

Department of Health  
Castle Buildings  
Stormont  
Belfast  
Northern Ireland  
BT4 3SQ

08 April 2021

Dear colleagues,

### **NMC response: Legislative options to inform the development of an Adult Protection Bill for Northern Ireland**

Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of more than 700,000 nursing and midwifery professionals, we have an important role to play in making this a reality.

Our core role is to **regulate**. First, we promote high professional standards for nurses and midwives in Northern Ireland and across the UK. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nursing and midwifery professionals – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns but we'll always take action when needed.

To regulate well, we **support** our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.

Regulating and supporting our professions allows us to **influence** health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

### **Development of an Adult Protection Bill**

As the largest regulator of health professionals across the UK, we welcome the opportunity to respond to the consultation announced by the Department of Health following the publication of these proposals. We also appreciate the opportunity to attend and contribute to an informal conversation with departmental staff as part of the consultation process.

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The nursing and midwifery regulator for England,  
Wales, Scotland, Northern Ireland and the Islands  
Registered charity in England and Wales (1091434) and in Scotland (SC038362)

Nurses and midwives have key roles to play in adult safeguarding and adult protection where their work brings them into contact with vulnerable people. They are bound by a range of professional duties set out in sections 16 and 17 of [our Code](#), and their work is also subject to guidance on [raising concerns and whistleblowing](#), the professional [duty of candour](#), and our [enabling professionalism](#) guidance. Nurses and midwives are also subject to the requirements of adult protection and safeguarding policies at national, local and organisation specific levels.

Several questions in the [consultation document](#) fall outside of our remit or available expertise. We are not in a position to respond directly to all of the points raised via the consultation, but we are able to comment on the broad approach, and to suggest areas for further development of some specific proposals: the duty to report, information sharing and cooperation, and the proposed new power of entry.

## **Key comments**

We broadly welcome the options and proposals set out by the Department, which will help to bring about greater clarity on roles and expectations for nurses and midwives, as well as the allied professionals they work with. The system proposed is clear about how serious cases will be addressed, which agencies will take responsibility when action is required, and what thresholds need to be met. We agree with the list of principles set out in Question 3, and are content for them to be set out in either legislation or statutory guidance as per Question 4. Overall we believe that they provide a cohesive and appropriate sense of direction.

We feel that the proposals as a whole would offer clarity for us as a regulator, and will also provide this for nurses and midwives as long as they are appropriately reconciled with existing duties and structures. The proposed system will also mean that the Northern Irish adult protection processes become more aligned with those in England, Scotland and Wales, which should help those who work in health and social care across the nations to more easily understand and transfer between the different systems.

[Our Code](#) states that professionals should provide person-centred care, working in partnership with people and practice in line with the laws regarding consent in their place of practice. It also requires professionals to preserve dignity and autonomy, and to respond to people's physical, social and psychological needs. We welcome the proposal for serious case reviews, which would provide a valuable tool for upholding and advancing these requirements. Information from the serious case reviews may also be helpful for us when investigating concerns that have been raised.

## **Reporting and information sharing**

Several areas of the proposals require further detail or clarity to avoid the risk of clashes with the existing professional framework set through our Code, which represents one of our key statutory functions and is not geographically limited. Our view is that new proposals should broadly align with these requirements, in order to avoid conflict or confusion for professionals in understanding their obligations.

Section 17 of [our Code](#) includes a duty to act and to share information in line with the law where professionals believe that there is a risk of harm. There is an overlap between this and the proposed statutory duty to report. 'Exposure to serious harm' is a substantially higher threshold for reporting than the existing professional requirements

of the Code, so the measure proposed sets a higher threshold for reporting than will continue to be expected of nurses and midwives. We wish to raise the risk of confusion to professionals posed by this potential overlap of duties, and ask that the Department gives further consideration to the potential impact this might have for education and operational management practices.

The proposed duties of cooperation and information sharing raise concerns for related reasons. Section 5 of [the Code](#) outlines the existing duties of privacy and confidentiality for nurses and midwives. Some examples where a confidentiality duty via our Code may be interpreted to present a barrier to disclosure are provided at [paragraph 2.77](#) of the consultation document. Given that organisations may cite the Code in their reasons for refusal, the department may wish to consider clearer guidance on when this would (or would not) be appropriate.

We note that health and social care regulators such as ourselves are not included in the department's list of organisations covered by the information sharing duty to cooperate at [paragraph 2.76](#). We operate formal data sharing agreements or Memoranda of Understanding (MoU) with a range of other organisations, but our reading of the current proposal is that it would impose no new obligations for us. We would welcome further information should the proposals be extended to work between other public authorities.

### **Power of entry**

Regarding Question 7, the consultation document proposes the introduction of a power of entry for private interview, which would be conferred on relevant statutory officials accompanying PSNI officers. We understand and acknowledge the context which gives rise to this suggestion. We would like to seek further assurances for how physical or mental risks to professionals entering properties will be assessed and mitigated, and around legal risk should the use of entry powers face legal challenges.

Section 1 of our [Code](#) requires nurses and midwives to treat people with kindness, respect and compassion, and to respect and uphold people's human rights. Nurses and midwives are required to uphold these requirements at all times, which would include during the exercise of this power. We would welcome further consideration of how these principles might play a role in decision making around the power of entry. We also encourage the department to consider during drafting how it might mitigate any potential legal risk to professionals in the exercise of the power should its use be successfully challenged.

We welcome the general approach taken by the department in this ambitious and considered document. We also hope that some of the issues that we have raised will be met with further consideration where possible, and will keenly await any further developments. We would like to offer the department our collaboration and assistance in further refining the proposals, and would be pleased to offer any relevant information during this process.

Yours sincerely,

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