



Department  
of Health

# Equality Analysis

The Nursing and Midwifery Council - Proposed  
changes to governing Legislation 2014

September 2014

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<p><b>Author: Strategy &amp; External Relations Directorate/ Professional Standards/13730</b></p>
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<p><b>Contact details:</b>          Professional Standards          2N09          Quarry House          Quarry Hill          Leeds          LS2 7UE</p>

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# Equality Analysis

The Nursing and Midwifery Council - Proposed changes to governing Legislation 2014

**Professional Standards**

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# Introduction

The general equality duty that is set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality, but doing so is an important part of complying with the general equality duty. It is up to each organisation to choose the most effective approach for them.

# Equality Analysis

**Title:** Consultation on proposed changes to governing legislation of the Nursing and Midwifery Council

**Relevant line in DH Business Plan 2011-2015:** This order is not included in the DH Business Plan

## **What are the intended outcomes of this work?**

This Order forms part of the responses to the Mid Staffordshire NHS Foundation Trust Public Inquiry. The purpose of the Order is to make a small number of urgent amendments to the legislation that governs the NMC. These amendments will better enable the NMC to protect the public through effective and proportionate regulation of nurses and midwives.

The purpose of these amendments is to ensure greater consistency in decision making and reduce the time it takes the NMC to deal with Fitness to Practise cases (i.e. allegations of impairment to practise by reason of: misconduct, lack of competence, cautions or convictions or health issues about a nurse or midwife) and thereby improve public protection.

The provisions in the Order will:

- give the NMC powers to appoint Case Examiners who will consider allegations of impairment of Fitness-to-Practise and decide whether the registrant has a case to answer. This should lead to the swifter resolution of complaints and improve the efficiency of the NMC's fitness to practise processes, reducing the stress caused through lengthy investigations;
- introduce a power for the Council to review 'no case to answer' decisions made in Fitness-to-Practise cases and to make rules in connection with the carrying out of such a review. This will allow the NMC to review no case to answer decision where new evidence comes to light that has a material impact on the original decision or it came to light that a decision is materially flawed and in the public interest to do so;
- introduce a power to allow the Council to delegate this function to the Registrar (or another officer of the Council). The Fitness to Practise Rules, being developed in parallel to this Order, will provide that this function will be carried out by the Registrar and will specify the circumstances in which such a review can be conducted;
- revise requirements for the composition of the registration appeal panel by removing the requirements for (1) an NMC Council member to Chair the panel which is intended to establish a clear separation of duties between the operational and governance functions

which would avoid suggestions of perceived bias and conflict, and (2) a Registered Medical Practitioner (RMP) to be on the panel in cases where the health of the person bringing the appeal is in issue . This is intended to ensure more consistency between registration appeals and fitness to practise appeals. Medical advice will be provided by expert witnesses and medical reports;

- clarify that the NMC's Health Committee or Conduct and Competence Committee has the power to make a striking-off order in a health or lack of competence case upon a review of a final suspension order or conditions of practice order, provided the registrant has been the subject of such a final order for at least two years. This is not a new power but merely providing clarification of the existing legislation;
- introduce a power for the NMC to disclose certain information relating to a person's indemnity arrangements to a third party for the purpose of verifying that information for NMC's purposes this will enable the NMC to check indemnity arrangements are in place and provided sufficient cover against the liabilities that may be incurred by a practising nurse and practising midwife registrant and it is appropriate to the nature and the extent of the risks to their practise;
- provide that the Investigating Committee (IC) may also make an interim order after it has referred a case to the Health Committee or to the Conduct and Competence Committee if that Committee has not begun its consideration of the case (at present once the Investigating Committee refers a case the power to make an interim order only rests with the Conduct and Competence Committee or Health Committee). This will ensure that, if new information is received which suggests that an interim order is necessary for the protection of the public after a case has been referred to another Practice Committee, but before the Committee has started to consider it, the IC still has the power to make an interim order.

