Nursing & Midwifery Council

Government consultation 'Promoting professionalism, reforming regulation': Nursing and Midwifery Council response

Introduction

1 The Nursing and Midwifery Council (NMC) is the independent professional regulator for nurses and midwives in the UK. From 2019, we will also regulate the new profession of nursing associates.

2 Our role as a regulator is to protect the public. The most effective way we can do that is by supporting nurses and midwives in their commitment to deliver high quality care, drive improvement and prevent harm. This means that our priority must be to make sure that those professionals who join our register have the competence and capability to provide a high standard of care and are supported in doing so throughout their careers. This is not only good for professionals and patients but for the broader development and maintenance of a high quality healthcare workforce.

3 Regulation is sometimes portrayed as a barrier to such development and to innovation, and an expensive one at that. In fact, effective regulation is well placed to be an enabler of change. At a time when the health services across the UK are under pressure and workforce supply in some areas is uncertain, effective regulation can help to support the UK to maintain a well-qualified and competent healthcare workforce.

4 But to be an enabler of change we must ourselves be enabled. Fundamental reform of our legislative infrastructure is needed to give us the autonomy and flexibility to respond to the changing needs of the health services. We can, and will, push the boundaries of what is possible within the limits of our existing legislation, but we are rapidly reaching the extent of what is currently possible.

Our response

5 We welcome the Government's consultation on proposals to reform health professional regulation[1]. We agree with the Government's view that health professional regulation needs to change. We consider that some, but not all, of the proposals in this consultation could lead to change in a positive direction.

6 Our role, functions and powers are set out in the Nursing and Midwifery Order 2001 ('the Order'). The Order provides the legal basis for the existence of the NMC, for the maintenance of the register of nurses and midwives in the UK and for our core regulatory functions of setting standards of education, training, conduct and performance for nurses and midwives and ensuring the maintenance of those standards through our education, registration, revalidation and fitness to practise processes.

[1] Department of Health, October 2017. Promoting professionalism, reforming regulation

7 A number of other pieces of secondary legislation stipulate in greater detail the governance structure and the operational rules which we rely upon to carry out our core regulatory functions. These include Orders made by the Privy Council relating to our governance processes and Rules made by our Council relating to our education, registration and fitness to practise processes. These pieces of legislation form the legal framework which governs how we operate and to make or amend them requires parliamentary approval.[2]

8 Our current legislation is prescriptive, outdated and a barrier to our becoming the dynamic leading regulator which is the cornerstone of our strategy. We have long called for wholesale changes to our regulatory framework so we can respond and adapt to the changing regulatory and healthcare environment. In the meantime, we have made significant improvements to our operating procedures most recently within fitness to practise as recognised in our best ever performance review from the PSA.[3] We achieved this against a backdrop of piecemeal legislative change. Our goal is greater flexibility to continue to improve delivery of our statutory duties so as to better protect the public and promote professionalism. In this context we are disappointed that no new draft legislation accompanies this consultation.

9 Our response is framed within the context of our remit as the professional regulator for nursing, midwifery and from 2019, nursing associates. We have responded to the consultation questions which we feel are most relevant to our remit.

Question 1 – Do you agree that the PSA should take on the role of advising the UK governments on which groups of healthcare professions should be regulated?

10 We do not agree with this proposal. Given their dual role in overseeing and measuring the performance of the statutory professional regulators and accrediting voluntary registers it could be argued that giving the PSA a formal role in advising on which professions should be regulated presents a potential conflict of interest.

11 Ultimately, decisions about whether any professions should become or remain regulated will remain with Ministers and we would support this approach. Whilst any such decision should be properly informed and evidence-based and should take account of the views of and advice offered by others, we do not see any particular benefit in giving the PSA a formal statutory role in the process and consider that any such decision should be approached with caution.

Question 2 – What are your views on the criteria suggested by the PSA to assess the appropriate level of regulatory oversight required of various professional groups?

12 We agree that any process to assess whether a professional group should be regulated must be based on clearly specified criteria. However we disagree with some of those proposed by the PSA.

