Regulating healthcare professionals, protecting the public.

The Royal College of Nursing response to the consultation questions.

With a membership of over 450,000 registered nurses, midwives, health visitors, nursing students, nursing support workers and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK. The RCN is the largest professional union of nursing staff in the world and represent members that work in a variety of hospital, community and care settings in the NHS and independent sector. The RCN welcomes the opportunity to contribute to the Governments consultation on the reform of professional healthcare regulation. We generally support the proposed reforms and legislative changes that will provide regulators with greater flexibility and autonomy to enable regulation to be undertaken in a way that is effective and efficient.

Nurses are the largest regulated healthcare profession and as the largest professional union for nurses, the RCN is keen to ensure that the reform provides the highest level of patient safety and public protection as well as deliver better support for our registrant members.

1. Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above? Please give a reason for your answer.

We agree with this duty and with the organisations listed. Additionally, we think regulators should have a duty to co-operate with organisations that are concerned with the representation of healthcare professionals. Trade unions and Royal Colleges often have access to insight and information which would be useful for the regulator to be aware of when undertaking their duties. This is particularly important considering the commitment made by some regulators (including the NMC) to take into account wider systemic and contextual issues. Working closely with trade unions and professional bodies will help enable them to do this.

The RCN is the largest trade union and professional body that represents nurses. Under the regulators duty to cooperate, we would want to see our operational and strategic leadership across the system fully acknowledged.
Working collaboratively and sharing data between healthcare and systems regulators could help to identify potential harm earlier. Closer collaboration will enable intelligence sharing and a greater understanding of the systemic failings that may affect individual practice. Sharing information will support greater improvements to the services provided and public protection.

2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and these related duties? Please give a reason for your answer.

Transparency is critical to building confidence and maintaining trust amongst both registrants and members of the public. We strongly support the proposal for regulators to have an objective to be transparent. One concern we do have relates to public access to hearings in situations where the hearing is being held virtually. We are concerned that members of the public may take steps to record (either audio or video) the hearing and sharing the content online. This would expose both registrants and witnesses to potential harm. We therefore ask for safeguards to be made to prevent this from happening. Some regulators allow members of the public to attend screenings of the hearings, and these screenings are monitored by staff to ensure recordings are not being made.

3. Do you agree or disagree that regulators should be required to assess the impact of proposed changes to their rules, processes, and systems before they are introduced? Please give a reason for your answer

We agree that regulators should undertake an impact assessment on any proposed changes before they are introduced. We do not believe it is acceptable for changes to be made without understanding the economic impact, operational considerations and system wide practice changes. In the past, we have seen where the failure to undertake an economic impact assessment has meant that the financial burden was transferred to organisations without due consideration of how this might be mitigated and managed.

It is vital that a transparent evaluation and risk assessment process is undertaken with partners before and during the implementation of any planned change. It is important that the change is subject to a proportionate assessment of cost and benefit on how the regulator functions, and that it does not have a disproportionate impact on registrants or result in unintended consequences. We recognise that during the pandemic this was not always possible however, we appreciate the steps the NMC took to consult on new powers following the initial emergency period.

Our view is that this explicit duty should also require regulators to assess the impact of changes upon people with protected characteristics. We know that registrants from BAME backgrounds are more likely to be involved in fitness to practice hearings and as such, it is vital that they and other groups are explicitly considered before changes are made. This will help to identify any factors which contribute to an over-representation of specific groups.

4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators? Please give a reason for your answer.

We generally agree with the broad principle of the proposal to strengthen the governance arrangements and modernise the structure that is standardised for all professional regulators. We acknowledge the importance and value of lay representation as part of a transparent governance process to ensure the regulator is effectively discharging it functions. However, we strongly disagree that the appointment of registrants to the Board should be seen as optional. We believe that it is essential to have members of the profession on the Board to be able to contextualise the contributions and ensure the professional perspective is heard.

We would want to see the Board structure included at least two registrant that is current in practice with up-to-date experience of the regulated profession.

5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval? Please give a reason for your answer

We agree in principle that regulators should be able to set their fees without parliamentary approval. With this new freedom, the regulators must provide a clear strategy that sets out an approach to their fees. This would provide a greater level of transparency, help with forward planning, and manage the expectations of registrants around their fees.

It is imperative that safeguards are put in place and a requirement for meaningful consultation to be undertaken before any changes are made.

6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees? Please give a reason for your answer.

Response as above

7. Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation? Please give a reason for your answer.

We agree with this in principle as it would allow regulators to configure their committee in a more relevant and effective way that reflect their various functions and meets the needs of their registrants and the public. In establishing any committee, we believe the regulator need to clearly set out where it aligns in their mandate and consider whether some committee functions may be better placed with the Royal College.
We do however think that there should be some shared standards between all of the regulators to ensure that the levels of governance, transparency, oversight and scrutiny are broadly consistent for registrants of all profession.

8. Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate? Please give a reason for your answers.

We are of the view that the regulators should be able to charge for services to third parties and be able to recover their costs, but this must not be transferred to registrants. However, we would want to see the criteria that will be used and put in place to determine the services that will be charged so that it can be closely monitored and applied in a transparent way.

9. Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator? Please give a reason for your answer.

We are broadly supportive of this proposal. We believe it would allow all regulators to put more focus and capacity into their core functions, rather than undertaking duplications of functions with other regulators. However, further clarification is required to better understand and align the context with the question. The proposal indicate that the functions could only be delegated to another regulator and not a third party, whilst the question refers to the power to delegate to a third party.

