NMC response to the Department of Health and Social Care call for evidence on proposals to protect titles associated with the nursing profession

We are grateful to the Department of Health and Social (DHSC) for the opportunity to respond to this important call for evidence on protected titles for the nursing profession. We have been pleased to support the registrant-led campaign to protect the title ‘nurse’ for a number of years. We welcome DHSC’s continuing commitment to make this change as part of wider reforms to our legislation, which will help us modernise how we regulate.

We recognise that it is DHSC's role to determine protected titles and the offences that complement them, and not ours. However as the regulator with statutory responsibility to maintain the standards of and to promote confidence in the profession of nursing, we are well placed to provide insights to support DHSC’s decision making around the proposals, and their implementation.

The importance of protected titles in supporting public protection

Protected titles are an important tool for public protection, providing a key safeguard by acting as a deterrent as well as providing accountability through a criminal offence. They are a hallmark which shows that someone holding a protected title is distinguishable from other professionals, has undertaken specific education and training, is subject to a set of ongoing professional standards, and can be subject to regulatory action where appropriate. Offences relating to protected titles are one of a number of tools that a regulator can use to protect the public, taking proportionate action together with other organisations when needed.

We believe that DHSC’s decisions about what titles should be protected should be based on consideration of evidence of risk, relate to a clearly understood profession, professional group or qualification, and complement other equally important regulatory tools. These include other criminal offences, as can be found in our existing legislation, relating to claims to hold registration or qualifications leading to registration. It is also important that protecting a title in legislation does not unduly constrain regulatory or workforce flexibility and innovation, especially considering that any subsequent changes to this legislation can be difficult to secure and can take a long time. As such we believe that protecting a title in law, justified in the case of ‘nurse’, is a step that should generally be taken sparingly. We have explained this in more detail later in our response.

What the public has a right to understand about the role of ‘nurse’

The overwhelming majority of the public, encountering someone claiming to be a nurse, or holding the title of nurse, would believe that person was a regulated professional, having undertaken education and training relevant to their role, and as such was a

trustworthy and safe provider of care and advice. They would also have the right to believe that where something goes wrong, there are effective and transparent avenues for investigation and, if needs be, sanction.

The nursing profession is the largest part of the healthcare workforce and the most trusted profession in the UK, year on year, notwithstanding falling public satisfaction with health and care services. Ongoing public confidence in the regulated healthcare professions is very important for the relationship between those providing care and those receiving it.

It is clear that among professionals, representative organisations and the public there has been increasing concern about the misuse of 'nurse' in role titles, as well as about the range of sources of information, services and expertise being offered, particularly in the online space. A recent tragic example of how titles can give misleading impressions as to a person's expertise and skill set and the risks that this poses to families employing their services, has served to draw these concerns into sharp focus.[1] As such we agree with DHSC's position that just protecting 'registered nurse' is no longer sufficient to protect the public.

Our role as the regulator of the nursing profession

A key part of the NMC's role, as set out in our legislation, is to uphold confidence in the professions that we regulate. To perform our role as a regulator, our legislation empowers us to set out the requirements for a person to be entered onto our register, what they must do to maintain registration and where we may take action in response to concerns about their conduct or practice. Our Code requires registrants to practise within their competence and skill set. It is the role of clinical governance on the part of providers and thereafter system regulators to ensure people are deployed appropriately.

Our statutory powers, for example our fitness to practise powers, are restricted to those who we regulate. However, in cooperation other bodies including employers, other professional and system regulators, education institutions and the police service, we can help identify and prevent misuse of titles and other criminal offences relating to registration. To do this effectively, DHSC should ensure that legislation is supported by clear information to employers and the general public, about what everyone should be able to assume when the term 'nurse' us used.

Thinking ahead to implementation of any change

It is important to recognise that adding a title to the existing protection of title offence will not on its own achieve the desired effect. Our current legislation includes several offences relating to registration. It is a criminal offence for a person 'with intent to deceive' (whether expressly or by implication) to –

- represent that they are on the NMC register when they are not;
- use a protected title to which they are not entitled; or
- falsely represent that they have qualification in nursing or midwifery in the UK, or as a nursing associate in England.