[2] https://www.nmc.org.uk/about-us/our-legal-framework/our-order-and-rules/
[3] https://www.professionalstandards.org.uk/docs/default-source/publications/performance-reviews/nmc-annual-review-of-performance-2015-16.pdf

13 *Criteria for assessing the risk of harm.* The PSA proposes that the complexity of activities or interventions should be the key indicator. We agree with that but the nature of those activities and interventions must also be considered.

14 *Size of the professional group or number of patients.* We do not agree with using this as a criterion. A small number of professionals in a high risk profession could present a serious risk to public protection.

15 *Potential impact of regulation on the cost and supply of the workforce.* We do not agree with using this as a criterion, because it runs counter to the over-arching objective of public protection.

16 *Two-stage assessment.* We see no clear rationale for the PSA's intention to run these assessments as a two-stage process, and see no benefit in it.

17 We believe that further thought needs to be given to the circumstances in which new professions are identified in this context. We would caution against the conflation of new specialist or advanced practice roles being undertaken by existing healthcare professionals with the creation of new professions. As healthcare continues to evolve we consider it is appropriate for regulated healthcare professionals to develop their practice across multi-disciplinary boundaries in order to meet the changing clinical needs of the population, without the need for a plethora of new professions, supported by new registers or regulators. This approach goes to the heart of encouraging individual professionalism and supporting dynamic regulation and should be facilitated by a more flexible approach to registration and annotation.

18 Ultimately we feel that the overarching criteria necessary to assess the appropriate level of regulatory oversight required of various professional groups should be:

15.1 What is the risk of harm and potential risk to the protection of patients and service users and other members of the public?

15.2 What value would regulation bring in terms of promoting professionalism and raising the quality of the healthcare professionals concerned and their work?

Question 3 – Do you agree that the current statutorily regulated professions should be subject to a reassessment to determine the most appropriate level of statutory oversight? Which groups should be reassessed as a priority? Why?

19 Yes, we believe that in principle it would be sensible to reassess the risks presented by some of the professions as this might have changed over time. Additionally, inevitably, the level of risk presented by different regulated professions will vary and it is important for any decisions about the need for statutory regulation to be evidence based. We are not in a position to comment on which groups should be reassessed as a priority.

Question 4 – What are your views on the use of prohibition orders as an alternative to statutory regulation for some groups of professionals?

20 The use of prohibition orders would constitute a very restricted approach to regulation, focused in the main on dealing with professionals who have already transgressed rather than preventing professionals from doing so through promoting professionalism and continued fitness to practise. Their proposed use would seem to run counter to the current direction of travel for professional regulation, which is about prevention rather than punishment and would therefore need very careful consideration.

21 If the arrangements for prohibition orders were similar to those of the Disclosure and Barring Service (DBS), it is difficult to see how they would work in practice in relation to fitness to practise matters which fall outside the DBS regime. For instance, if the profession is not regulated there will be no clear standards of competence and conduct against which the profession will be held to account and the mechanism for making any such prohibition order would then need careful thought. In addition, it is unclear how employers would become aware if one of their employees or potential employees is subject to a prohibition order if they were not subject to any form of registration or regulation. Overall, we consider that any move in this direction needs a clear evidence base and further investigation.

Question 5 – Do you agree that there should be fewer regulatory bodies?

Question 6 – What do you think would be the advantages and disadvantages of having fewer professional regulators?

Question 7 – Do you have views on how the regulators could be configured if they are reduced in number?

22 In response to each of the questions 5-7 above, we consider that any decisions on the number and configuration of regulators should be for Ministers based upon the principles outlined in our response to question 2 above.

Question 8 – Do you agree that all regulatory bodies should be given a full range of powers for resolving fitness to practise cases?

23 We would strongly support the proposal that regulators be given a full range of powers for resolving fitness to practise cases so as to deal with concerns about the performance of professionals in a more proportionate and responsive fashion and improve the protection of the public from the risk of harm from poor professional practice.

24 We have found that having a fuller range of disposal powers enables us to operate our fitness to practise functions in a more proportionate and effective fashion. We think that these options should be available to all regulatory bodies as otherwise there is the risk of certain groups of registrants being disadvantaged compared with others. Common terminology between different regulators' methods of disposal would also assist with informing the public as to what each disposal power means and why it has been used in a particular case.