We also note that the Health & Care White Paper outlines the intention to give regulators greater powers to delegate functions. The RCN is keen to enter a delegated relationship with the NMC to determine UK applicable education standards and training, including those for advanced level practice. We would like the RCN to be recognised as the professional body setting the standards and guidance for nurses, and to have parity with the medical Royal Colleges who already have the power to set mandatory standards.

It will be important for us to see more detail about the safeguards which will be put in place to ensure that the level of equality and efficiency experienced by registrants when dealing with their regulator is not compromised when functions are delegated.

We will also expect to see clear transparency about rationale for decision making regarding delegating functions to third parties. This will aid scrutiny and help identify any issues which may impact registrants or the public. Regulators should also have specific routes available to registrants, professional bodies, trade unions and the public which allow them to raise complaints or disputes about the third-party handling of delegated function.

10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above? Please give a reason for your answer.

While we are supportive of the principle of data sharing and transparency between organisations, we have some concerns about the practical requirements. There is a need for further detail on these proposals before we can fully support. Further detail should be provided on the safeguards which would be in place regarding this type of data sharing. It is our expectation that normal data governance and data protection standards would be upheld, along with bespoke arrangements or contracts established between the regulator and each organisation.

We expect that the circumstances in which data is requested from any of the listed bodies be set out in statutory guidance, following a full consultation with those involved and due parliamentary process. These circumstances should be regularly reviewed.

As a professional body and trade union our priority is to our members. We would not share information which would break their confidentiality or privacy. There is information which the NMC holds which would be beneficial to our work, and we would be interested to understand how this proposal could facilitate that. We await further detail on this proposal.

11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which it operates? Please give a reason for your answer.

We are supportive of this proposal. This annual report to the parliament of each UK country would provide additional opportunities for scrutiny and oversight of regulatory activities. It would give parliamentarians the opportunities to identify any risks or issues which may impact upon future regulatory activities.

12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC? Please give a reason for your answer.

We believe that the Privy Council default powers should apply to all regulators.

13. Do you agree or disagree that all regulators should have the power to set:

- standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners;
- standards for providers who deliver courses or programmes of training which lead to registration;
- standards for specific courses or programmes of training which lead to registration;
- additional standards for providers who deliver post-registration courses of programmes of training which lead to annotation of the register; and
- additional standards for specific courses or programmes of training which lead to annotation of the register?

  Please give a reason for your answer.

We are broadly supportive of the regulator having these powers.

Regulators need to set learning outcomes that are at a high enough level to allow flexibility in professional scope, but also provide enough clarity for education and training providers to know what they need to cover to ensure patient safety.

There is some concern that training and education are used interchangeably and their application to the breadth of nurse education and training is complex.

Setting standards for providers who deliver courses or programmes of training can be easily applied for pre-registration students. It is the regulator who must do this and identify the methods by which this is assessed, but not necessarily at the micro level as this should be done by the approved university. However, we do not think it is the same for post registration students, unless the standard leads to annotation on the register. The regulator has a duty to protect the public and ensure the healthcare professionals on their register meet the required standards to enable patient safety through safe practice.

As indicated in our earlier response to Q9 on delegated powers, as a Royal College, we are best placed to set the standards for nurse education. As such, we are keen to explore the model in place through delegated powers that medical Royal Colleges have for setting standards.

The issues relating to workforce development is complex. The complexity relating to workforce development would require the universities to seek extensive support for each module. If the post registration education is not annotated the professional body acting in the interest of the profession should set the standards, given their responsibility for improvements in education, training, professional practice and continuing professional development.

Standards for post registration should be aligned to levels of practice. Some clarity on what is meant by post registration and how it aligns to the levels of academic underpinning required to gain a registered qualification.

We strongly support the development of additional standards, that are field specific, for post-registration programmes of training leading to an annotated qualification, such as the specialist practitioner qualification (SPQ). Without additional standards that are field specific or bespoke, this is likely to lead to variations in care and this poses a risk to patient safety.
The current legislative framework makes it difficult to regulate the complexities around levels of practice and this is relevant across professions. We believe the professional body for each regulated profession would be best placed to set the standards and recognise individuals. Delegation of authority by regulators could be an option to enable this, and continued assessment frameworks such as revalidation could be strengthened to mandate meeting such standards and demonstrating currency.

We would want to see greater collaboration between regulators to ensure consistency of approach in setting/reviewing standards, particularly where there are key issues of relevance to all health professionals.

14. **Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register? Please give a reason for your answer.**

We are supportive of all regulators having the same powers, but these should be proportionate and not overburdensome. Having a consistent approach would also be clearer for the profession, general public and HEIs in their provision of contemporary fit for practice, purpose and future proofing qualifications and courses.

15. **Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.**

We are in agreement with this and are aware that the NMC already has this power. It is our view that the regulator should monitor and evaluate the HEI's and practice partners through a collaborative approach. We know that this works well with pre-reg education as the students are in HEIs and practices. This should link to a clear audit programme through the HEI and collaborative work with partners, to build upon data sets to minimise attrition and opportunities of support for our student members.

16. **Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decision-making process? Please provide a reason for your answer.**

While we are supportive of this proposal, it would be helpful to have further clarification on what is meant by 'observations' and the circumstance in which this might be required. There should be a right to appeal and deliver evidence in support of this. Due to the complexity of several partners in the delivery, this is essential to maintain the standard and approach.

As a Royal College with access to a large group of nursing members, we are able to bring substantial intelligence to the table from our student, practice assessors and supervisor membership as well as members from our education forum.