**Who will be affected?** *e.g. staff, patients, service users etc*

The NMC, registered nurses and midwives, applicants to become a registered nurse or midwife, the public.

# 1. Evidence

*The Government's commitment to transparency requires public bodies to be open about the information on which they base their decisions and the results. You must understand your responsibilities under the transparency agenda before completing this section of the assessment. For more information, see the current [DH Transparency Plan](#).*

**What evidence have you considered?** *List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations etc. If there are gaps in evidence, state what you will do to close them in the Action Plan on the last page of this template.*

The following evidence has been considered:

- A triage Impact Assessment has been carried out by the department,
- Analysis of responses to the consultation on the proposals, and
- Equality and Diversity information in NMC annual reports<sup>1</sup> generated anonymously from voluntary returns of equality and diversity monitoring forms.

The NMC does not require information on the disability, race, sexual orientation, religion or beliefs of any applicant or registrant. However, the NMC may receive voluntary information on these protected characteristics via: a) the completed application/registration equality and diversity monitoring form, or; b) the completed fitness to practise equality and diversity monitoring form when a registrant has been notified of an allegation regarding their fitness to practise. Such information is separated at the point of receipt and added to an overall pool of anonymous information that cannot be attributed to any individual. This enables the NMC to gain an overall picture of the composition of those affected by its functions and policies and whether any has an adverse impact on any protected characteristic as a whole.

**Disability** *Consider and detail (including the source of any evidence) on attitudinal, physical and social barriers.*

Policy approaches outlined above will apply equally to all individuals (applicant or registrant). Analysis of the proposed policy approaches shows no evidence of adverse equality impacts: monitoring the overall equality and diversity information the NMC has (as outlined in the 'what evidence have you considered' section above) will enable this conclusion to be tested and, where appropriate, for amendments to the legislation be considered.

One respondent to the consultation was of the view that a provision of this Order i.e. that clarifying the position in relation to the ability to strike-off in a health or lack of competency case was potentially discriminatory on the grounds of disability (this is dealt with in more detail in the 'Summary of Analysis'). However, the reason for a strike-off in any fitness to practise case is because it has been found by a practice committee, considering all available evidence and any oral representations made, that the registrant's fitness to practise is impaired and, that an order to strike-off the register is necessary and appropriate in that case for the protection of

<sup>1</sup> NMC Fitness to Practise Equality and Diversity Monitoring Data 2012-2013 - [http://www.nmc-uk.org/Documents/Annual\\_reports\\_and\\_accounts/NMC%20Fitness%20to%20Practise%20Equality%20and%20Diversity%20Monitoring%20Data%202012%20-%202013.pdf](http://www.nmc-uk.org/Documents/Annual_reports_and_accounts/NMC%20Fitness%20to%20Practise%20Equality%20and%20Diversity%20Monitoring%20Data%202012%20-%202013.pdf) ; Analysis of Diversity Data 2011 - <http://www.nmc-uk.org/About-us/Equality-and-diversity/Analysis-of-diversity-data-2011/>



the public.

**Sex** *Consider and detail (including the source of any evidence) on men and women (potential to link to carers below).*

The NMC records information from applicants and registrants on their sex. This information is used only as a means to identify an individual.

Policy outlined in the consultation will apply equally to all individuals (applicant or registrant) regardless of their sex, therefore there will be no discrimination on the grounds of sex.

**Race** *Consider and detail (including the source of any evidence) on difference ethnic groups, nationalities, Roma gypsies, Irish travellers, language barriers.*

Policy approaches outlined above will apply equally to all individuals (applicant or registrant), therefore there will be no discrimination on the grounds of race.

**Age** *Consider and detail (including the source of any evidence) across age ranges on old and younger people. This can include safeguarding, consent and child welfare.*

The NMC requires a date of birth from applicants and registrants which is recorded. This information is used only as a means to identify an individual.

Policy approaches outlined above will apply equally to all individuals (applicant or registrant) regardless of their age, therefore there will be no discrimination on the grounds of age.