25 It is also important to recognise that these powers should not simply be limited to being able to issue warnings, give advice, or agree undertakings. The fitness to practise process is lengthy and often time consuming. Regulators need to be given greater flexibility and discretion over how to process and investigate fitness to practise cases.

26 We are already exploring ways to reduce the number of cases requiring a full public hearing following the introduction of our new disposal powers but early and constructive engagement from our registrants is critical to all these initiatives.

27 We also recognise that potentially avoidable delays occur in fitness to practise hearings due to late or limited engagement from nurses and midwives. This is despite nurses and midwives being under a professional duty to co-operate with any regulatory investigations. The power to make binding case management directions would improve efficiency and reduce delays during fitness to practise hearings and also encourage constructive early engagement. This would help to reduce costs in fitness to practise and allow us to redirect our resources into areas which promote upstream harm prevention.

28 The quicker disposal of cases would also ensure that those who are subject to fitness to practise referrals will have their cases dealt with more efficiently thus allowing them to remedy their practice and return to the workforce if appropriate. Additionally, highlighting the need for engagement with your regulator would have clear positive implications for professionalism in the workforce.

Question 9 – What are your views on the role of mediation in the fitness to practise process?

29 We would support any measure which allows the consensual disposal of those cases that do not require a full contested hearing however we remain unclear how mediation would play an effective role in promoting this. Fitness to practise decisions are fundamentally about risk assessment and management in order to protect the public. Mediation is about resolving disputes in a way that focuses on the individual needs of the parties. There is a clear and unbridgeable disconnect between the two concepts. We consider that mediation is neither applicable nor relevant to our regulatory role and does not deal with concerns about the performance of professionals in a proportionate and responsive fashion.

30 We recognise that mediation may have a possible role in relating to complaints resolution for those regulators involved in regulating businesses as well as individuals but this would be separate from any fitness to practise process.

Question 10 – Do you agree that the PSA's standards should place less emphasis on the fitness to practise performance?

31 We consider that fitness to practise is an important regulatory function and one where effective performance is essential for public protection. However, we think the current emphasis on fitness to practise is disproportionate bearing in mind the other important regulatory activities carried out by healthcare regulators such as education, registration, revalidation and so on, and that this should be reflected in how the standards are balanced.

32 Overall, we believe that the PSA's standards should be outcome focused and be measured by qualitative assessment focusing on the impact of our approaches in achieving public protection, rather than on inputs and process. For best effect, the standards should be coupled with descriptions of the characteristics of good outcomes. Regulators would then be free to innovate in how best to achieve these outcomes. We believe this is reflective of best practice regulation, will provide flexibility, act as a proactive driver to bring about effective behaviours, and will enhance public protection.

33 This proposed approach is also more future-proofed than the current linear approach and would ensure that PSA's oversight role does not act as a barrier to effective and innovative regulation of the future healthcare workforce. We also believe that the scope of the PSA's oversight activities for the professional regulators should be limited to our core regulatory functions of education, registration, continuing professional development / revalidation and fitness to practise, focusing on what the impact of our approaches is on public protection.

Question 11 – Do you agree that the PSA should retain its powers to appeal regulators' fitness to practise decisions to the relevant court, where it is considered the original decision is not adequate to protect the public?

34 In the absence of a power being given to all regulators to appeal their own decisions, we can see the benefit in the PSA retaining its appeal powers where the original decision is not adequate to protect the public. If however, the appeal power was made available to every regulator then the need for the PSA to retain its powers is less clear-cut.

35 If the PSA retains its power to appeal then there is a need for it to move to a more risk based and proportionate approach to best direct its finite resources towards protecting the public. For example, this could be a move to a risk-based approach to the review of substantive fitness to practise outcomes (instead of the current blanket approach to reviewing final determinations through the PSA's s.29 powers), the generation of 'learning points', and revisiting the PSA's approach to initial stages of audits. We believe there is scope for greater added value and helping identify performance improvements by adopting such an approach, and ultimately better protecting the public.

Question 12 – Do you think the regulators have a role in supporting professionalism and if so how can regulators better support registrants to meet and retain professional standards?

