House of Commons
Health Committee

2013 accountability hearing with the Nursing and Midwifery Council: Nursing and Midwifery Council’s response to the Committee's 5th Report of Session 2013–14

4th Special Report of Session 2013–14

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The Health Committee

The Health Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Health and its associated bodies.

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Committee staff

The current staff of the Committee are David Lloyd (Clerk), Martyn Atkins (Second Clerk), Laura Daniels (Committee Specialist), Stephen Aldhouse (Committee Specialist), Daniel Moeller (Senior Committee Assistant), Hannah Beattie (Committee Assistant), and Alex Paterson (Media Officer).

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Fourth Special Report

On 3 December 2013 the Health Committee published its Fifth Report of Session 2013–14, 2013 accountability hearing with the Nursing and Midwifery Council. The Nursing and Midwifery Council’s Response was received on 14 February and is published as the Appendix to this Report.

Appendix – Nursing and Midwifery Council Response

Introduction

The Nursing and Midwifery Council (NMC) is the UK regulator for nurses and midwives. Our primary purpose is to protect patients and the public through effective and proportionate regulation of nurses and midwives. We set standards of education and practice, maintain a register of those who meet these standards and take action when a nurse or midwife’s fitness to practise is called into question. By doing this well we promote public confidence in nurses and midwives, and in regulation.

We welcome the Health Committee’s scrutiny of our work and will take forward the recommendations as set out in our response. We look forward to updating the Committee on our progress on revalidation and other matters in March 2014.

Response to Recommendations

Background and overview

1. Over the past year, NMC has had significant performance issues to address; the PSA evidence suggests that it believed the NMC had made progress but that more progress is required before the NMC can be regarded as an effective regulator. In the coming year the NMC will face additional challenges, both in responding to the recommendations of the Francis report, and in preparing to introduce a system of revalidation. The NMC has told us that it believes it is now able to begin to address these new challenges, but the Committee remains concerned that the progress made so far remains fragile and believes it is important that these new challenges do not become a distraction from the continuing requirement to improve its performance of its core functions. We look to the PSA to continue to closely monitor the NMC’s progress, and we shall seek evidence of continuing improvement in the delivery of its core functions at our annual accountability hearing with the NMC in 2014. (Paragraph 11)

NMC response

We are, and will continue to be, focused on improving public protection. We are confident that both addressing the Francis recommendations and introducing revalidation will
strengthen our ability to protect the public better, regulate more effectively and improve confidence in our work.

We are determined to build on the improvements already made and not be deflected from delivering the fitness to practise and financial targets agreed with the Department of Health as a condition of the £20m grant. Until these targets are achieved, we will remain cautious about taking on any new demands and the Committee's support for our approach is welcome.

**Progress on clearing backlog of outstanding cases**

2. We welcome the fact that the NMC has made progress in eliminating the backlog of Fitness to Practise cases dated from pre-2011 but we are disappointed that, a year on, the number of cases over two years old has only fallen from 572 to 428. It is a matter of concern to the Committee that even now the number of very old cases remains stubbornly high and we look to the NMC to demonstrate that it is able to address and resolve this issue before next year's accountability hearing. (Paragraph 14)

**NMC response**

Our oldest cases are by nature the most complex and challenging. Reasons for this include that they may have been subject to complicated local inquiries, police investigations or legal proceedings. Nevertheless, we continue to make steady progress: at the start of February 2014, 402 cases were over two years old (9.4% of our caseload). The majority of these are currently scheduled for a hearing or a meeting or are currently on hold pending a third party investigation.

All cases over two years are monitored on a weekly basis by the senior team in Fitness to Practise and reviewed monthly by the Executive Board. The Council scrutinises progress rigorously, including the age of the caseload, at every meeting and is ready to take action to keep performance on track. We expect the number of older cases to continue to reduce over time as we move nearer the target agreed with the Department of Health. We should therefore have a more positive picture to report to the Committee at our next accountability hearing.