17. Do you agree that:

    - education and training providers should have the right to appeal approval decisions;
    - that this appeal right should not apply when conditions are attached to an approval;
    - that regulators should be required to set out the grounds for appeals and appeals processes in rules?

    Please provide a reason for your answer.

Transparency and parity in the approach is important to help maintain confidence in the process. It is essential that the process of appeal is standardised across healthcare regulators. It is also important that information is shared between professional and system regulators and any difference in approach highlighted so that steps to a more standardised approach can be explored. This could be an area to maintain or identify safety and potential risks.

18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.

We are supportive of regulators retaining existing approval and standard setting powers to help maintain safety and consistency. However, we are of the view that the RCN would be best placed to set nursing standards and therefore we are keen to look at how this can be done to achieve parity with the medical royal colleges.

19. Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register? Please provide a reason for your answer.

We disagree with this proposal as we believe the approved education provider should set and administer assessments. Further to this, we are concerned that this would remove the expertise from the HEI's and stifle innovation. In pre-registration once the core curriculum outcomes, which have undergone the quality assured approval process, are set. The exams and approach to delivery should remain with the HEIs or even the relevant royal college.

Where there is no programme/course approval, it would seem appropriate for the regulator to set the exams as is currently happening in the Test of Competence for international and Return to Practice, as there is no specific set approved programme. However, an evaluation and report of outcomes should be frequently published.

The NMC model with Mott McDonald provides components of a helpful quality assurance framework but a more transparent approach with an agreed Professional Body could lend itself to its delivery.

20. **Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register? Please provide a reason for your answer.**

Response the same as in previous question.

21. **Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways? Please provide a reason for your answer.**

Regulators should be able to undertake this work in a range of ways that will make it less burdensome; the Coronavirus pandemic has shown that it is possible to assess providers and meet the outcomes it needs to without always requiring a visit. However, a robust assessment of decision making around this is required and triangulated with intelligence such as the student survey, complaints, or any other relevant data.

While we think this is achievable with assessing education and training providers for pre-registration programmes, there are questions about how this can realistically be achieved for post registrations across the differing nursing areas and fields of practice.

22. **Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs? Please give a reason for your answer.**

The RCN has no comment to make to this question.

23. **Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements? Please give a reason for your answer.**

We agree that detailed requirements for CPD and revalidation should be set in rules and guidance following consultation and the relevant partnership working. Unlike our medical colleagues, the CPD hours for nurses are not resourced. This should be standardised across the regulators to ensure a consistent approach is applied with support, recognition and renumeration for the required hours.

24. Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate? Please give a reason for your answer.

We agree that individual professional regulators should hold a single register relevant to their registrant demography that can be divided into the relevant parts. This should provide a clear understanding of entry and standards of proficiency that has been achieved by registrants to enable admission to the different parts of the register and to remain on the register.

All regulators should use a standardised format in which they hold and publish their register of the professionals they regulate.

25. Do you agree or disagree that all regulators should be required to publish the following information about their registrants?

- Name
- Profession
- Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants)
- Registration number or personal identification number (PIN)
- Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules/policy made by a regulator)
- Registration history

Please provide a reason for your answer.

We agree that all regulators should publish a core set of information about those they regulate as part of their function of protecting the public.

While we generally support the requirement to publish the information as listed, we are not convinced of the need for information on a registrant's qualification beyond the initial entry to the register. If the standards required to join the register have been met, the importance of recording the qualification of registrants becomes less relevant. We believe that only details necessary for the purpose of public protection should be on the register.

Anyone looking at the register should be able to expect a basic level of information that is consistent across all regulators. A standardised approach might also help the public to better understand and navigate the register.

26. Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data? Please give a reason for your answer.

The data that regulators collect, and hold should only be that which is in line with their objective of patient safety and public protection. It is our expectation that regulators comply with good data protection standards.

A duty must be placed on regulators to ensure that those on their register are informed of the data they require, the measures that will be taken to collect it and how the information will be used. This would support the ambition to achieve greater transparency. Any data breaches should be publicly declared.

27. Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer.

As indicated in the previous response, we are supportive of this proposal if it is in line with the regulators objective of protecting the public.

It is important that the human rights of professionals are fully upheld when considering the information that should be available on registers. Personal information relating to health, contact details or any unfound allegations against them should remain confidential and not appear on the register.

28. Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection? Please give a reason for your answer.

We are supportive of this rule for regulators to be given the power to annotate their register to ensure its public and patient safety function. This would allow regulators to adapt more rapidly to the changing health and social care landscape. The increased powers would also allow any developments to easily and proportionately be reflected on a regulator register. We are of the view that regulators must be required to make explicit the use of annotations through their policy documents.

While we agree to the regulator making annotations to the register, we oppose the idea that regulators should be able to charge for making them. The fundamental principle should be that annotations are made where they are necessary to protect the public, a core function of the regulator's responsibility. As such, we see no reason why a regulator should be able to charge a fee for making annotations to a register entry.

29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power as set out above? Please give a reason for your answer.

We agree that all regulators should be given emergency registration powers. The Coronavirus pandemic over the past year has shown that with greater flexibility the regulators can help with areas required across the workforce, such as an increase in capacity. The NMC temporary register has created a part of the mechanism to bring additional staff into the workforce to aid with the response. We would want to see the NMC extend this to all the professional groups that they regulate, including Nursing Associates.

