

Updated Joint Working Protocol

Nursing and Midwifery Council (the NMC) and Care Quality Commission (CQC) – November 2017

Contents

Introduction.....	2
1. How to contact the NMC and CQC.....	2
2. When and how the NMC and CQC share information.....	3
3. Emerging or urgent concerns.....	3
4. Fit and proper person requirement and the duty of candour.....	5
5. Whistleblowing and speaking up.....	6
6. Sharing information about individual nurses, midwives and nursing associates with CQC.....	6
7. Nurses and midwives in leadership positions.....	6
8. Concerns about a setting or a learning environment.....	7
9. Routine information sharing.....	7
Annex 1: Contacts.....	9
Annex 2: Information for CQC staff making referrals to the NMC.....	10
Annex 3: NMC’s fitness to practise process.....	11
Annex 4: Whistleblowing and speaking up.....	12

Introduction

The Nursing and Midwifery Council (NMC) and the Care Quality Commission (CQC) have jointly developed this protocol in order to work more effectively together and reduce duplication. Both organisations have a mutual responsibility for the safety of patients and people who use health and care services and should therefore ensure that they share information as early as possible. In several areas of the work of the NMC and CQC, information gathered by one organisation can help the other. Both organisations have set out their intention to work together and their agreement to share information, as appropriate, in a memorandum of understanding published on their websites and intranet sites.

The protocol is designed to work alongside – not separately from – existing processes in each organisation and, where relevant, reflects these for the benefit of the staff in each organisation. This is an updated version of the protocol which was first published in July 2014. It builds on the memorandum of understanding to provide an operational model for staff in both organisations. This is a dynamic document that will be reviewed annually.

1. How to contact the NMC and CQC

The NMC's Employer Link Service

The NMC's Employer Link Service (ELS) provides advice to employers to improve patient safety and ensure higher standards of care. The service aims to encourage robust local investigation where there are concerns relating to nurses, midwives and nursing associates, and to ensure that where these relate to fitness to practise, appropriate and timely referrals are made to the NMC.

ELS Regulation Advisers work jointly with CQC. They are senior staff members from the NMC with experience in regulation and health care. They can provide expert advice on whether a referral about a nurse, midwife or nursing associate, including those in senior leadership positions, should be made to the NMC. Advice can be provided to inspectors after inspection or while inspectors are on site.

The ELS team can be contacted by email: employerlinkservice@nmc-uk.org or by phone: 0207 462 8850 for referral advice.

Referral to the NMC

A referral can be submitted to the NMC by email: newreferrals@nmc-uk.org.

Referral to the CQC

To submit a referral to the CQC, NMC staff should refer to the guidance and submit a request to ELS.

CQC's National Customer Service Centre

CQC's National Customer Service Centre (NCSC) provides information and responds to enquiries from members of the public, people who use health and care services, providers and CQC partners such as the NMC.

NCSC staff log queries in CQC's customer relationship management (CRM) system and either provide a response or contact the relevant CQC inspector or other member of staff for further information.

NCSC can be contacted by email: enquiries@cqc.org.uk, by phone: 03000 616161 or by post:

CQC National Customer Service Centre
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

2. When and how the NMC and CQC share information

The NMC and CQC share information routinely with each other as part of planned activity, such as:

- the coordination of ongoing activity
- risk-related activity
- sharing information about the fit and proper person requirement and the duty of candour
- strategic collaboration.

Information is also shared when there is a need to respond to emerging or urgent concerns.

Information shared must comply with data handling requirements (such as the General Data Protection Regulation and Data Protection Act 2018) for sharing personal information.

3. Emerging or urgent concerns

Emerging or urgent concerns that may present a safety risk to a member of the public or to people who use services need to be shared promptly and usually outside of routine channels.

Urgent concerns fall into two categories: concerns about individual nurses, midwives or nursing associates; and concerns about healthcare systems and their environment (including the learning environments of nurses, midwives and nursing associates).

When dealing with emerging or urgent concerns, the principles and guidance set out in the memorandum of understanding between CQC and the NMC should be followed. Escalation contact details are set out in annex 1 of this document. If an emerging or urgent concern relates to the other organisation's remit, but it is unclear whether the concern is sufficiently serious to engage their processes, this should be discussed with the relevant manager or escalation contact.

3.1 Concerns about individual nurses, midwives and nursing associates (referral to the NMC)

Referring a concern to the NMC is appropriate when the conduct, performance or health of a nurse, midwife or nursing associate suggests their fitness to practise may be impaired. Inspectors should first speak to inspection managers and then contact the NMC's ELS team.

There is further information about referrals to the NMC in annex 2 and on the NMC's fitness to practise process in annex 3.

3.2 Concerns about healthcare systems and environment (referral to CQC)

Concerns about healthcare systems and environment (including the learning environments of nurses, midwives and nursing associates) should be made to CQC by contacting the NCSC.

