

NMC response: Scottish Government consultation on safe and effective staffing in health and social care

About us

- 1 The Nursing and Midwifery Council (NMC) is the professional regulator for nurses and midwives practising in the UK. We exist to protect the public. We do this by holding and controlling access to the register of qualified nurses and midwives and setting standards of education, training, conduct and performance. If an allegation is made that a registered nurse or midwife is not fit to practise, we also have a duty to investigate and, where necessary, take action to protect the public.

Our view on the consultation proposals

- 2 We welcome the opportunity to respond to the Scottish Government's consultation on safe staffing and effective staffing in health and social care¹. As set out in our position statement² on safe staffing guidelines, it is not our role as a professional regulator to set or assure standards related to appropriate staffing. Our role is set out above; it is for organisations to appropriately deploy those on our register. However, staffing does have a bearing on what we do in a number of ways, so we would therefore encourage the Scottish Government to take account of this in developing its safe staffing legislation.

Education and training

- 3 We set and monitor standards for the education of nurses and midwives. Pressures on staffing and requirements such as safe staffing levels can have an impact on practice placement settings for those on an education programme. Both could make it harder for registered professionals to dedicate time to supporting students. We require education providers to monitor and mitigate risks to practice placements, this includes requiring sufficient staff and support to be able to provide a safe training environment. If we have evidence that staffing levels may be affecting the training environment, we may ask education providers to investigate and provide assurance. We also require students to be supernumerary, so students should not be used or considered as staff.

Upholding the Code and revalidation

- 4 When registered, all nurses and midwives, regardless of their seniority and scope of practice, are required to uphold our Code³. It sets out the required professional standards of practice and behaviour. The consultation document references taking a triangulated approach to workload measurement for nurses and midwives where one part is professional judgment. This is likely to interact with the requirements in

¹ https://consult.scotland.gov.uk/nursing-and-midwifery/safe-and-effective-staffing-in-health-care-setting/supporting_documents/Safe%20and%20Effective%20Staffing.pdf

² <https://www.nmc.org.uk/about-us/policy/position-statements/safe-staffing-guidelines/>

³ <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>

the Code for nurses and midwives and we would encourage the Scottish Government to consider how these could be aligned.

- 5 For example, the Code sets out that nurses and midwives must:
 - 5.1 “Put the interests of people using or needing nursing or midwifery services first. You must make their care and safety your main concern and make sure that their dignity is preserved.” (Preamble for Prioritising People of The Code);
 - 5.2 “Work with colleagues to evaluate the quality of your work and that of the team (paragraph 8.4 of The Code);
 - 5.3 “You must work with colleagues to preserve the safety of those receiving care” (paragraph 8.5 of The Code);
 - 5.4 “Act without delay if you believe that there is a risk to patient safety or public protection” (paragraph 16 of The Code);
 - 5.5 “Must raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other healthcare setting and use the channels available to you in line with our guidance and your local working practices” (paragraph 16.1 of The Code);
 - 5.6 “Tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards” (paragraph 16.3 of The Code); and
 - 5.7 “Keep to the laws of the country in which you are practising” (paragraph 20.4 of The Code).
- 6 The Code also put additional requirements on senior nurses and midwives, for example directors of nursing or members of executive teams. These requirements are that senior nurses and midwives must:
 - 6.1 “Acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so” (paragraph 16.4 of The Code);
 - 6.2 “Provide leadership to make sure people’s wellbeing is protected and to improve their experiences of the healthcare system” (paragraph 25 of The Code); and
 - 6.3 “Identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first” (paragraph 25.1 of The Code).
- 7 All nurses or midwives on our register are required to revalidate⁴ with us every three years in order to maintain their registration. Revalidation requirements

⁴ <http://revalidation.nmc.org.uk/>

include five pieces of practice related feedback, five written reflective accounts, and a reflective discussion with another NMC registrant on the reflective accounts / another experience and how this relates to the Code. This is to ensure skills, knowledge, training and professional behaviours embedded in the Code remain up to date. Safe staffing legislation could therefore interact with the revalidation process, such as forming a part of the reflective requirements.

Raising concerns and fitness to practise

- 8 Our Code requires nurses and midwives to raise concerns in order to preserve safety. This could be within an organisation or to us or another regulator. Equally, other employees, employers, patients and the public may raise concerns with us. We have produced a range of information and guidance on raising concerns⁵. A nurse or midwife's failure to raise concerns could result in a fitness to practise referral to us. Our raising concerns guidance for nurses and midwives⁶ contains a list of examples of concerns that should be raised, including issues to do with care in general, such as concerns over resources, products, people, staffing or the organisation as a whole.
- 9 Individuals on our register may therefore raise concerns with us or others where there is a concern about staffing levels. Or, they may find themselves subject to a referral to us about their fitness to practice for not having raised that concern or for not complying with any future safe staffing legislation.

Duty of Candour

- 10 The consultation document highlight that "The Duty of Candour procedure, and regulations to be made using the powers combined in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act, will require organisations to make sure that they are open and honest with people when an unintended or unexpected incident resulting in death or harm has happened. It will also require training and support to be provided for staff involved with disclosure, and support to be available to people who have been affected by an instance of harm. Organisations will be required to prepare an annual report on the duty of candour – this will include a requirement to outline procedures and support available to staff and persons affected by incidents." (paragraph 3.10 of the consultation document).
- 11 Relating to this, our Code sets out that nurses and midwives must:
 - 11.1 "Recognise and work within the limits of your competence" (paragraph 13 of The Code);
 - 11.2 "Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place" (paragraph 14 of The Code);
 - 11.3 "Always offer help if an emergency arises in your practice setting or anywhere else" (paragraph 15 of The Code); and

⁵ <https://www.nmc.org.uk/concerns-nurses-midwives/>

⁶ https://www.nmc.org.uk/globalassets/sitedocuments/annual_reports_and_accounts/raising-concerns-10-june-2015-2.pdf

11.4 “Act without delay if you believe that there is a risk to patient safety or public protection” (paragraph 16 of The Code).

- 12 In addition to this the NMC and GMC have developed joint guidance for nurses, midwives and medical professionals on ‘Openness and honesty when things go wrong: the professional duty of candour’⁷. We would encourage the Scottish Government to take account of this when developing the duty of candour procedure and regulation.

Working with others

- 13 We will inform the appropriate system regulator if we uncover concerns about a provider when we are investigating a fitness to practise referral or as part of our work in quality-assuring nurse and midwifery training. Such concerns could include claims of unsafe staffing or other concerns raised by staff. We also encourage system regulators to inform us if they have concerns about the conduct or practice of individual nurses and midwives in respect of staffing or any other matter covered by the Code. We have a number of Memoranda of Understanding to facilitate this⁸.

⁷ <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/openness-and-honesty-professional-duty-of-candour.pdf>

⁸ <https://www.nmc.org.uk/about-us/who-we-work-with/mous/>