In support of the permanency of the emergency registration powers for all regulators, we would also want the rules by which this will be enacted to be clearly set out through detailed guidance and that the approach is standardised across all regulators and in consultation with stakeholders, including the royal colleges.

In executing the emergency registration powers, it should be in a proportionate way that supports those on the temporary register and keep the public safe.

30. Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation?

We are supportive of this rule that professional titles should have the same level of protection. This is essential for the protection of the public and the value placed on the qualification, competencies and standards of practice achieved to deliver safe care.

We would also suggest that there is now an opportunity for the NMC to consider the parameters and use of titles, especially when aligned to potential confusion or risk of substitution in relation to the registered workforce.

31. Do you agree or disagree that the protection of title offences should be intent offences or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)? Please give a reason for your answer.

We agree that intent offences in relation to protected professional titles should be within the governing legislation of all regulators. Intent would reflect the fact that anyone making a false representation to suggest they are registered to practice would be held liable for the deceptive act and subject to prosecution.
As above, we would suggest that there is an opportunity for the NMC to consider the parameters and use of titles, especially when aligned to the potential confusion or risk of substitution in relation to the registered workforce.

32. Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist? Please give a reason for your answer.

We support this proposal as a way of enhancing the governance and ensuring the operational delivery of statutory duties are maintained at all times. We are aware that the NMC already have the power to appoint a deputy registrar.

33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance? Please give a reason for your answer.

We agree that the registration requirements need to be made explicit in the regulators rules and communicated in a way that is easily understood and not open to different interpretations. This is particularly pertinent to our overseas or internationally trained professionals. By allowing the registration process to be set out in rules and guidance we think this would provide the regulators with greater flexibility to update the process in response to any changes.

Where possible we would like to see all regulators following a similar format, subject to the specific details that may be required for their register. This would help to reduce variability and ensure a consistent and transparent approach is adopted by all regulators irrespective of the professional group.

We would expect any proposal to be consulted upon, particularly with the royal colleges; and that there would be absolute protection of nursing at degree level.

34. Should all registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration? Please give a reason for your answer.

We would have some concerns if registrars were given a discretion to turn down an application for registration, as this has the potential for unfair treatment. We expect regulators to have set out and publish their registration criteria and the standards against which they are be measured. If this is in place, it is unclear why the registrar would need to be given discretionary powers to turn down an application for registration or the circumstance in which this may arise.

We are also concerned that this would undermine the registration process that we would want to see consistently applied across all regulators.

35. Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance? Please give a reason for your answer.

The RCN has no comments to make on this question.

36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them? Please give a reason for your answer.

We agree in principle that suspension in specific circumstances would be preferable to removal.

Regulators clearly have the right to suspend registrants where there are concerns about public safety and protection. It is unclear how the suspension process would work in some of the specific circumstances highlighted, particularly if the issue that led to the suspension is remedied at an early stage.

We are supportive of an easy process that can be applied for registrants that may have made a simple administrative error, to return to the register promptly. To achieve this there would need to be a mechanism in place that would be workable by the regulator and not overly bureaucratic.

We are aware that there has been a rise in the level of poverty for many of our members, and this has led to increased struggles with payment of fees. We would not want to see them prevented from earning and driven into greater hardship through a suspension if this could be avoided. We believe that any decision to suspend must be proportionate and should only occur after all other efforts and steps have been made and exhausted. Suspensions should be seen as the absolute last resort and registrants should have a right to appeal.

37. Do you agree or disagree that the regulators should be able to set out their removal and readmittance processes to the register for administrative reasons in rules, rather than having these set out in primary legislation? Please give a reason for your answer.

We broadly agree that the regulator should be given the power to set out their removal and readmission process in rules which are consistent with the principle of public protection.

Voluntary removal is an approach that we consider to be a practical and humane way for those who choose to end their nursing career. We would encourage the regulators to set out for dealing with requests for removal that is accessible and easily administered.

However, as indicated in the previous response, the decisions for removal need to be proportionate, particularly in relation to the administrative reasons of failure to pay fees and maintain contact details. The rules should make clear the threshold that would need to be met to trigger the decision for removal. We are supportive of the readmission process being made easier for these administrative reasons and for the rules to be consistent across all the regulators.

38. Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.

The RCN has nothing further to add.

39. Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation? Please give a reason for your answer.

We are supportive of this proposal. In line with the approach of providing regulators with greater autonomy to set out their operating processes around registration in rules, this should also include the appeals procedure as an integral part. This must be consistent across all regulators.

40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers? Please give a reason for your answer.

We agree that regulators should not be given the power to establish student registers as it would fail to comply with the purpose of having a register and by that nature would only be a 'list' with no real purpose.

Registration denotes a list of professionals that the regulators are satisfied are appropriately trained and qualified with the necessary knowledge and skills to enable safe and effective practice. As such, the regulator is able to meet its core objective of patient safety and public protection.

Establishing a student register, by its very nature, mean those that are on it would not meet the regulators registration requirements and assurance of safe practice that ultimately meet their fundamental role of patient safety and public protection.

In addition, we think that the power to establish a student register would be at odds with the proposal to reduce multiple registers and is likely to be an administrative burden and unnecessary cost to the regulator.

41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers? Please give a reason for your answer.

We are supportive of this proposal that regulators should not be given discretionary powers to establish non-practising registers. As indicated in the previous response, it would undermine the proposal for a single register of those that are permitted to practice. Regulators should be looking at alternative ways of accessing professionals that does not require going through the regulatory process as demonstrated by some regulators during the Coronavirus pandemic.