Regulatory action

Where the NMC or CQC are considering, or already taking, regulatory action, they will share all relevant information with each other. While working in partnership with other agencies, the NMC and CQC will not suspend their own statutory enforcement responsibilities and processes pending the outcome of another process (for example, criminal), if doing so would affect the safety and wellbeing of the people who use the service. In such circumstances, they will aim wherever possible to coordinate actions to preserve evidence and avoid impeding each other's investigations or enforcement action.

Safeguarding

Staff may be told about or may witness abuse. Safeguarding is everybody's business. Any form of abuse, harm or neglect is unacceptable and should not be tolerated by a provider, its staff, the regulators, or by members of the public or allied professionals who may also become aware of such incidents. It is essential that the correct procedures are followed when dealing with safeguarding issues.

CQC's safeguarding information is available on its website:
www.cqc.org.uk/content/safeguarding-people

The NMC's staff should contact the ELS.

4. Fit and proper person requirement and the duty of candour

4.1 Fit and proper person requirement

Providers of health and social care services must take proper steps to ensure that their directors (both executive and non-executive), or equivalent, are of the appropriate character, skill and experience for their roles. They must be physically and mentally fit, have the necessary qualifications, and be able to supply certain information (including a Disclosure and Barring Service check and a full employment history).

If a member of the NMC's staff has a concern about how a provider is ensuring that directors are meeting the fit and proper person requirement, they should contact the ELS team. The team will contact CQC through the NCSC and the inspector for that provider will then be contacted.

CQC's fit and proper person guidance for directors is available on its website:

<http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>

4.2 The duty of candour

Providers must be open and honest with people who use health and care services and other 'relevant persons' (people acting lawfully on behalf of people who use services) when things go wrong with care and treatment. They must give them reasonable support, truthful information and a written apology. This means that they must:

- tell the person using the service (or, where appropriate, that person's advocate, carer or family) when something has gone wrong
- apologise to the person using the service (or, where appropriate, the person's advocate, carer or family)
- offer an appropriate remedy or support to put matters right
- explain fully to the person using the service (or, where appropriate, the person's advocate, carer or family) the short and long-term effects of what has happened.

Providers must have an open and honest culture at all levels within their organisation and with other regulators. They should have systems in place for receiving and recording alerts about notifiable safety incidents. They must also take part in reviews and investigations when requested and they must support and encourage each other to be open and honest, and not stop someone from raising concerns.

CQC can take enforcement action against providers that do not satisfy the duty of candour requirements.

If a member of the NMC's staff has a concern with a provider's approach to the duty of candour, they should contact the ELS team. The team will then contact CQC through the NCSC and the inspector for that provider will be contacted.

CQC's duty of candour guidance can be found on its website:

www.cqc.org.uk/content/regulation-20-duty-candour

The NMC's duty of candour guidance can be found on its website:
www.nmc.org.uk/standards/guidance/the-professional-duty-of-candour

5. Whistleblowing and speaking up

The staff of the NMC and CQC should use the appropriate channels for whistleblowing and speaking up as set out in annex 4 of this document.

6. Sharing information about individual nurses, midwives and nursing associates with CQC

The NMC shares the information it publishes about the fitness to practise of individual nurses, midwives and nursing associates with CQC. Information about a nurse, midwife or nursing associate's health is always kept confidential.

A nurse, midwife or nursing associate's registration status can be checked by searching the NMC's website.

Employers can also check the registration status of potential employees using the NMC's employer confirmation service: www.nmc.org.uk/registration/employer-confirmations.

The NMC publishes the outcomes of hearings on its website:
www.nmc.org.uk/concerns-nurses-midwives/hearings-and-outcomes.

The NMC will proactively share information with CQC and escalate risks through the NMC's education quality assurance mechanisms.

There are a number of registered nurses, midwives and nursing associates working for CQC. In the event that a CQC employee is referred to the NMC, the NMC will inform CQC of the action being taken in line with the fitness to practise process.

7. Nurses and midwives in leadership positions

The NMC's Code of Conduct 2015 (The Code) has introduced Standard 25 which places a duty on those with relevant responsibilities to "provide leadership to make sure people's wellbeing is protected and to improve their experiences of the healthcare system".

The Code states that to achieve this, registrants with the NMC must:

- identify priorities, manage time, staff and resources effectively, and deal with risk to make sure that the quality of care or service they deliver is maintained and improved, putting the needs of those receiving care first, and
- support any staff they may be responsible for to follow the Code at all times. They must have the knowledge, skills and competence for safe practice; and understand how to raise any concerns linked to circumstances where the Code has not been upheld

The process for referrals of those in leadership positions between CQC and the NMC should be the same as those of other professional regulators such as the General Medical Council and the Health and Care Professions Council.