Currently, around 75% of our resources are spent on Fitness to Practise to enable us to hold some 30 hearings and meetings a day. Any increase in Fitness to Practise activity would drive costs up still further. For example, adding just three more hearings a day for six months would cost around £1.6 million. Sustaining even the current level of activity over a protracted period would seriously undermine either our financial viability or our capacity to maintain the register and fulfil our other core regulatory duties. So the scope for faster progress is constrained.
A total time limit for concluding cases

3. The Committee continues to believe that the NMC’s current targets relating to the investigation and the adjudication of Fitness to Practise cases are subject to several shortcomings:

a) They add up to a target of 18 months, which too long;

b) They only apply to 90% of cases, which means that no individual can know whether they have received proper service because the target does not apply to each individual case. (Paragraph 18)

4. We note from the end of next year, the NMC proposes to toughen the target period for resolving fitness to practise cases to 15 months. We welcome this development and urge the NMC to commit themselves to delivering this objective in every case. (Paragraph 19)

5. The Committee continues to believe that it is essential that NMC targets should clearly express the total length of time a Fitness to Practise case should take from start to finish. We therefore welcome the fact that the NMC has said that, provided it meets its targets for 2014, it will set a ‘start to end’ target rather than targets for individual stages from 2015 onwards. (Paragraph 20)

NMC response

We share the Committee’s ambition to see a reduction in the time taken to complete cases.

Our first milestone is to deliver the targets agreed with the Department of Health. This means that by December 2014, 90% of investigations will be completed within 12 months and 90% of cases which progress to adjudication will reach the hearing stage within six months.

Getting to a position where we can deliver an end to end target of 15 months by the end of 2015 is dependent on both meeting these targets and legislative change, in the form of a section 60 order, to allow us to use case examiners to resolve cases at initial stages. We are working closely with the Department of Health to secure this and other urgent changes to our fitness to practise and registration processes. We hope this will be in place by December 2014, provided that the Department is able to allocate necessary resources to progress the order. We would urge the Committee to press for this legislative change to be delivered as quickly as possible.

We understand the Committee’s desire to see any targets apply in each and every case to give clarity to the public and professionals alike. We could do this for those cases where progress is entirely within our control. In practice, there will always be a proportion of cases delayed by factors we cannot control, such as police investigations, disciplinary proceedings or judicial action. The target would therefore need to exclude such cases with the risk that it might be seen as confusing at best or misleading at worst.
One way of giving the public greater clarity might be for all the regulators to report targets in the same way. An initiative championed by the Committee to bring this about would be welcome.

The Council will review priorities, key performance indicators and targets in March 2014 when it agrees the corporate plan and budget for 2014-2017. The Council will consider the Committee’s recommendations at that time. In doing so, the Council will need to weigh all the issues carefully, including the financial costs involved in delivering tougher targets. It will also wish to ensure that any revised targets, while challenging, are also honest with the public and others about what we can realistically deliver.

**Legislative change to streamline fitness to practise processes**

6. The Committee welcomes the willingness of the NMC to commit itself to a 12 month process. It recommends however that the NMC work with the Department to introduce all the necessary legislative changes no later than the end of 2014, and deliver the resulting process improvements no later than the end of 2015. (Paragraph 26)

**NMC response**

We welcome the Committee’s recognition that legislative change is key to achieving the modernisation of our processes and share the Committee’s wish to see this progressed urgently. Any realistic prospect of our achieving a 12 month target is critically dependent on a radical overhaul of our existing legislation, not just the limited changes in the section 60 order mentioned above. We are working closely alongside the Law Commissions and the Department of Health to ensure that our requirements are reflected in a Bill which we hope the Government will introduce in the coming months.

Even if such a Bill is enacted in the next parliamentary session, necessary consequential changes will then need to be made to our own rules. This is likely to mean that it will be a further two years before speedier and more flexible Fitness to Practise processes are fully operational. The earliest we could hope to deliver a 12 month end to end process would be 2017. We would urge the Committee to continue to press for a Bill to be brought forward at the earliest opportunity, since any delay will push back the prospect of timely resolution of cases even further.

7. The Committee believes that the difficulties caused to the NMC by the High Court ruling in 2013 need to be addressed as a matter of urgency. If the matter cannot be addressed by appealing against the decision, the Committee recommends that the Government should state clearly and quickly how it intends to address the issue. (Paragraph 30)

**NMC response**

We echo the Committee’s call for this issue to be addressed urgently. We are working closely with the Department of Health to facilitate the speedy introduction of this and other essential measures through the section 60 order discussed above. We had hoped this
would be in place by July 2014 and, whilst we recognise the many pressures on departmental resources and parliamentary time, it would be disappointing if there was any further slippage in the current timetable of December 2014.