36 We exist to protect the public and supporting professionals to deliver the highest standard of care is integral to ensuring public safety. We believe that regulators do have an important role to play in supporting professionalism, provided this does not stray into the territory that should be occupied by professional bodies rather than a regulator. We have already made significant progress in many areas including our joint guidance with the General Medical Council (GMC) on the duty of candour, the enabling professionalism project, our new education standards and our new revalidation process.

37 With the help of the four Chief Nursing Officers we launched The Enabling Professionalism Framework' on Nurses' Day 2017. Its aim is to set out the ways in

which care settings can support professionalism among the nurses and midwives they employ.

38 We are also modernising the standards for the education and training of nurses and midwives so they are equipped with the skills and knowledge they need to practise now and in the future. This is a further example of supporting professionalism by ensuring UK education is fit for future nursing and midwifery roles in light of an ever-changing healthcare environment.

39 We have successfully introduced revalidation for nurses and midwives. This is the process that all nurses and midwives in the UK need to follow to maintain their registration with us. Our revalidation process is centred on our Code[4] and encourages continuing professional development and reflective practice which are both so critical to maintaining high standards. It has played a key role in embedding professionalism for nurses and midwives and we are proud of our work in this area.

40 We recognise that we can support professionalism by undertaking more proactive or 'upstream' regulatory activity of this nature rather than only responding once harm has occurred. However, we also acknowledge that we should not overstep our statutory remit or the remit of other professional bodies when supporting professionalism and we must ensure our activities are always geared towards public protection rather than being focused on maintaining professional interests or status.

41 Looking forward, we would like to improve the way we manage and maintain our register. Many of the annotations and parts/sub-parts of the register are a historic record of how care was delivered in the past. The nursing register itself is a record of the qualification that someone gained at the start of their careers and does not always reflect the area of practice in which they now work. This archaic structure does not support the objectives outlined in this consultation by the four UK governments, namely "supporting the development of a flexible workforce that is better able to meet the challenges of delivering healthcare in the future" and providing "greater support to regulated professionals in delivering high quality care".

42 With over 690,000 registrants, who make up such a significant proportion of the UK health workforce, it is paramount that we have the necessary tools to ensure that the register reflects current practice. We therefore require better powers to manage the register and be able to adapt it to reflect current and future nursing and midwifery workforce needs in order to protect the public and ensure that our register is relevant, up to date and is not a barrier to supporting professionalism now and in the future.

Question 13 – Do you agree that the regulators should work more closely together? Why?

43 Collaboration is one of the strategic priorities in our NMC Strategy for 2015-2020. Accordingly, we would support steps which facilitate further voluntary collaboration

[4] Professional standards of practice and behaviour for nurses and midwives - https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf

with other regulatory bodies. Our Employer Link Service (ELS) function is making progress towards joint working and data sharing. We are currently also working on a Joint Escalation Protocol which will allow greater information sharing between regulators.

44 The regulators should be able to work together where this can deliver increased public protection; greater consistency and fairness; better customer service and improved efficiency. However, it is important that a drive for greater joint working does not mask profession-specific considerations and does not in itself increase bureaucracy. The PSA should have a central role to play in promoting and sharing good practice among the regulators.

Question 14 – Do you think the areas suggested above are the right ones to encourage joint working? How would those contribute to improve patient protection? Are there any other areas where joint working would be beneficial?

45 The four UK governments and the PSA have identified four potential areas where joint working may improve public protection and generate efficiencies. These include a shared online register, a single set of generic standards, a single adjudicator responsible for all fitness to practise cases and a single organisation conducting back office functions such as HR, finance and IT. These proposals are similar to those outlined in the PSA document Right Touch Reform.[5]

46 Whilst we support the idea of joint working to promote upstream regulation, we consider that the case has not been made and that there is no rationale given to support moving in the direction suggested. There is no evidence base to suggest that a shared online register, a single set of generic standards, a single adjudicator and/or a single organisation creating back office functions would enhance public protection or increase efficiency.

47 There is no mention of the potential set-up costs associated with the proposals which are likely to be considerable, nor who would be liable to pay for delivery and implementation. Similarly, there is no mention as to the length of time this would take. We suggest that further work is needed to explore these options, and to evidence whether they would actually make a difference against the backdrop of the costs and time it would take to implement.