42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation? Please give a reason for your answer.

While we would want to see the high standards around international registration maintained, we agree that there should be less bureaucracy applied to the process. International nurses make a significant contribution to the supply of nurses in our health economy. Although we are aware that the NMC has taken steps to simplify the process for those applying, anecdotally we are still hearing there are significant delays experienced by those going through the complex registration process.

An approach that is more streamlined and proportionate to the registration requirements of internationally qualified healthcare professionals should be set out in the regulator's rules.

It is imperative that the UK recruits from overseas ethically – adhering to both its own Code of Practice for the international recruitment of health and social care personnel and the WHO Global Code of Practice. Information must be clearly communicated to international nurses at all stages of the recruitment process, so they feel informed throughout.

We are aware that a new framework for recognising overseas professional qualifications in the UK has been proposed in the Professional Qualifications Bill, which is currently in the House of Lords. The RCN has several concerns around the Bill, in particular we are concerned about the implications of the wording in the Bill which would give the relevant national authority (the Secretary of State and Ministers in the devolved nations) power to enter into international recognition agreements, as part of future trade deals. We are also concerned about the implications of the Bill allowing the Secretary of State, or Ministers in devolved administrations, to take action if there is a shortage of professionals in a particular profession, and how this poses a risk of dilution of professional or education standards.

Adhering to existing standards to maintain patient safety must be prioritised – nursing is a safety critical profession. The Department of Health and Social Care must seek and provide assurances that the Bill will be explicit that regulators cannot be mandated to recognise overseas qualifications. The Government must provide appropriate assurances to that the professional regulator for nursing workforce will be

granted flexibility and the full control for appropriately assessing who can and should join the nursing register, without interference.

43. Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering:

    - 1: initial assessment
    - 2: case examiner stage
    - 3: fitness to practise panel stage?

    Please give a reason for your answer.

We support the principle that regulators are encouraged to establish rules that permit more effective use of the early stages of the process to resolve cases quickly and fairly. We would want to see consistency between the regulators so that all cases for every regulator can be dealt with as swiftly as possible. At the NMC, following the pandemic and even prior to that time, there has been a build-up of casework and the delays are having a damaging impact upon all those involved, particularly registrants.

44. Do you agree or disagree that:

    - All regulators should be provided with two grounds for action – lack of competence, and misconduct?
    - Lack of competence and misconduct are the most appropriate terminology for these grounds for action?
    - Any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence?
    - This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?

    Please give a reason for your answers.

We have concerns about losing 'health' as a ground for action. The two grounds remaining have negative connotations and we consider that ending someone's career because they are unfit for health reasons and then characterising it as 'lack of competence' is unnecessary and unkind.

We agree with the NMC's suggestion that 'being unable to provide safe care' is a more acceptable wording. If adopted, it would need careful definition.

However, the loss of 'health' as a ground involves the loss of several safeguards in the process. We do not see any benefit in losing health as a ground. In the past, NMC health cases were heard in relation to the health concerns only. These were conducted in a compassionate and less adversarial way, focusing upon helping the registrant to recover.

More recently, health cases have also had misconduct charges heard at the same time. We have seen this as a loss as it is difficult for someone who is unwell to defend themselves against misconduct allegations. Sometimes the case must be adjourned until the registrant is well enough to defend the misconduct charges. This loses an opportunity to manage the health condition and provide the registrant with a demonstration that the role of the regulator is to support them in returning to their best practice, rather than assuming a punitive role.

45. Do you agree or disagree that:

- all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and
- automatic removal orders should be made available to a regulator following conviction for a listed offence?

Please give a reason for your answers.

We agree that giving the same measures to Case examiners to make decisions about cases is a forward-looking and promising strategy to resolve cases more quickly. This will reduce the distress, inconvenience and expense of protracted proceedings, for all concerned. It will allow registrants to return to the workforce more quickly. A less adversarial process and engaged process will enhance learning and reduce the blame culture.

We support automatic removal in principle, to improve efficiency and we do not consider that protracted proceedings are in anyone's interests. We note the safeguard of an appeal to the High Court, but are aware that on occasion, cases may occur in which a judicial hearing is appropriate in order to consider lesser sanction than removal. The case of Wright (R(on the application of Wright and others) v Secretary of State for Health [2009] UKHL 3) found that the right to work is an Article 8 human right, so a less serious conviction from the guideline list from Schedule 3 of the Social Work Regulations, such as sexual assault which can amount to touching outside clothing might be capable of providing a finding of less than a removal. There should be a mechanism for checking this before a removal takes place. The example offence can attract a criminal sentence at its lowest, of a medium level community order.

46. Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.

Regulators should have powers to review a measure at any point before its expiry and should be able to set out in rules a clear process to follow when reviewing a measure. This power should be available to both case examiners and FtP panels. The rules must make clear that any change to a measure is proportionate and fair, and there will be a fair process.

We agree that it is important that registrants have a right to seek an early review of a measure before its expiry, so that changes in circumstance can be accommodated.

47. Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process? Please give a reason for your answer.

There must be rules enabling the registrant to be notified about key stages and their right to be represented, and also potential consequences if they fail to participate. There should also be clarity provided about when they do not have to respond (e.g. when the allegations are unclear, or the asks made of them are not fair). Our concern is that in an effort to encourage engagement early (which we fully support), registrants will feel obliged to admit to allegations when they should not (e.g. because there were system failures etc) and they need to be able to ask for the time to reflect properly and gather evidence.