**Gender reassignment (including transgender)** *Consider and detail (including the source of any evidence) on transgender and transsexual people. This can include issues such as privacy of data and harassment.*

The NMC does not request or collect information on the gender reassignment of any applicant or registrant.

Policy approaches outlined above will apply equally to all individuals (applicant or registrant) regardless of whether they have had or intend to have gender reassignment, therefore there will be no discrimination on the grounds of gender reassignment. The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts: monitoring the overall equality and diversity information the NMC has (as outlined in the 'what evidence have you considered' section above) will enable this conclusion to be tested and, where appropriate, for amendments to be considered.

**Sexual orientation** *Consider and detail (including the source of any evidence) on heterosexual people as well as lesbian, gay and bi-sexual people.*

Policy approaches outlined above will apply equally to all individuals (applicant or registrant), therefore there will be no discrimination on the grounds of sexual orientation. The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts: monitoring the overall equality and diversity information the NMC has (as outlined in the 'what evidence have you considered' section above) will enable this conclusion to be tested and, where appropriate, for amendments to be considered.

**Religion or belief** *Consider and detail (including the source of any evidence) on people with different religions, beliefs or no belief.*

Policy approaches outlined above will apply equally to all individuals (applicant or registrant),

therefore there will be no discrimination on the grounds of religion or belief. The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts: monitoring the overall equality and diversity information the NMC has (as outlined in the 'what evidence have you considered' section above) will enable this conclusion to be tested and, where appropriate, for amendments to be considered.

**Pregnancy and maternity** *Consider and detail (including the source of any evidence) on working arrangements, part-time working, infant caring responsibilities.*

The NMC does not request or collect information on pregnancy or maternity status of any applicant or registrant. Policy approaches outlined above will apply equally to all individuals (applicant or registrant) regardless of their pregnancy or maternity status, therefore there will be no discrimination on the grounds of pregnancy or maternity status.

**Carers** *Consider and detail (including the source of any evidence) on part-time working, shift-patterns, general caring responsibilities.*

The NMC does not currently request or collect information on the personal caring arrangements / responsibilities or working patterns of any applicant or registrant.

Policy approaches outlined above will apply equally to all individuals (applicant or registrant) regardless of their personal caring arrangements / responsibilities; therefore there will be no discrimination on the grounds of personal caring arrangements/responsibilities.

**Other identified groups** *Consider and detail and include the source of any evidence on different socio-economic groups, area inequality, income, resident status (migrants) and other groups experiencing disadvantage and barriers to access.*

The NMC does not request or collect information on the income, social status, marital status or status of inequality of any applicant or registrant. Policy approaches outlined above will apply equally to all individuals (applicant or registrant) regardless of such factors, therefore there will be no discrimination on these grounds.

The NMC does not request or collect information on the nationality, right to remain or right to work of an individual (this is the responsibility of an employer), only the geographical location of where the application is being submitted from so that it may be processed as a domestic or overseas application. The NMC may only request sight of a passport (or identity document of equivalent level) to confirm the identity of an individual. The policy approaches outlined in the consultation will apply equally to all individuals (applicant or registrant) regardless of their nationality, right to remain or right to work; therefore there will be no discrimination on these grounds.

## 2. Engagement and Involvement

**Was this work subject to the requirements of the cross-government Code of Practice on Consultation?** Yes

**How have you engaged stakeholders in gathering evidence or testing the evidence available?**

Yes – through public consultation

**How have you engaged stakeholders in testing the policy or programme proposals?**

*'The Nursing & Midwifery Council – proposed changes to the governing legislation'* consultation ran for 8 weeks from 17 April 2014 – 12 June 2014.

The following two questions were asked as part of the consultation exercise in order to establish whether there were any concerns surrounding Equality;

**Q9: Are you aware of any particular groups who will be affected by this legislation?**

**Q10: Are you aware of any groups for whom these proposed legislation changes could have a detrimental effect?**

Link to the consultation below:

<http://consultations.dh.gov.uk/professional-standards/nmc-changes-legislation>

**For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:**

The Department consulted with the NMC, who have carried out detailed research and analysis on these proposals.