Question 15 – Do you agree that data sharing between healthcare regulators including systems regulators could help identify potential harm earlier?

48 Yes. In November 2017 we updated our joint working protocol with the Care Quality Commission in order to work more effectively together and reduce duplication by sharing information where appropriate.

49 We have a duty to co-operate with other public bodies including other regulators however our legislation does not contain any specific powers to enable the Council to work more closely with other regulators and share functions and information. For example more specific permissive powers on sharing and requesting

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[5] https://www.professionalstandards.org.uk/publications/detail/right-touch-reform-a-new-framework-for-assurance-of-professions

information would enable us to develop our joint regulatory work in this area further in light of the General Data Protection Regulation (GDPR).

50 If information is shared between regulators it is important that it is carried out lawfully and fairly in accordance with data protection legislation, including that the information is accurate.

Question 16 – Do you agree that the regulatory bodies should be given greater flexibility to set their own operating procedures?

51 We strongly agree that regulatory bodies should be given greater flexibility to set their own operating procedures and we are disappointed that previous attempts to secure reform of this nature have not resulted in the introduction of legislation to parliament.

52 Section 60 orders have enabled us to change our processes in relation to fitness to practise, which has had a positive impact on our regulatory function. However, they are piecemeal and not able to offer the level of reform needed to secure the progress needed to affect real change.

53 We believe that a single, high-level piece of legislation would be the most appropriate framework, setting out our statutory functions and regulatory outcomes whilst giving our Council the necessary powers to allow us to make and amend our own procedural rules and guidance. Having our high level requirements in legislation but much of the detail in guidance would allow us to be innovative, efficient and flexible in responding to or driving change in a fast changing environment with newly emerging trends. We would ensure that we undertook appropriate consultation and stakeholder engagement on any formal guidance and standards, as we do at present. It would mean the need for parliamentary time would be minimal, and that we could be much more agile and proactive at pursuing public protection outcomes and promoting professionalism. Our outcomes would also be more future-proofed than the current approach.

54 However, the NMC is mindful that such a piece of legislation requires a lengthy process, which is challenging given other demands on the parliamentary agenda. If Government is unable to find parliamentary time to provide regulators with an entirely new statutory framework we believe there is an alternative option. Our view is that it is possible to use one Section 60 order to change our legislation and create powers to move many of our current procedural requirements from rules into guidance.

55 In the interests of strengthening public protection our English language requirements were set in guidance instead of rules under a Section 60 Order which came into force in 2015. This was an innovation for us at the time and has allowed us to be much more flexible and change processes that require revision far more quickly than if they were set out in Rules.

56 As an example, in early 2017 we undertook a stock take of our language testing arrangements for nursing and midwifery professionals from overseas seeking to register to work in the UK. In November 2017, we subsequently amended our language requirements for nurses and midwives trained outside the UK following a consultation without needing to go through the parliamentary process involving

legislative change. The new language testing arrangements increase the options available for applicants trained outside the UK to demonstrate their English language capability whilst maintaining the standards needed to ensure public protection.

57 The case of language testing is important as an example of how flexible regulation enables us to be responsive to the changing needs of the health service and workforce. However this would not have been possible if our statutory power to amend these language requirements was prescribed in our rules, in the same way as many of our other detailed registration processes. At present, if we want to amend any of the other documentary and evidence requirements that we have for registration we have to change our Registration Rules by going through the whole parliamentary process, despite how small the change may be.

58 The proposed change to our Order outlined above would allow us to make other appropriate changes to our registration processes more quickly and thus allow us to introduce more efficient and effective ways of processing applications from those who have qualified in the UK or overseas to our register. This would enable us to streamline our registration processes at a time of unprecedented workforce pressures across the UK, addressing this where possible whilst maintaining our standards to ensure public protection.

Question 17 – Do you agree that the regulatory bodies should be more accountable to the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly, in addition to the UK Parliament?

59 As a UK wide regulator, we support proposals for greater accountability to the Scottish Parliament, National Assembly for Wales, and the Northern Ireland Assembly, in addition to the UK Parliament.

