

## **Response by the Nursing and Midwifery Council to the Department of Health's *Consultation on proposals to change CQC registration standards***

- 1 The Nursing and Midwifery Council (NMC) is the healthcare regulator for nursing and midwifery in the UK. It exists to safeguard the health and wellbeing of the public. It does this by setting standards of education, training, conduct and performance for nurses and midwives. It also holds the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, the NMC has a duty to investigate that allegation and, where necessary, take action to safeguard the health and wellbeing of the public.
- 2 Our responses to each of the questions posed by the consultation are provided below.

### **Do the Fundamental Standards (regulations 4-14) make clear the kinds of outcomes we expect providers to meet/avoid?**

- 3 We support the move away from a highly detailed set of regulations to a smaller amount of key standards as it will make the system much less complicated. Reducing complexity will also be of benefits to patients, who will be better empowered to hold providers to account over their failure to maintain fundamental standards.
- 4 The concept of having a set of Fundamental Standards is also clear, and may help stakeholders to understand the remit of the CQC more easily.
- 5 We also welcome the creation of a single list of fundamental standards as opposed to a dual system of 'fundamental' and 'expected' standards. This is preferable as it reduces unnecessary semantic confusion, as well as reducing the chance that providers will be tempted to focus solely on the 'fundamental' standards at the expense of the 'expected' ones.
- 6 The draft regulations which contain the Fundamental Standards are situated in outcome-focused language which provides adequate signposting to outcomes which providers must achieve. This is aided by using examples to illustrate types of outcomes expected within different categories.
- 7 We therefore believe that the Fundamental Standards therefore adequately communicate the kind of outcomes which are expected.

### **Do you think the Fundamental Standards (regulations 4-14) reflect the policy aims we have set out for the Fundamental Standards in Chapter 4?**

- 8 Overall, we think that the Fundamental Standards do reflect the policy aims set out in Chapter 4, in particular because they offer clarity and concision.

- 8.1 Clear outcomes: as explained above, the Fundamental Standards are straightforward, clear, memorable and aid clarity by using examples.
- 8.2 Clearer offences: the standards express the offences relatively clearly, but as we outline below, do not always accurately divide outcomes into those which cause direct harm and those which do not.
- 8.3 Proportionate responses: the division between sanctions – having a notice or otherwise – enables the sanction to be better tailored to the outcome and it therefore makes it more proportionate than the previous method.
- 8.4 Encompassing comments: the new standards are more comprehensive and adequately reflect the views of those who provided feedback.
- 8.5 One list of standards: this is clearly reflected in the new set of standards.
- 8.6 General yet applicable yet realistic standards: the general caveat in regulation 3, together with the broad language of the text of the regulations, appears to provide a suitably general set of standards which enable them to be applied to a broad range of clinical and non-clinical care settings. Moreover, the standards are realistic insofar as they outline outcomes which are achievable for settings of different types.
- 8.7 Clear distinction between regulations and guidance: the separation of guidance notes from the regulations is welcome as it enables providers to look at the outcomes and aims and focus on their achievement. Guidance being provided separately will enable providers to know that it is designed to help them achieve their outcomes rather than being a set of mandatory requirements. Regulations by their very necessity are also rather more technical in nature than guidance.
- 8.8 Reducing the burden on providers: the new standards reduce the burden on providers as they are clearer and easier to understand. However, in many ways there is not a primary intent for the burden on providers to be reduced; rather the emphasis of the CQC's work is to ensure that any burden is reasonable and proportionate to achieving safe outcomes. Phrasing the aim in this way muddies the water and it might be preferable to state that the burden on providers is to be reasonable and proportionate to achieving a safe and caring environment for patients. This would help to place the emphasis on the patient.

**Are the Fundamental Standards clear enough that they could be used as a basis for enforcement action?**

- 9 We agree that the Fundamental Standards are clear enough to be used as a basis for enforcement action for the following reasons:
  - 9.1 The provision of interpretation in regulation 2 aids understanding.
  - 9.2 Clear language is used throughout the regulations.

- 9.3 The regulations in part 2, section 2, are aided in their clarity by use of examples to promote understanding by providers as to what the statements mean in practice.
- 10 It is imperative that at all times, language used is clear, plain English, which is patient-friendly as well as provider-friendly. This will help patients to understand their rights.

