHS it should apply to.
12. We do not have a view on the level of seniority or category of manager which should be included in the scope of regulation, though we note that the more categories included the more people will be brought into scope. This would increase the number of clinicians potentially subject to dual registration (discussed in more detail below).
13. We do though support extending the category chosen into equivalent organisations beyond the NHS, and many of our professionals work in non NHS settings. This recognises that health and care is not delivered solely in NHS settings, and regulatory risk therefore is present in these settings. We would also be concerned about the risk of unintended or even perverse consequences if non NHS settings were to sit outside the regulation of managers.

### **Clinical managers and dual regulation**

14. The paper raises the issue of people who hold management and leadership positions in the NHS and are also clinically registered professionals, regulated as part of their profession. If full statutory regulation is introduced for NHS managers then dual registration brings a level of complexity which, though not insurmountable, would need careful thought and development. We have approached our consideration of this through a risk-based frame, considering risks to those seeking to complain about poor care, to registrants and to the conduct of effective regulation.

### **Managing risk to those experiencing poor care**

15. In the event that a member of the public, or a member of staff, believes they have experienced or witnessed poor care or unacceptable behaviour, there needs to be a clear process for them to report this and concerns to be investigated. Any system of regulation needs to ensure that this is not made unnecessarily complex or traumatic for all parties involved.
- Manager regulation could add to the challenges of complaints from a patient and public perspective – where complainants can be passed from local complaints management to system regulators to professional regulators to ombudsmen.
  - There are risks about complaints being duplicated (risking double jeopardy or investigated in different way) and/or falling between the cracks.
  - Clear pathways should exist for the public and members of staff to know to whom they should raise concerns, ensuring we do not unwittingly create any barriers to concerns being raised.

- Any fitness to practice process should be clear who is being investigated, by whom, and for what, so parties do not have to face the burdensome and retraumatizing experience of duplicate investigations and evidence giving.

### Managing risk to registrants

16. Aside from the fitness to practice concerns (above), any system of dual registration would need to identify and manage the potential impact on registrants who are already citing concerns about workload, stress and the cost of living.
- Dual regulation would need to ensure that dual registrants aren't pulled in competing directions by different professional standards, or left confused by multiple versions of similar expectations.
  - There is potential for dual registrants to have to register twice, renew and revalidate regularly for both, and pay two fees, bringing concerns about unnecessary burden and duplication.
  - We need to avoid unintended consequences on career development where the admin and process burden disincentivises people from developing their career. Processes must be sympathetic and realistic.

### Managing the risk to the conduct of effective regulation

17. As a professional regulator, it is of course vital we maintain trust and confidence in our register and our processes. There are risks with dual registration which would need to be carefully resolved.
- We see a risk to fitness to practice processes. The need to coordinate cases between regulators and multiple standards could increase the administration or bring new stages to the investigation process. Lengthy and complex decisions could be required in trying to decide if something is conduct or competence and as a clinician or manager. In many cases, especially around behaviours, it may be practically impossible to differentiate between conduct as a clinician or a manager.
  - There is also a potential risk for conflict between registers. A situation could emerge whereby a registrant is deemed unsafe by one regulator but retains their other registration. This could be confusing with the potential to undermine trust and confidence in the robustness of our register.
18. These are not insurmountable issues but would need credibly to be resolved before introducing statutory regulation. The consultation notes the potential for exploring the potential for already regulated professionals to rely on their existing regulator for oversight, with some cooperation over leadership and managerial standards. In the event that statutory regulation is considered, this will need exploring in more detail.

### **Phasing of a regulatory scheme**

19. The consultation suggests a phased approach to implementation, potentially starting with a lighter touch approach to regulation before transitioning to a full system of regulation in the longer term. We support the option of starting with lighter touch regulation. This would enable the initial benefits to be realised more quickly, as well as giving time to monitor operation in practice to provide learning and insight on the impact and complexities before considering moving to a full system of regulation. As a four nation regulator, we hope that a phased approach would also enable time to understand more fully how regulation would impact with health systems in other nations.

**Duty of candour of NHS leaders and NHS leaders' duty to respond to safety incidents**

20. The consultation notes that the professional duty of candour already forms part of the professional standards for clinicians, and as regulator we strongly encourage open behaviour. We support the proposal that individuals in NHS leadership positions should have a similar duty of candour. It would be perverse for professional standards to not include a duty of candour when other professionals do. Managers in health and care should be accountable for the creation of safe spaces encouraging professional openness and speaking up at the heart of leadership.