Whilst advising about the seriousness and the consequences is important, the language used could be intimidating, particularly for the unrepresented. There should be a requirement for regulators to consult on language used in letters and guidance documents with registrants and those representing them to avoid unintended consequences of this type.

In relation to keeping the complainant informed, regulators should be mindful about keeping the level of information shared only to that which is reasonably necessary. On occasion, particularly when the complainant and the registrant live in small communities, we have been aware of complaints made that have seemed to arise from personal animosities (in Care Homes between staff, for example). It is critical that the regulator maintains the appearance of absolute neutrality and sets very clear expectations about the level of communication with the complainant.

We are also conscious of the emotion provoked by some nursing cases which, whilst understandable, can lead those involved to exhibit unhealthy behaviours like posting updates and information about the registrant on social media. The regulators must not give any appearance of favouring one side or the other.

48. Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern? Please give a reason for your answer.

We want to see a clear discretion for regulators to decide whether there is a basis for onward referral in the Fitness to Practice (FtP) process and the regulator should have the power to decide, if appropriate, that there is no further action to be taken and close the case at this stage. We consider that being in the process for any length of time is alarming and demoralising for registrants, and regulators should be given powers to minimise time spent on cases that do not require further action.

We would like to see regulators have the power to investigate a FtP concern at any stage, and be able to require information from a third party. We think that this can be a powerful tool to reach decisions based on evidence at an early stage. We would like more information about the power to require information from a registrant. How would this be enforced? Thought should be given to the safeguards so that registrants are not required to provide evidence that might incriminate them. The rules here could be intimidatory.

We note the safeguard of excluding any requirement to provide reflective pieces but note that the boundary between a reflective piece and a factual piece is not always clear cut.

49. Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than five years after they came to light should be removed? Please give a reason for your answer.

We are currently seeing extremely old allegations being made in NMC cases. A recent example relates to cases that arose over 20 years ago. This is because they were raised in a public inquiry however, our members have been practising competently since then. We think that there should be a strong presumption that unless there are exceptional public interest grounds for opening an investigation years later, investigations should not be opened. Otherwise, regulation can appear punitive and pandering to the news stories of the day, rather than dispassionately dealing with public protection.

50. Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as “adverse inferences”? Please give a reason for your answer.

There is a tension between a registrant’s right to defend themselves and not self-incriminate, and the regulator’s need to be able to access relevant evidence. When the regulator advises registrants that they could face further charges on the basis of non-compliance, it is a powerful threat. If this power is given to regulators, we would want to see rules that require the regulator to be clear and specific about the information requested.

At present, some concerns raised at the outset of regulatory cases lack particularity. They may be along the lines of ‘Failed to maintain safe practices on Ward X’. Any requirement for information should be specific and there should be no expectation that registrants respond to concerns that are vague. Regulators must also be mindful of the impact of a request for information accompanied by a threat of further action. Any request for information should be clear and contain a careful explanation to registrants that they are only compelled to provide information when a failure to comply creates a risk to public protection, due to its inability to fully investigate the concerns about a registrant’s fitness to practise.

Adverse inference can also play a part, but again, should only be resorted to when concerns or charges have been properly articulated.

51. Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage? Please give a reason for your answer.

The regulators should be given the flexible powers proposed.

52. Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the Register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations? Please give a reason for your answer.

We support a new power to automatically remove a registrant for all offences on the list save for the lowest level of offending under Schedule 3 of the Social Workers Regulations (Sexual Assault contrary to section 3 of the Sexual Offences Act 2003) which exceptionally may be appropriate to have properly heard by a panel, in order to avoid breaching the registrant's right to earn a living under Article 8 ECHR (see response to Q45).
We support this because it avoids uncertainty and unnecessary protracted proceedings.

53. Do you agree or disagree with our proposals that case examiners should:

- have the full suite of measures available to them, including removal from the register?
- make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?
- be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure?
- be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days?

Please give a reason for your answers.

We are strongly in favour of resolving cases with 'accepted outcomes'. In our view, concluding cases at a much earlier stage will reduce much of the harmful impact that the current reliance upon final panel hearings creates. The lengthy process, uncertainty, and the stress of a hearing causes significant distress to the registrants we represent at the NMC. Patients and their families also suffer, unable to move on. By the time that cases finally conclude, opportunities to learn from what went wrong have been lost.

Registrants are often kept out of the workforce, sometimes by their own inclination whilst proceedings are underway. Panel hearings are a great drain on resource for both the regulator and for representative bodies like the RCN.
Had there been a proposal to give case examiners the power to impose outcomes, we would have been concerned about the fairness of the process. However, by providing registrants with the right to decline an 'accepted outcome', a swifter process and fairness can be maintained.

We recognise that it might be more difficult for unrepresented registrants to know whether they could receive a lesser sanction if they ask for their case to be adjudicated by a panel. In our view the benefit in reducing the distress caused by the current process outweighs the risk of such registrants accepting an unduly harsh outcome. However, we ask that regulators make efforts to mitigate the risk for unrepresented registrants by producing clear summaries of the process and likely timeframes if they opt for a hearing, together with up-to-date case studies setting out recent outcomes.

We agree that case examiners proposed outcomes and measures should come into force where a registrant does not respond after a specified time. Twenty-eight days seem short, given that many nurses have reason to be abroad with poor internet access from time to time, for example. We would ask that in addition to the right of appeal, there is a mechanism to enable the decision to be revisited if it can be shown that the registrant did not respond due to a reasonable mistake or logistical impediment.

54. Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.

We do agree with the proposed powers for Interim Measures.