**Section 29 Appeals**

8. The Committee recommends that the Department of Health work with the NMC and the PSA to close gap in the NMC’s legal framework identified by the PSA. (Paragraph 33)

**NMC response**

We have contributed to discussions with the Department of Health and Professional Standards Authority about how to address this issue. Given the legal complexities involved, we support the Department’s view that this can best be addressed through inclusion in a Bill to take forward the Law Commissions’ proposals.

In the meantime, we have suggested what we consider to be a workable interim solution to the Professional Standards Authority and look forward to hearing its views on our proposals.

**NMC Accountability**

9. The NMC has a new Council and a permanent Chief Executive has been appointed, giving the organisation more stable leadership. However, questions remain about the NMC’s ability to provide consistent and timely regulation of key clinical professions. Public concern about care standards within these professions has risen in recent times as a result of the Francis Report and other well publicised failures of care. There is an urgent requirement for the NMC to develop both its ability to deliver effective and consistent regulation and to demonstrate that ability to a more sceptical public. Transparent accountability for its own track record should be a high priority for the NMC. (Paragraph 41)

**NMC response**

We are committed to being open and accountable about our performance and being an efficient and effective regulator in which the public, patients and registrants all have confidence.

We are introducing performance and quality frameworks across all our activities to help us deliver effective regulation on a more consistent basis and measure our progress. We are developing tools to help us become a learning organisation and promote a culture of continuous improvement.

We report publically on our performance and risks at each Council meeting. We are pleased that Council meetings are well attended by of a range of stakeholders including service users, patients, registrants, professional bodies, representatives of devolved administrations and the media. The Council scrutinises progress against targets and
Attendees can ask questions from the floor. We discuss our progress in addressing the Francis report recommendations and those arising from other important reports such as Berwick, Cavendish and Clwyd-Hart, and key developments like the introduction of revalidation in open session.

We communicate the outcomes of our fitness to practise cases through monthly e-newsletters for the public, registrants, student, employers and educators. We are extending our use of social media, to reach as wide a range of audiences as possible and encourage input to our work.

Stakeholders commented positively on the accountability and openness with which we now go about our business to the Professional Standards Authority’s annual performance review currently underway. This is encouraging and we will build on it to promote further confidence in our work.

NMC Fees

10. The simple option of phased payment, which is made available to the customers of most types of organisation, has the potential to make a big difference to nurses and midwives struggling to pay the NMC’s increased fees as an annual lump sum. We do not accept that "IT difficulties" should be allowed to prevent this. (Paragraph 42)

NMC response

We recognise that paying an annual lump sum can cause hardship for some nurses and midwives and are committed to introducing phased payments for those who want to take advantage of this option. In March 2013, the Council agreed that capacity to do this should be built into any new registration system. Detailed investment decisions on implementing the next stages of the ICT Strategy, including in respect of our registration system, will be taken by the Council when it agrees the corporate plan and budget for 2014-2017 in March. We would be happy to update the Committee at that time.

Financial controls

11. The NMC has told us that over the past year, it has "worked quickly to improve financial management and controls", and that the Council are now provided with detailed financial information. However, less progress has been made in improving staff turnover which, although reducing, still remains high, at 26%. We will revisit both of these issues at our next accountability hearing with the NMC. (Paragraph 46)

NMC response

Achieving a more stable workforce is a key priority and the Council continues to monitor the position closely at each meeting. Staff turnover is reducing steadily and we are on course to meet our projection for this to be around 23% by March 2014. This is still too high. We have a number of initiatives underway to help us attract and retain high quality staff and expect these to have an impact on the turnover rate as the benefits are realised.
**IT**

12. At last year’s accountability hearing, IT was identified as a major issue of concern. We were told that as well as addressing immediate problems, the NMC planned to develop a longer term strategy for IT. The Committee understands that the ICT Strategic Plan 2013-16 was considered by the Council on Thursday 21 November. Effective IT underwrites everything the NMC does. The Committee urges the Council to agree and implement a strategy as soon as possible. (Paragraph 47)

**NMC response**

We took a significant step forward in December, when we began piloting online registration capability with a group of registrants. We are on track to move ahead with online renewals from May. We have now completed the programme of work described in our written evidence to stabilise existing IT, including updating our telephony and desktop systems. Following on from this, the Council will take decisions about future IT investment, as mentioned above, when it sets the corporate plan and budget for 2014-2017 in March.