Key stakeholders were identified and notified of the consultation by e-mail

The 21 respondents to the consultation identified themselves as follows:

Category	Number of respondents	Percentage
A member of the public	2	9%
A health or social care professional	10	48%
On behalf of an organisation	8	38%
Not answered	1	5%
<b>Total</b>	<b>21</b>	

In parallel, the NMC consulted on new provisions to the Fitness-to-Practise Rules and Registration Rules that will draw their legal basis from the amendments proposed in this consultation. A link to that consultation was provided with the consultation document.

The consultation response is published on the DH website and key stakeholders notified.

<http://consultations.dh.gov.uk/professional-standards/nmc-changes-legislation>

### 3. Summary of Analysis

*Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impact, if so state whether adverse or positive and for which groups. How you will mitigate any negative impacts. How you will include certain protected groups in services or expand their participation in public life.*

Consultation – Summary of responses to questions 9 and 10 listed above.

The Professional Standards Authority (PSA) considered that the proposals in relation to striking-off orders in health and lack of competency cases could have a detrimental effect for those whose FtP is impaired on adverse health grounds. Therefore the ability to striking-off, in these cases, is more likely to affect or disadvantage disabled registrants than non-disabled.

However, the reason for strike-off, in any fitness to practise case, is because a practice committee has found, considering all the available evidence, that practitioner's fitness to practise is impaired and therefore, if they continued to practise, they would put patient safety at risk. DH considers that this is a legitimate aim.

The power to strike off in a health and lack of competence case is permissive. It does not happen in every case and in a health or lack of competency case, only following a period of 2 years continuous suspension or being subject to a conditions of practise order for that period. A fitness to practise panel must be satisfied, on the facts of each case and taking account of the registrant's views, that a strike-off order an appropriate and necessary measure.

A further safeguard for a practitioner is that where new evidence relating to a strike-off order becomes available the order can be reviewed and a practitioner can be re-instated to the register . So, in a health case, if a person's health improves and they wish to start practising there is provision in the legislation for them to make an application for a review of the order and restoration to the register.

The Department discussed PSA's concern in detail with it and the PSA have retracted this concern on the understanding that if a registrant subsequently recovers and wishes to practise again there is a power in the Nursing and Midwifery Order which allows for a review of the striking off order and for restoration to the register.

It should be noted that the NMC are not gaining new powers to strike-off in a health case, the Order is clarifying the position in this regard. This is because of a High Court judgment<sup>2</sup> in which the judge questioned the way in which the relevant powers were drafted (although the case was decided on a different point) and the NMC are at risk of legal challenge if it continues to use these powers without clarifying the position.

Other responses to the consultation thought there would be no changes as a result of these proposals and others listed the following specific groups nursing professionals, clinical supervisors, registrants, human resource personnel, employers and line managers as being affected but no detailed information was provided to enable further analysis. The need for more diversity on panels was raised in particular the point that BME employees are under-represented within the disciplinary

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<sup>2</sup> Okeke v Nursing and Midwifery Council [2013] EWHC 714 (Admin).

systems of both NHS employers and regulatory bodies and that better insight into ethnic health and social issues was required. This concern has been raised with the NMC.

*Now consider and detail below how the proposals impact on elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups.*

### Eliminate discrimination, harassment and victimisation

*Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, sexual orientation).*

The analysis of the proposed policy approaches shows no evidence of adverse equality impacts.

### Advance equality of opportunity

*Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, sexual orientation).*

The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts.

To advance the equality of opportunity, the NMC can:

- Ensure the promotion of diversity by recruiting case examiners on merit from a diverse background.
- Provide greater fairness to all in access to, and scrutiny of, medical opinion in registration appeals by bringing them in line with fitness to practise appeals and removing the requirements for a registered medical professional to sit as part of the appeal panel but instead medical advice being provided by expert witness and medical reports.

