

Independent review of midwifery regulation

Terms of reference

Context

In 2013 the Parliamentary and Health Service Ombudsman (PHSO) in England investigated three cases arising from failures in maternity care at Morecambe Bay NHS Foundation Trust. She published her investigation reports in December 2013 along with a thematic report entitled *Midwifery supervision and regulation: recommendations for change*. During the course of her work on Morecambe Bay the Ombudsman explored the operation of the unique additional regulatory framework that pertains to midwifery, and had a number of concerns about that framework. She concluded:

I am deeply concerned that the regulations allow potential muddling of the supervisory and regulatory roles of midwives or even the possibility of a perceived conflict [of interest].

The report recommended two principles for the future model of midwifery regulation:

- That midwifery supervision and regulation should be separated.
- That the NMC should be in direct control of regulatory activity.

The PHSO gave the Professional Standards Authority (PSA) the chance to contribute its perspective and in addition to the concerns voiced by the Ombudsman, it added:

- Lack of evidence to suggest that the risks posed by contemporary midwifery require an additional tier of regulation – bringing into question proportionality
- That the imposition of regulatory sanctions or prohibitions by one midwife on another without lay scrutiny is counter to notions about good regulation in the post-Shipman era.

At its meeting on 29 January 2014 Council accepted the Ombudsman's finding that midwifery regulation was structurally flawed as a framework for public protection. It considered the Ombudsman's report and approved an immediate review of midwifery regulation.

The review will be commissioned by the NMC from a credible independent provider, and the NMC will involve partners (hereafter 'the partner group') as specified by the PHSO (DH, NHS England and PSA). The PHSO's views will also be sought at appropriate points. In addition to this group, the NMC will ensure UK wide engagement via the health departments, NHS bodies and Ombudsmen in Northern Ireland, Scotland and Wales.

Remit

The remit of the review is to consider potential models for the future of midwifery regulation, with particular reference to the PHSO's recommendations.

The review should also take account of the wider concerns of the PHSO and the PSA as set out in the PHSO report.

Its recommendations must have regard to:

- public protection
- proportionality
- public confidence in the regulatory model, which, post-Shipman, includes the expectation that regulatory decisions are not taken by professionals in isolation
- the PSA's standards of good regulation
- public assurance about the responsibility and accountability of service providers for the quality of maternity services
- fairness to midwives whose fitness to practise is called into question.

The review should also have regard to the NMC Council's interest in distinguishing two aspects of the review:

'The link between supervision and regulation and...the future of supervision and the supporting infrastructure if it were no longer part of the regulatory framework.'
(Council minutes, 29.1.14)

There will be staged reporting to NMC Council after the initial round of stakeholder engagement and evidence review is completed, and the NMC's Midwifery Committee will play its statutory role in advising Council at this point and as requested.

The outcomes of the review will be presented in the form of a report to the NMC. The work is expected to conclude by the end of 2014.

Out of scope

- Drafting of proposed legislative change
- General public consultation on any changes to midwifery regulation – the NMC's legislation requires it to consult on any proposals to change its standards.

Responsibilities

The responsibilities of the provider will include:

- Conducting a literature review to inform its deliberations
- Defining the terms on which evidence will be sought about the role of midwifery supervision as a tool of regulation
- Calling for evidence and deciding the means by which evidence will be taken
- Engaging key stakeholders as specified by the NMC and understanding elements of consensus and divergence
- Informing and considering the outcomes of focus groups that the NMC will commission to contribute to the review
- Sharing an initial preferred recommendation with the NMC and its partners, with an indication of stakeholder views on that recommendation
- Keeping the NMC informed and consulting the NMC as needed over matters arising during the review
- Reporting to the NMC Council and the partner group as specified.

Roles of respective partners

- The Council of the NMC to decide whether to accept the review's recommendations and to request any related legislative changes
- DH to take a view of any implications of the review for the NMC's legislative framework
- PSA to take view on whether the proposed model is proportionate and fit for the purpose of public protection
- Bodies that fulfil the LSA role in each of the UK countries and NHS bodies to consider how the outcomes of the review affect the future role of supervision and any associated transitional arrangements.