[1] https://www.judiciary.uk/prevention-of-future-death-reports/madison-smith-prevention-of-future-deaths-report/

The extent to which protecting new titles will add meaningful protection will depend on the ‘mental element’ (the state of mind, or intent) required for the offence. For example, whether it should be necessary to prove that the defendant intended to deceive, or whether it is sufficient that the defendant knowingly used a title which they knew they were not entitled to use (or were reckless as to those matters). In considering this, DHSC will need to balance effectively tackling the current public protection risk with the potential impact on people who may, in various capacities, still refer to their previous qualifications and career in a way which is not intended to give the impression they are currently registered and able to practise.

We consider that there are a number of different categories of persons who are not registered nurses who might use the title ‘nurse’ in different circumstances. Across these the public protection risk will vary, as will the degree of culpability or blameworthiness of their actions:

- Those who, with an intention to deceive, refer to themselves as a nurse or act in any other way which implies that they are on our register or have nursing qualifications. These are already caught by the existing legislation, which makes it a criminal offence for a person ‘with intent to deceive’ (whether expressly or by implication) to represent that they are on the NMC register when they are not, or to falsely represent that they have qualification in nursing.
- Those whose use of the title of ‘nurse’ could lead to perceptions that they were registered or had nursing qualifications or expertise, when this is not the case, but where there is no evidence of an intent to deceive. This is not caught by the current legislation. However, before the legislation is expanded, careful consideration should be given to the range of different circumstances where the title might be used, which will give rise to varying levels of public protection risk as well as culpability. They might include:
    - individuals who have given themselves ambiguous or misleading titles when offering their services to individuals,
    - individuals who are not qualified or registered nurses who have taken employment in a role with ‘nurse’ in the job title, where it was advertised as open to, for example, nurses *and* AHPs,
    - individuals who use the term inadvertently. For example those who may have left reference to their former title on LinkedIn after they had left the register.
    - Individuals who use the term ‘nurse’ in a manner which infers they are qualified but not registered, for example those describing themselves as a “retired nurse” or “former nurse”.

The ambit of any new criminal offence needs to be clear, so that those concerned with investigating it can focus their attention and resources appropriately, that any resulting prosecutions are effective and the offence can act as an appropriate deterrent.

Communication and awareness raising of the new offence (as well as any exceptions) will be vitally important. There is a very important role for employers, who need to ensure that they do not create roles which risk misunderstanding or give false impressions. At the present time there are concerns about misapplication of the title ‘nurse’ to roles that are available to people who are not nurses, such as allied health professionals.

We share the public safety concerns that have led to this call for evidence and are ready to work with DHSC, our registrants, employers and others to take forward the outcome. We will consider how we can work with employers, representative bodies and others ahead of this change to raise awareness about current titles and the need to avoid confusion with roles.

Our response to the call for evidence questions

Question 1: what roles do you think should be allowed to use the word 'nurse' in the title and therefore be exempt from prosecution?

The only roles that should be permitted to use the word 'nurse' in the title are those which are held by persons registered as nurses with the NMC, and those which are exempted in the legislation. Similarly where someone is offering services as a nurse in the UK, online or otherwise, they should meet the same criteria.

We agree with the principles that DHSC has set out to consider what exemptions may apply to the new offence. These are that:

- the title is already well established;
- the role is distinct from that of NMC registrants; and
- there is limited risk of public confusion or harm.

We think that the exemptions should be small in number, and apply to clear groups or categories of individuals.

DHSC has already set out that 'dental nurse' is a protected title under other legislation and would be subject to an exemption. We agree with this. We suggest that DHSC also consider the inclusion of veterinary nurses when thinking about exemptions. We would support the inclusion of this role in the exemptions.

We also think that while the employment status (and thus employed role name) of such individuals may differ, 'student nurses' should also be considered as these relate to individuals on a pathway to registration with the NMC. We would support these being exemptions.

We agree that where a person was once on our register but no longer is, they must make that clear. We also agree that those on our register would still be able to refer to themselves as 'registered nurses'.