### Promote good relations between groups

*Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, sexual orientation).*

The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts.

### What is the overall impact?

*Consider whether there are different levels of access experienced, needs or experiences, whether there are barriers to engagement, are there regional variations and what is the combined impact?*

The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts.

### Addressing the impact on equalities

*Please give an outline of what broad action you or any other bodies are taking to address any inequalities identified through the evidence.*

The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts.

## 4. Action planning for improvement

*Please give an outline of the key actions based on any gaps, challenges and opportunities you have identified. Actions to improve the policy/programmes need to be summarised (An action plan template is appended for specific action planning). Include here any general action to address specific equality issues and data gaps that need to be addressed through consultation or further research.*

The research and analysis of the proposed policy approaches shows no evidence of adverse equality impacts. The consultation requested evidence and rationale from respondents and their answers to consultation have been fed into the final policy position and equality impact. An Action Plan is set out below.

**Please give an outline of your next steps based on the challenges and opportunities you have identified. Include here any or all of the following, based on your assessment**

- *Plans already under way or in development to address the **challenges** and **priorities** identified.*
- *Arrangements for continued engagement of stakeholders.*
- *Arrangements for continued monitoring and evaluating the policy for its impact on different groups as the policy is implemented (or pilot activity progresses)*
- *Arrangements for embedding findings of the assessment within the wider system, OGDs, other agencies, local service providers and regulatory bodies*
- *Arrangements for publishing the assessment and ensuring relevant colleagues are informed of the results*
- *Arrangements for making information accessible to staff, patients, service users and the public*
- *Arrangements to make sure the assessment contributes to reviews of DH strategic equality objectives.*

Analysis of consultation responses has helped to refine the Equality Analysis and will help refine the final policy approaches to be implemented.

## 5. For the record

**Name of person who carried out this assessment:**

Lindsey Proctor with support from the NMC

**Date assessment completed:** 30 August 2014

**Name of responsible Director/Director General:**

Gavin Lerner

**Date assessment was signed:**



(11 September 2014)



## 6. Action plan template

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Target date	Person responsible & their Directorate
<b>Involvement and consultation</b>	<ul style="list-style-type: none"> <li>• Consultation exercise to include specific question on equalities issues arising from implementation of legislation.</li> </ul>	Completed	Lindsey Proctor (SER)
<b>Data collection and evidencing</b>	<ul style="list-style-type: none"> <li>• Consultation exercise to include specific question on equalities issues arising from implementation of legislation.</li> </ul>	Completed	Lindsey Proctor (SER)
<b>Analysis of evidence and assessment</b>	<ul style="list-style-type: none"> <li>• Analysis of consultation responses will allow assessment of impact and, where necessary, amendments to final policy approach.</li> </ul>	Completed	Lindsey Proctor (SER)
	<ul style="list-style-type: none"> <li>• Continued assessment of information in voluntary and anonymous equality and diversity monitoring forms.</li> </ul>	Ongoing	NMC
<b>Monitoring, evaluating and reviewing</b>	<ul style="list-style-type: none"> <li>• The Government asked the Law Commissions for England and Wales, Scotland and Northern Ireland to review the legislative framework for the regulation of health professions across the UK and social workers in England. The NMC's approach to regulation has been considered as part of that review.</li> </ul>	Completed	Professional Standards (SER)
	<ul style="list-style-type: none"> <li>• The Law commissioned the Outcome of its review and recommendations for legislative changes on 2 April 2014 and the department has to respond within 12 months.</li> </ul>	Ongoing	NMC
	<ul style="list-style-type: none"> <li>• Continued assessment of information in voluntary and anonymous equality and diversity monitoring forms.</li> <li>• The NMC will continue to monitor the potential discrimination issue highlighted in strike-off case.</li> </ul>	Ongoing	NMC
<b>Transparency (including publication)</b>	This Equality Analysis will be published alongside the final policy approach to be implemented.	September 2014	Lindsey Proctor (SER)