**Language testing**

13. The issue of appropriate language controls for health professionals is important, and the Committee is concerned that it is not being pursued with sufficient urgency. High quality care requires that staff can communicate effectively with patients. The Department of Health must ensure that EU legislation does not prevent this from happening. (Paragraph 51)

**NMC response**

We welcome the Committee’s support for ensuring that this issue is tackled urgently. It is helpful that the revised EU Directive now provides clarity around the capacity of competent authorities such as the NMC to test for language competence. We need this to be transposed into UK legislation in a way which enables testing to take place after recognition of qualification but before entry to the register, since this is what confers the right to practise here as a nurse or midwife. We are working closely with the Department of Health and BIS to seek to resolve these issues in a satisfactory way.

**Other EU Issues**

14. The NMC has raised further concerns arising from amendments to the EU Directive on the recognition of professional qualifications. We have not examined the detail of these concerns in the limited time available to us, but the evidence presented to us by the NMC suggests that they have potentially serious implications for the NMC’s ability to protect the public, and therefore we urge the Department of Health to address these concerns as a priority. (Paragraph 54)
**NMC response**

The Committee’s support on these issues is welcome. We are actively engaged with the Department of Health and BIS to seek to ensure that the Directive’s provisions are implemented in a way which addresses our concerns to mitigate any potential adverse impact for public protection. We are also continuing to engage with the EU Commission to influence the practical operation, cost and resource implications of some of the measures such as, introduction of the European Professional Card and the Alert mechanism.

**Making it easier to raise concerns with the NMC**

15. The Committee was surprised by the omission of the NMC’s contact details from their own guidance on raising concerns, and we raised the matter with the NMC in our oral evidence session. We welcome the fact that the NMC has subsequently told us that they plan to amend the guidance to include their contact details. They also plan to add a statement about the different paths for raising concerns about 'system' issues and 'professional issues', while making it clear that if a registrant is not sure what are dealing with they should raise the concern anyway. (Paragraph 63)

**NMC response**

We amended our guidance as soon the Committee alerted us to this issue and published this on our website.

Our engagement with Directors of Nursing and Heads of Midwifery suggests that the Raising Concerns guidance was both timely and well-received. There have been nearly 20,000 viewings of the guidance on our website.

**NMC profile**

16. The requirement to raise the awareness of patients about the work of the NMC as well as the awareness of registrants about their professional responsibilities lay behind several of the key recommendations of the Francis Report. The Committee welcomes the steps which the NMC has taken to address these issues, but it agrees with the Chief Executive that more work was needed in this area:

I do not think we are at the point where we could say that our visibility is such that members of the public would be aware of what our role is. I think we have a way to go. (Paragraph 65)

17. We recommend that the NMC develops and introduces a system of monitoring its profile amongst patients, the public, registrants and employers, to evaluate whether it is becoming easier for concerns to be raised with NMC. (Paragraph 66)
**NMC response**

Various initiatives are already in train to promote awareness and understanding of our work. We are redeveloping our website to make it more public and patient friendly. Our Public and Patient Engagement Forum is helping us create publicity materials for the public and patients on how to raise concerns with us and how to get involved in nurse training and education. The Forum has helped us redesign our forms to make it easier for the public to refer cases to us. We are seeking to work with partners such as Healthwatch and the Citizens Advice Bureaux to make information available through their networks. We increasingly use Twitter to communicate with a wide range of audiences, including live tweeting our Council meetings, as well as tapping into other social networks to spread the word about our work.

We are working proactively with employers and senior professionals to improve understanding of what we do and to secure input into our work on revalidation and revision of the Code. We have engaged with over 150 Directors of Nursing and Lead Midwives by working in partnership with the Trust Development Authority and have visited each of the "Keogh" trusts to talk to professionals about the issues they face on the ground and when to refer cases to us.

We will look at the affordability of evaluating the impact and effectiveness of these initiatives in raising awareness and understanding of our role. This should provide a starting point on which we can build over time to a more comprehensive approach of the sort suggested by the Committee.