We agree that there should be a power to consider interim measures at any stage from initial receipt of the concern until a final outcome is reached, in order to protect the public. However, there should be a presumption that an interim order is considered at the outset of the case, and thereafter, it should only be considered if there is new information. Interim orders can have an enormous impact on a practitioner’s ability to work and should not be initiated simply because a new case examiner or panel takes a different view from a predecessor about the same set of circumstances.

We agree that there should be two grounds for imposing interim restrictions: a public protection risk or a registrant protection risk.

We agree that the registrant should be able to seek a finding from the Interim Measures panel if they disagree with the case examiner finding.

55. Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates? Please give a reason for your answer.

We agree that regulators should be allowed to determine in rules the details of how the Fitness to Practise panel stage operates. However, we do have some concerns that we would want the legislation to address:

In the past there has been criticism that different healthcare regulators have generated different outcomes, or at the least, different experiences of the process, for the professionals on their registers, simply as a consequence of their different rules.

In the past we have seen harsher outcomes and more drawn out procedures for nurses compared to doctors who have been involved in the same circumstances and against whom the allegations were largely the same. This has been unfair in itself and undermines trust in healthcare regulation. We would like to see a mechanism whereby this is avoided as the regulators draft and consult upon their rules, and once the rules are in place, by benchmarking. Consistency will be key to the success of the new regime.

In this consultation document there is limited detail about what requirements the legislation will stipulate for the rules that are to be drafted by the regulators. We suggest that there should be expectations of principles like fairness and proportionality, against which an organisation like the PSA and the regulator's own governing body can measure the performance of the new rules. A regulator which is both the administrator of the process, and the prosecutor of cases can unintentionally tend towards practices that facilitate its own functions, to the potential detriment of fairness. For example, a regulator's desire to deal with cases in a timely way can conflict with the registrant's wish to make use of a representative of their choice familiar with their case.

At the NMC there is an interest in rules that would enable effective case management, and we would, of course, support more effective case management. The mechanics of this in practice are more difficult to imagine, in a regulatory setting. If there are penalties for non-compliance, this would raise the issue of equality of arms, and unrepresented registrants may find it difficult to navigate the process fairly.

We agree that the Fitness to Practise panel should have the power to make a reasonable request for information from anyone that the Fitness to Practise panel considers it appropriate to do so, but there should be safeguards so that it is clear the registrant is not required to self-incriminate.

56. Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel? Please give a reason for your answer.

We agree that a registrant should have a right of appeal against decisions by a case examiner, Fitness to Practise panel or Interim Measures panel so that regulators can be held accountable to a common standard.

57. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? Please give a reason for your answer.

We agree that the right of appeal should be to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

58. Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases? Please give a reason for your answer.

We agree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases. We would want to see a mechanism to ensure consistency of these rules between regulators.

59. Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register? Please give a reason for your answer.

We agree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register. this right of appeal should be to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

60. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? Please give a reason for your answer.

We agree that this right of appeal should be to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

61. Do you agree or disagree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public? Please provide any reasons for your answer.

We support the use of a Registrar Review for challenges to case examiner decisions, and have the following comments: Case examiner decision-making provides a means to resolve cases in a timely and proportionate manner whilst maintaining public protection. The mechanism for challenging those decisions also needs to be timely and proportionate. The Registrar Review is a mechanism that can be responsive to demand and, provided the rules are robust and the registrar posts are adequately staffed, should be well placed to avoid unnecessary additional processes.

We agree with the proposed grounds for a review, as they require serious reasons for embarking on the review. They contain the sensible caveat that the review will not alter the decision unless, in addition, the decision taken as a whole may not be sufficient to protect the public. We anticipate that this will prevent the accepted outcomes process becoming enmeshed in particular points of disagreement, and the registrar will be able to evaluate the overall outcome from the point of view of what is required to maintain public safety.

As anybody can request a registrar review, it will be important that the rules include a screening process as to whether there is a reasonable prospect that the grounds for review could be met on the face of the application for a review. It is our experience that a few members of the public affected by the case in question will always seek to apply for available further processes if they are unhappy with an outcome. It is important that registrants are released from onerous processes as quickly as possible if there is no merit in the application.

62. Under our proposals, the PSA will not have a right to refer decisions made by case examiners (including accepted outcome decisions) to court, but they will have the right to request a registrar review as detailed above. Do you agree or disagree with this proposed mechanism? Please provide any reasons for your answer.

In our view, the PSA should not have the right to refer decisions made by case examiners. We acknowledge the PSA's important role in upholding regulators' accountability in relation to public protection. However, we think that if the PSA had the same right of appeal in 'accepted outcome' cases as they do in substantive cases, this could undermine the purpose of the new case examiner process, for the following reasons:

The point of the new process is that the registrant implicitly accepts that there are concerns about their practice to be put right, by accepting the restriction on practice proposed. This is in the spirit of correcting concerns in a less adversarial way. A registrant accepting concerns is in itself a safeguard for public protection and is not necessarily replicated in panel hearing outcomes. Accordingly, this lower risk can be

managed by the registrar review process and a legalistic process would be inappropriate.

If the registrant is accepting an outcome, but it can then be appealed, there is potential unfairness. The registrant will have accepted the outcome and made concessions in the expectation that this will bring the proceedings to a close. We face a similar issue in the current post-substantive PSA process whereby the registrant has a shorter time period in which to lodge an appeal than the PSA and may decide not to appeal due to cost/ uncertainty/ desire to end the process. They can then find themselves facing a PSA appeal, having lost the opportunity to challenge aspects of the outcome with which they disagreed.

