

Response to Nursing and Midwifery Council consultation on continued use of new powers arising from the coronavirus pandemic

January 2021

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to comment on the Nursing and Midwifery Council (NMC) consultation on the future use of the powers received in response to the Covid-19 pandemic.
- 2.2 We recognise the pressure placed on professionals and regulators as a result of the pandemic and are broadly supportive of the emergency powers to enable regulators to continue to operate their processes during a challenging period. We welcome the fact that the NMC are consulting on future use of some of these powers now that it has the opportunity to do so and are engaging widely to seek the views of stakeholders.
- 2.3 Some of the changes introduced as a result of the pandemic appear sensible to continue to use outside of the emergency situation. However, we would welcome sight of any research carried out by the NMC into the potential impact of moving solely to such methods, particularly in relation to access to IT equipment for the purposes of receiving documents or participating in virtual hearings.
- 2.4 We welcome the NMC's statement that it will not continue to operate with reduced panel quorum and without the requirement for a registrant on the

panel outside of the emergency period. However, we would expect the NMC to monitor the use of all powers during this period with a view to mitigating any issues arising.

- 2.5 With virtual hearings, outside of an emergency situation it will be important for these to be used in appropriate circumstances and for the NMC to ensure that transparency and accessibility can be maintained through facilitating public access.
- 2.6 Similarly, with regard to the proposal to allow flexibility with revalidation and payment of registration fees in exceptional circumstances after the end of the emergency period it will be important to ensure that this power is used sparingly to avoid undermining the importance of these requirements.
- 2.7 We welcome the NMC's statement that it has carried out an equality impact assessment and data protection impact assessment on the changes brought in by the new powers.
- 2.8 Our detailed answers to the consultation questions are below.

3. Detailed commentss

Virtual hearings

1. Do you think there are any reasons why we shouldn't continue to hold hearings virtually, once the emergency period ends?

- 3.1 We do not see any reason why the NMC shouldn't continue to hold virtual hearings once the emergency period ends where circumstances allow. We note the benefits that the NMC identifies of continuing to hold hearings in this way unless there is a good reason not to.
- 3.2 However, we think that it is particularly important that the NMC should consult with panellists and those taking part in virtual hearings about their experience and the challenges they faced. Anecdotally, we have heard about a number of potential benefits but also potential negative unintended consequences of holding hearings in this way. In the light of this, it may be appropriate for the NMC to consider whether there are particular types or categories of case that are particularly suitable or unsuitable for this type of hearing once the pandemic is over.
- 3.3 A key element of continuing to hold hearings in this way is providing clear guidance and information to registrants, complainants and witnesses in advance of a hearing and additionally to clarify availability of any adjustments that can be made to support participation as appropriate. We welcome the NMC's guidance outlining factors that will be considered in deciding whether a virtual hearing is appropriate. We suggest that this should continue to be used and reviewed regularly based on the NMC's experience of running virtual hearings and any other considerations that emerge.

- 3.4 We also welcome reference to the Authority's guidance on the holding of fitness to practise hearings during the pandemic.¹
- 3.5 We are however of the view that if the NMC decides to continue with virtual hearings once the emergency period ends, it must ensure maximum accessibility for registrants and openness to the public. We comment further on this below.
- 3.6 We also suggest that the NMC continues to review its use of virtual hearings on an ongoing basis to identify and mitigate against any negative unforeseen consequences of holding hearings in this way.

Public access

2. How do you think that members of the public should have access to our virtual hearings?

- 3.7 We support the NMC working towards allowing members of the public to have access to virtual hearings via video stream from their own premises to ensure maximum transparency and accessibility.
- 3.8 When the NMC first introduced the emergency rule changes in response to the pandemic we expressed some concern about the suspension of Rule 19 requiring hearings to be open to the public except in certain circumstances. We welcome the fact that this Rule was reinstated on 31 August 2020 and that the NMC have been facilitating a level of public access to hearings in various forms including via screens at the hearing centre and audio access to virtual hearings.
- 3.9 As the consultation notes, a number of other regulators have now gone further in this area and allow observers to attend virtual hearings and view a video stream of proceedings from their own home. We are of the view that regulators should do all they can to enable maximum public access to virtual hearings to promote transparency and openness of proceedings. This will be particularly important if the NMC wishes to continue using virtual hearings after the end of the emergency period.
- 3.10 We recognise that some concerns remain about privacy and information security. However, virtual hearings have been in use since early in the pandemic now and different solutions have been developed by many organisations to address these problems. We welcome the NMC's commitment to act in the public interest.

Constitution of panels

3 (a). Do you agree with this approach? (not continuing to use powers to hold hearings with just two panellists and without a requirement for a registrant panellist outside of the emergency period)

¹ Professional Standards Authority 2020, *Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic*. Available at: <https://www.professionalstandards.org.uk/news-and-blog/latest-news/detail/2020/09/24/guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic>

- 3.11 Yes. We understand why the decision was taken to amend the rules around constitution of panels during the emergency period, however it is appropriate to revert back pre-existing rules when this period is over.

3(b). Please tell us if you think there are any other circumstances where it would be reasonable for us to have a panel without a registrant member.

- 3.12 Beyond the circumstances brought about by the pandemic where registrants were under significant pressure on the front line and therefore might not have been available for FtP panels it is difficult to envisage a similar situation. Registrant panel members provide an important perspective to proceedings and therefore we suggest that such circumstances may not be possible to define but may be possible to assess on a case by case basis if this occurs.

3(c). What do you think the exceptional circumstances should be where we would have a panel with two members?

- 3.13 It is difficult to speculate what might constitute exceptional circumstances outside of an emergency situation. We therefore suggest that a future change of this nature is approached on a case by case basis beyond the current approach permitted (illness of panel members during hearing etc).

Sending notices of meetings and hearings

4. Do you think we should continue to send notices of our hearings and meetings by secure email?

- 3.14 Yes. We support the current approach taken by the NMC and other regulators in ensuring that registrants and parties to a case are able to receive notices in this way prior to using this method of communication and adapting approach (e.g. sending by post) where required.
- 3.15 We note that amongst both registrants and the general public there is likely to be varied access to IT equipment which may affect ability to receive documentation in this way and potentially also to participate in remote hearings. We would expect the NMC to assess the effect of the this change on an ongoing basis and mitigate any negative effects as required.

Revalidation and fee payment

5. Do you think we should continue to grant revalidation and fee payment extensions in limited circumstances such as those outlined above?

- 3.16 Yes. Whilst we agree that some flexibility is sensible, we suggest that caution is used when utilising such discretion to ensure that there no devaluing of the requirement to revalidate and pay the necessary fee.

6. If there is anything else you would like to comment on in relation to whether and how we should use our powers under the rules after the emergency period ends, please do so here.

- 3.17 We suggest that the NMC continues to monitor the use of all of these powers in order to mitigate any negative effects or adapt processes as a result.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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