60 In practice, we already seek to engage fully with each of the devolved administrations. As a matter of courtesy and for information, we send our statutory annual reports and accounts to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly as soon as these have been submitted to the UK Parliament. Our annual reports include information broken down by country where possible and we will continue to seek to develop this further, so we would not see a case for providing separate country specific reports. We give evidence to Parliamentary/Assembly Committees in all four countries when invited to do so. As a charity we also ensure compliance with the requirements of the relevant charity regulators in all four countries.

61 We recognise that, over time, devolution will lead to greater diversity of health and care policies and provision across the four countries of the UK. In turn this may require different processes for accountability. So we would consider carefully any requests to strengthen our relationship with the relevant authorities in the devolved administrations, and would do our best to respond positively to them.

62 We ensure through a wide range of mechanisms that we are fully aware of differences in delivery of health care and developments across the four administrations. In setting UK wide standards for education and training, we

facilitate the movement of nurses and midwives throughout the four countries of the UK.

Question 18 – Do you agree that the councils of the regulatory bodies should be changed so that they compromise both non-executive and executive members?

63 We share the Government's view of the importance of effective governance. As the consultation recognises, clarity of accountability is integral to effective governance. We acknowledge that there are different templates for the composition of a Council that can secure this, and the appropriate one may vary in different circumstances. For example, there is a huge disparity in the size of the professions regulated by the current nine health care professional regulators. The composition that is effective for the NMC, which regulates a much bigger number of professionals than any of the others, may not be appropriate for others.

64 For the NMC we believe that there is no reason to depart from the current constitutional arrangements. They provide clarity of accountability, enabling the Council to hold the Executive to account, whilst critically also ensuring independence of operational decision-making.

65 The current configuration of the NMC Council with a balance of registrant and lay members drawn from across the four UK countries provides an invaluable mix of expertise and knowledge. All Council members, lay and registrant, are appointed entirely on merit, following robust open and transparent processes to ensure that they are qualified for the role and that the Council has the right mix of skills. Each of them is appointed as an individual, not as a representative of either a profession, or of one of the countries of the UK. In addition, the Chair and Council members participate in annual individual appraisals and the Council as a body reviews its own effectiveness annually.

66 Council members, collectively and individually, are clear that protection of the public is the foremost consideration in all Council decision-making. Adoption of best governance practice, including our Code of Conduct, published registers of interest and declaration of interests at every meeting, mean that effective arrangements are in place to ensure that decisions are not subject to any inappropriate or undue influence.

67 The effectiveness of the current constitution and composition of the Council is evidenced by the significant improvements in NMC performance and reputation led and overseen by the Council since it was reconstituted in 2013. This has been achieved by working in partnership with the Executive, setting the strategic direction and providing both support and challenge, whilst effectively holding it to account for delivery. The current constitutional arrangements provide the essential clarity of role and responsibilities conducive to strong and effective governance.

68 We are not persuaded that moving to a unitary style board comprising executive and non-executive members would therefore enhance accountability or strengthen governance. The role of the Executive is to share the making of strategy and policy with the non-Executive members and take responsibility for the execution of policy. A unitary board would give the Executive more influence over policy and is more likely to reduce the ability of the Non-Executive members to challenge and hold the Executive to account. Moreover, constitutional change inevitably involves

disruption, distracting organisational energy and focus from the primary purpose - to protect the public, for no apparent gain and potentially significant loss of focus and effectiveness.

Question 19 – Do you think that the views of employers should be better reflected on the councils of the regulatory bodies, and how might this be achieved?

69 We already have effective mechanisms in place to engage with and gauge the views of employers, and work closely with them as appropriate. This includes our Employer Link Service which has been very positively received by employers, as well as ongoing Executive engagement with employer representative bodies, amongst others.

70 Within the current constitutional arrangements, Council members can include individuals who are also employers, as is currently the case, and we value the insight and awareness this brings to our work. However, as indicated above, we believe that Council appointments should continue to be solely on merit, in accordance with the skills mix needed to ensure an effective high-performing governance body. We strongly oppose allocation of places on the Council to represent the specific interests of employers. This would present potentially insurmountable conflicts of interest for the individual(s) involved since unlike other Council members their authority and primary responsibility would be to the body they represent, rather than to serving the best interests of the Council and the public we serve.