Registrants who have accepted an outcome in good faith may find themselves in the same difficult position as those facing an appeal following a substantive hearing in other ways. Although they are facing an appeal due to a criticism being made of the regulator's decision-making, they can face drawn out proceedings and a bill for the PSA's costs at the end. Some registrants may consider that it is preferable to proceed to a hearing before a panel than take this risk.

PSA appeals are costly, involving the legal costs of the PSA, the NMC and the registrant's representative. All these bodies are funded by nurses, and complex processes should be reserved for exceptional cases where there is a clear risk to public protection.

We note that the PSA can request the Registrar Review process, so it has the opportunity to draw attention to any perceived outcomes of concern. We would expect that a regulator facing a query from the PSA would take such concerns seriously. Any rules and guidance subsequently produced must ensure that the processes are sufficiently robust and transparent to maintain public confidence that there is independent oversight.

63. Do you have any further comments on our proposed model for fitness to practise?

When anticipating rule-setting by regulators, there is concern that separate sets of rules might exacerbate inconsistencies between regulators, and we encourage measures that reduce this risk.

At the NMC, the backlog of cases is creating difficulty for registrants and all those involved in casework. We hope that the new processes will reduce backlog, and we ask that consideration is given at every stage to enabling the prompt resolution of cases. In relation to the measures in general, we would ask that keeping the demands on local systems to a minimum are kept in mind at every stage. We do agree that local resolution is preferable, and we ask that as much support as possible is provided to employers to resolve cases locally.
We have set out concerns above about removing 'health' as a ground for action. We would like to emphasise that we want the new rules to encourage local support for those with health issues.

There have been some concerns within our organisation that by not giving the PSA the right to appeal Case examiner decisions, that allows the regulators to 'mark their own homework.' We ask that efforts are made to write the rules with care and include a mechanism to evaluate the impact of registrar reviews, to ensure that they are part of a process that maintains public confidence in independent oversight.

When nursing staff are working, they are responsible for delivering safe and effective care for all their patients. However, we know in some cases they will not have everything they need to deliver safe and effective care for all patients. We also know that when this happens, nursing staff are highly likely to keep working regardless so they can care for their patients as best they can.

It is vital that nursing staff have a simple, accessible and formal route to not only raise these concerns but make clear they are continuing to work despite not having everything they require to do so properly. This mechanism must then be utilised to inform fitness to practice cases as to whether or not the staff member(s) in question had everything (e.g. resource, capacity, learning and equipment) they required, and how this impacted on their ability to deliver safe and effective care.

64. Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give a reason for your answer.

We are supportive of PAs and AAs being regulated through the approach outlined and because they are associated with medicine, it is appropriate that this is with the GMC. However, we would want to be included and recognised as a stakeholder in any discussions on changes/development of the role and that which relate to the scheme of delegation.

The RCN has long advocated for the regulation of all healthcare support workers. With the current direction of healthcare policy that points to the increase and extension of non-registered roles in the delivery of health care, concerns around public protection, accountability and standards continue to be raised. We believe the reforms provides an opportunity for an appropriate regulatory model for the wider cohort of nursing support workers to be considered in addition to these roles that are more aligned to medicine.

65. In relation to PAs and AAs, do you agree or disagree that the GMC should be given a power to approve high level curricula and set and administer exams? Please give a reason for your answer.

The RCN has no comment to make on this question.

66. Do you agree or disagree with the transitional arrangements for PAs and AAs set out above? Please give a reason for your answer

The RCN has no comment to make to this question.

67. Do you agree or disagree that PAs and AAs should be required to demonstrate that they remain fit to practise to maintain their registration? Please give a reason for your answer.

We agree that PAs and AAs should be required to demonstrate their ongoing fitness to practise in order to remain on the register. As with other registrants on the regulators register, PAs and AAs should be required to meet the same standards of behaviour and conduct. They should also be required to provide assurance that they remain a competent and safe practitioner. The process of revalidation is consistent with the requirements of other registrants to maintain their registration.

68. Do you agree or disagree with the benefits identified in the table above? Please set out why you've selected your answer and any alternative benefits you consider to be relevant and any evidence to support your views.

We think the benefits as set out will help to achieve a more robust process of regulation within a clear framework that is transparent. Ultimately, the benefits will help to maximise public protection and achieve greater efficiencies.
However, our assertion of the likely benefits is made with caution, as we have not been provided with any information to support this and the basis on which on which the assessment has been made.

69. Do you agree or disagree with the costs identified in the table above? Please set out why you've chosen your answer and any alternative impacts you consider to be relevant and any evidence to support your views.

We believe the breakdown and assessment of cost is consistent with that of other regulators who have taken on the responsibility for the statutory regulation of a professional group.

70. Do you think any of the proposals in this consultation could impact (positively or negatively) on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by Section 75 of the Northern Ireland Act 1998?

- Yes – positively
- Yes – negatively
- No
- Don't know

Please provide further information to support your answer.

Aspects of the proposals relating to registration and fitness to practice process may have a negative impact on some people with protected characteristics. A report published by the NMC in 2020, 'Ambitious for Change', highlighted that registrant with diverse characteristics such as ethnicity, were more likely to have a negative experience and outcomes from their registration and fitness to practice process.

A more detailed assessment is required in order to assess the impact of the proposals on equality and protected characteristics covered by the duty.

Christine Callender, Head of Nursing (Quality and Regulation)

Date: 16th June 2021