**Proactive, preventative regulation**

18. Against this background the Committee supports the view of the NMC that it should be cautious about extending its role in ways which may overlap with other regulators. As the NMC put it:

We think broadly there is a clear distinction between our own focus on individuals and the CQC focus on systems. We have to make sure between us that there are no gaps between the two... (Paragraph 70)

19. However the Committee also welcomes the statement of the Chief Executive that: If nurses are seeing a system operating that is impacting on patient safety, we would say that is an issue for us. We try to reflect in the guidance that there are different levels of concerns and we hope that the vast majority that a nurse or a midwife encounters can be resolved locally; where they cannot and patients are being put at risk, it is a regulatory matter. (Paragraph 71)

**NMC response**

We agree with the Committee and welcome its support for the measured approach we have adopted. Improving collaboration with other regulators is key to closing any gaps in the protection afforded to the public.
Our own ability to take a more proactive and preventative approach will be strengthened by the information sharing arrangements we are putting in place with CQC and other key partners, such as the Trust Development Authority. Directors of Nursing and Heads of Midwifery can already seek advice on when cases need to come to us through our dedicated external liaison team. We will pilot regional representatives to create closer links with employers, build a better understanding of our role and support the introduction of revalidation.

Registrants obligations to raise concerns about impact of staffing levels

20. The Committee agrees with the NMC that determining and monitoring staffing levels are not a direct responsibility of NMC. However, the Committee also agrees with the NMC finding in a recent case that individual registrants, particularly nursing leaders, who have concerns about staffing levels at their place of work are under a professional obligation to raise these concerns in the appropriate manner. We recommend that the NMC take specific steps to ensure that the implications of the findings of this Fitness to Practise case are drawn to the attention of all registrants. (Paragraph 74)

NMC response

The case in question was subject to appeal proceedings and only finally concluded at the end of January 2014. We are writing to Directors of Nursing and Heads of Midwifery to highlight the findings and reinforce the message that there is a professional duty to raise concerns if staffing levels or skills mix may jeopardise public safety. We will ensure that this message, along with learning from other Fitness to Practise cases, is reflected as we revise our Code for nurses and midwives. We will be consulting widely on the draft revised Code during the late spring and summer which will provide a further opportunity to promote wider awareness and understanding of these important issues.

As a member of the National Quality Board, we were involved in the Chief Nursing Officer’s initiative on safe staffing and look forward to the guidance on this expected from NICE later this year. We will use our communications channels to promote these resources to our registrants to support them in upholding the Code in this regard.

A unique source of information

21. The Committee recommends that the NMC should develop its capacity to provide an annual commentary, drawing out themes and trends, and highlighting learning points. The intelligence the NMC gathers in the course of its work should be used not only to enhance its own processes, but also to inform policy making more widely. (Paragraph 80)

NMC response

We share the Committee’s view that we should aim to do this. We need to start by getting better at analysing and understanding our intelligence and data. This will be a priority in both our corporate plan 2014-2017 and the Council’s emerging five year strategy to be published in July 2014. We are mindful of the Committee’s first recommendation that we
should not over-reach at this stage and be cautious of taking on new demands. We therefore see this as an ambition for the longer term when capacity and resources allow.

Revalidation

22. Although the Committee welcomes the commitment of the NMC to introduce revalidation for nurses and midwives from the end of 2015, it does not believe the NMC yet has a workable plan to deliver this commitment. (Paragraph 96)

23. The Committee will seek further assurance on the development and delivery of the NMC's plans for revalidation, and we recommend that the NMC publish regular updates on the timescales for different projects relating to revalidation on its website, as well as updates on lessons learned from piloting of this model. In particular, the NMC's approach to analysing risk, and to how its audit of revalidation will be conducted, is a key element of the revalidation process which has not yet been set out in detail. (Paragraph 97).

24. As part of this process of regular updates, the Committee will seek an update on progress on this project at the end of the first quarter of 2014, which it will publish. (Paragraph 98)

NMC response

We welcome the Committee's recognition of the importance of this work. We note the recommendations and look forward to providing an update on progress at the end of March.

Concluding remarks

We are determined to continue to improve delivery of our core functions and build confidence in our work and look forward to providing confirmation of further progress at our next hearing.