We would not support the inclusion of any other healthcare related titles or roles in the list of exemptions.

Question 2: please specify any other roles that do not include the term 'nurse', which you think should also be granted protected title status under the Nursing and Midwifery Council's (NMC) governing legislation, for example 'health visitor'.

Health visitors are part of a category of post-registration qualifications for registrants specialising in public health and community roles. Together these are currently entered as an additional register entry on the Specialist Community Public Health Nurse

(SCPHN) part of the register. In addition to health visitors this includes registrants with the NMC-approved qualifications of school nurse, occupational health nurse, public health nurse and family health nurse.

With the exception of the title ‘health visitor’, these roles will have some added protection via the change to protect the title of ‘nurse’. Thus, for example, a person will not be able to use the title of ‘school nurse’ if they are not registered with us.

For this reason therefore we would not object to a move by DHSC to protect the title of ‘health visitor’. In deciding whether to take this step DHSC would need to be cognisant of wider government workforce strategies for health visiting across the UK and the views of the health visitor community.

We would not support protection of further titles for any other nursing related qualifications that the NMC approves or does not approve. We think it is important to avoid legislation which protects a broader list of qualifications we approve *now*, as this will result in any new qualifications that are developed over time not having parity without further legislative change. It would also seem to be contrary to the direction of DHSC’s reform agenda, which is to avoid over-prescription in legislation and frequent requests for changes.

If ‘health visitor’ is protected we do not see the need to protect any additional new titles for the reasons set out here:

- those roles and qualifications which include ‘nurse’, which will be protected, mean that only those on our register will be able to use them;
- other offences set out in our legislation can prohibit false representation that someone is on the register or holds NMC-approved qualifications; and
- if registration is enhanced in the future, using powers set out in DHSC’s proposals for regulatory reform, it will also be an offence for a registrant to claim to hold that enhancement when they do not.

Question 3: do you think any other job titles that include the word ‘nursing’ or other variations of the word ‘nurse’ should be granted protected title status under the Nursing and Midwifery Council’s (NMC) governing legislation?

We do not support the protection of ‘nursing’, which has wide application in common parlance that we suggest does not pose a risk to public protection. Currently, the title ‘nursing associate’ is also protected in England, and we believe that this should continue. This is now a well-established role in healthcare in England, with an established and clear distinguishing line between the role and that of a registered nurse, and a clear route of progression from one to the other. The Welsh Government is preparing to use the role in Wales as soon as our legislation can be changed to enable regulation.

We would not support any proposals to protect additional titles with variations of the word ‘nurse’, for the reasons that we have set out for the question above. Whilst we fully recognise the public safety rationale behind protecting ‘nurse’, moving beyond this into similar sounding variations would bake complexity and inflexibility into the legislative framework, and do the same for NMC and employers’ processes. Such a move would

also presumably require a large list of exemptions, with a resulting risk of omissions that may have a detrimental impact.

In conclusion

As we have set out in this response, we support the proposal to protect the title of ‘nurse’. We would also have no objection to any proposal DHSC makes to protect the title of ‘health visitor’. We do not support the protection of the term ‘nursing’ which is not a role title as such, or further titles.

We are ready to work with DHSC, employers, and others to get this change right and to plan for its most appropriate implementation.

It is important that DHSC carefully considers the ambit of any new offence, with particular attention to the range of circumstances outlined above, where use of the term can involve very different intentions and levels of risk. Ahead of and during implementation, effective communication with employers, professional and system regulators, representative bodies and the public will be key, to embed a clearer understanding of what the title of ‘nurse’ should represent. In the future, more effective control must be put in place over roles and job titles, both in the NHS and other sectors. We will play our role and look to employers and agencies to help make the new offence work. DHSC may wish to consider whether further statutory provisions, other than criminal offences, or non-statutory interventions can provide additional levers for dealing with the proliferation of misleading job titles.

Finally, DHSC will need to consider what the most appropriate transitional period will be, both to enable employers to prepare, but also to avoid any detrimental impact both on individuals and also the NMC’s regulatory process.