Question 20 – Should each regulatory body be asked to set out proposals about how they will ensure they produce and sustain fit to practise and fit for purpose professionals?

71 We agree that each regulatory body should state this clearly. However, in the case of the NMC, this is already in place. The statutory functions of the NMC are already clearly set out in Article 3 of the Nursing and Midwifery Order 2001. These statutory functions set out how we “produce and sustain” fit to practise and fit for purpose professionals through our education requirements, standards setting, and registration and fitness to practise functions. Our statutory functions clearly state that we exist to protect the public. We set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare throughout their careers. We make sure nurses and midwives keep their skills and knowledge up to date and uphold our professional standards. We have clear and transparent processes to investigate nurses and midwives who fall short of our standards.

72 We work closely with other regulators to share good practice and information, collaboratively where appropriate for example, our joint guidance with the General Medical Council on the duty of candour and joint statements with other regulators on the duty of candour.

73 Our five year strategy and annual corporate plan clearly set out our priorities and how we will fulfill our statutory functions and we evidence how we achieve this in our statutory annual reports to Parliament.

74 The question implies that there should be some new requirement laid on regulators. Given what is already in place in the case of the NMC, we do not see the value or rationale in imposing additional requirements of the sort proposed and are unclear how this would add to public protection.

Question 21 – Should potential savings generated through the reforms be passed back as fee reductions, be invested upstream to support professionalism, or both? Are there other areas where potential savings should be reinvested?

75 The Council is responsible for setting the fees and is committed to reviewing the fees annually, as part of the budget-setting process. In this way the Council ensures that the fees are set at the right level to meet the costs of regulation, whilst ensuring best value for money for registrants from the fees paid.

76 The NMC Council takes its responsibility for setting the fees very seriously. We consider that each Council is best placed to make judgments about the most effective and efficient use of resources, taking account of short, medium and long term financial health and sustainability.

Question 22 – How will the proposed changes affect the costs or benefits for your organisations or those you represent?

- **an increase**
- **a decrease**
- **stay the same**

Please explain your answer and provide an estimate of impact if possible.

77 The proposed changes in this consultation are broad and lack specific detail. Therefore we are unable to clearly set out what the costs or benefits will be. Further information is required as to the proposed changes outlined before we can analyse the impact on our organisation and our stakeholders.

Question 23 – How will the proposed changes contribute to improved public protection and patient safety (health benefits) and how could this be measured?

78 As per our answer in question 22, we are unable to provide a meaningful answer unless further information is provided on the changes the Government has proposed. We welcome further clarity before we are able to analyse any impact on public protection and patient safety.

Question 24 - Do you think that any of the proposals would help achieve any of the following aims:

- **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 and Section 75(1) and (2) of the Northern Ireland Act 1998?**

- **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**

- **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?**

If yes, could the proposals be changed so that they are more effective?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

79 As mentioned above, we are unable to provide a meaningful answer from an equality and diversity perspective unless further clarity on the proposals is provided.

80 However, we note that the executive summary says that:

> *"we expect the professional regulators to work in partnership with employers and higher education providers to ensure that the recruitment, education and training systems they assure and operate are delivering the* ***right people, that they are teaching the right things*** *(through both the formal and informal curricula)"* emphasis added.

81 It is important to recognise that the 'right' people should mean recognition of the diversity of both patients and the health professionals. This should be intrinsically part of any system for the education of health professionals, that they understand the health needs of a diverse population. Furthermore any education system may need to include provision for widening participation, to engage with groups that may be disadvantaged in their applications into health professional education, and to ensure that the health professionals are diverse in how they reflect the patient population. To meet the public sector equality duty to 'advance equality of opportunity' there may need to be requirements set by the health regulators in their standards to encourage education and training providers to meet these duties.

82 Similarly in order for health professionals to meet the public sector equality duty of eliminating discrimination and harassment, it may be that they have to be more prescriptive in their regulatory expectations of health professionals and consider breaches of these duties in fitness to practise proceedings. Any focus on risk should include consideration of discrimination and harassment of patients and other colleagues – as discriminatory behaviours have been linked to environmental risks and patient safety.