**Regulation 17 sets out which of the regulations are offences for which CQC will still need to issue a pre-prosecution notice, alongside those that could be prosecuted immediately. Do you think this split reflects our intention that only breaches related to a harmful outcome can be prosecuted without a pre-prosecution notice being issued in advance?**

- 11 This question effectively asks whether those provisions excluded from the general rule (that a pre-prosecution notice is not required for proceedings to be brought) are not to be considered 'harmful'.
- 12 Firstly, there can be debate as to whether systems-related outcomes, such as those in sections 12 to 14 as to good governance and staffing, are not be considered potentially harmful outcomes. Arguably, if providers have failed to deploy sufficient numbers of suitable staff and have failed to establish systems to ensure compliance with the other regulations, they are committing breaches 'related to a harmful outcome'.
- 12.1 It is also worth considering whether it is in the public interest for the CQC to be constrained in this manner. It would be safer for patients if the CQC were able to prosecute any case without notice in certain circumstances of actual harm having occurred. An example of this might be that a provider employed a convicted abuser without having carried out a due check under regulation 14.
- 12.2 Moreover, a better way of understanding the difference between provisions which require pre-prosecution notices and those which do not might be to distinguish between outcomes which create direct harm to patients and those which may indirectly occasion it.
- 13 Secondly, specific provisions – notably 4(3)(f) – might be especially likely to create direct harm to patients and is hard to put into the category of a non-harmful outcome.

**Do you agree that CQC's guidance about complying with these regulations should set out criteria for cases in which it would consider bringing a prosecution?**

- 14 We agree with this, as it aids clarity and transparency amongst all stakeholders. In particular regulation 17 of the draft regulations, which contains detailed content about where the CQC can bring proceedings, is beneficial to making this clear.

**Do you agree that the health and adult social care system should always seek to meet the standards outlined in Chapter 4?**

- 15 We agree with this. The NMC argues strongly that public protection and patient safety is of the utmost importance. All providers should therefore strive to meet these standards.
- 16 Many of the standards, furthermore, match the standards which the NMC includes in its Code – all of which are designed to ensure public protection. For example, the need for consent outlined in regulation 6 matches the section of the Code which states that nurses and midwives must gain consent before beginning any treatment or care.

**Do you think any changes are needed to the draft regulations to ensure they reflect the policy aims we have set out in Chapter 4?**

- 17 In order to achieve the policy aims set out in Chapter 4, the Department of Health may wish to make the following changes:
  - 17.1 The point raised in paragraph 8.8 of this response in relation to reducing the burden on providers.
  - 17.2 The points raised in paragraph 12 of this response in relation to pre-prosecution notices.
  - 17.3 The point raised in paragraph 19 of this response in relation to language skills being included in regulation 14.

**Do you have any other comments about the draft regulations?**

- 18 We agree with regulations 13(2)(c) and 14(5) which relate to the NMC. Nurses and midwives should be supported to meet our standards, especially in relation to continued competence. We also agree that employers should inform the NMC, as appropriate, when a nurse or midwife no longer meets the requirements set out in regulation 14(5). Specifically, 13(2)(c) will support the NMC's revalidation and continued fitness to practice plans, whilst 14(5) will encourage appropriate referrals.
- 19 We believe, however, that the skills outlined in regulation 14 should expressly include language skills either in the regulations or in the guidance.

**Do you have any concerns about the impact of the proposed regulations on people sharing protected characteristics as listed in the Equality Act 2010?**

- 20 We welcome the inclusion of section 5(2)(b) and its attendant need for the registered person to have “due regard to any protected characteristics... of the service user”. This expressly recognises the need for the protected characteristics to be included as a fundamental aspect of dignity and respect, and will aid the legal enforceability of claims arising out of failure to provide adequate consideration for those with protected characteristics.

- 21 We also welcome the inclusion of dignity and respect in the form of regulation 5 as a whole. This will facilitate the need to place emphasis on treating patients as individuals with respect to their individual characteristics, needs and autonomy.

**Do you have any comments about the estimated costs and benefits of these regulations, as set out in the draft impact assessment?**

- 22 There may be a possible increase in referrals to fitness to practise in light of the positive duty in regulation 14(5) to inform the NMC and other professional regulators. However, as stated previously, we support this positive duty because we believe that what is crucial is to ensure that patients are properly protected from harm.

**Further information**

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