A Director of Nursing or equivalent Chief Nurse, or Head of Midwifery can potentially be referred to the NMC during or following an inspection but this must be discussed with ELS first to ensure the referral is appropriate.

A referral to the NMC could be one measure and would probably be based on lack of adherence to the leadership elements of the NMC's Code. Public protection and patient safety should be considered as the priorities. There is more information about referrals in annex 2.

8. Concerns about a setting or a learning environment

Nursing, midwifery and nursing associate education is delivered by higher education institutions and health and care settings working in partnership. The NMC is responsible for setting and quality assuring standards of nursing, midwifery and nursing associate education.

Although the NMC looks at and assures the quality of the learning environment and the quality of care, it should also pass on any wider concerns about a health or care setting to the relevant regulator. The NMC receives reports about quality in geographical locations and specific settings which are shared with CQC when a risk is identified.

Similarly, when an organisation is rated inadequate or requires improvement, CQC should ensure the NMC is aware of this so they can consider how adequate the training arrangements are.

Nurses, midwives and nursing associates in training must have the opportunity to meet the requirements of their relevant curriculum and to access appropriate support and mentorship supervision. CQC may identify concerns about the suitability of a site or department as a learning environment for nurses or midwives. For example, nurses, midwives and nursing associates in training may not have adequate supervision or mentorship, or know the escalation protocols to call for assistance. Additionally, staffing pressures within the clinical environment may prevent the student from being supernumerary.

9. Routine information sharing

Routine information sharing is important for ensuring the NMC and CQC can fulfil their functions effectively. Examples of routine information sharing include:

- the NMC sharing fitness to practise outcomes
- the NMC sharing information from its quality assurance education function

- the NMC sharing a summary of responses to concerns with CQC, listing all organisations delivering pre-registration nursing, midwifery and nursing associate education or training where the NMC's education team has active concerns
- CQC sharing concerns with the NMC about approved practice settings
- CQC giving the NMC access to its publicly available database.

Information sharing also takes place at various points during CQC's inspection process and the NMC's visiting process. The sharing of this information is coordinated in a range of ways, while taking account of the differences between the two regulators, for example:

- aligning the dates of inspection and visiting activities
- including a member of the other organisation as an observer on a visit
- sharing information before an activity and any outcomes after a visit, ensuring that a consistent message is given to the organisation or that the reasons for the different perspectives of the two regulators are clear.

Annex 1: Contacts

NMC and CQC general contacts - redacted

Annex 2: Information for CQC staff making referrals to the NMC

The NMC regulates the nurses, midwives and nursing associates on its register. To practise in the UK, a nurse or midwife must be registered with the NMC. Nursing associates must be registered with the NMC to practise in England. The registration status of a nurse, midwife or nursing associate can be checked using the NMC's online search facility on the NMC's website: www.nmc.org.uk/registration/search-the-register

The NMC also maintains the Specialist Community Public Health Nursing part of the register which lists registered nurses and midwives who are working in public health roles. They include health visitors, school nurses, occupational health nurses and family nurses. The NMC does not regulate other health care professionals such as healthcare assistants (HCAs).

Referring a concern to the NMC is appropriate when the conduct, performance or health of a nurse, midwife or nursing associate causes their fitness to practise to be called into question. The NMC registrants are required to uphold the standards in *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates* www.nmc.org.uk/standards/code

The NMC also provides guidance for employers considering raising a concern: www.nmc.org.uk/registration/guidance-for-employers

Staff members should consider the reasons for referring their concern and discuss them with their manager or head of inspection first. It is important to establish whether:

- local action has been taken
- the employing organisation or agency has already investigated the concern or is in the process of doing so
- the employing organisation or agency has already made a referral to the NMC.

The NMC processes often take place alongside local action. Where a referral has already taken place, additional information can usefully support any investigation. Local action or an existing referral does not prevent CQC from making a referral to the NMC.

If further advice is needed, CQC staff can contact ELS at the NMC. Once the decision has been made to refer a nurse, midwife or nursing associate then the staff member should:

- make ELS aware
- record the referral information in CRM.

The staff member should include the following information if possible:

- the nurse, midwife or nursing associate's full name, or surname, initials and the NMC pin
- the name and address of the department, hospital, trust, care home or practice where they work
- a full account of the events or incidents that prompted the referral, with dates if possible, and a note of the concerns
- details of any action already taken
- details of anyone else who can support the referral
- details of any investigation or action being taken by CQC and the appropriate contact at CQC
- copies of any relevant papers and any other evidence that the staff member or their team may have.

If it is a serious concern, then it is important not to delay the referral in order to collect this information. Instead, it should be discussed promptly with the relevant manager or head of team.

Registration

It is illegal to practise as a nurse, midwife or nursing associate without current and valid registration. If a staff member has concerns about nursing and midwifery registration, they should contact the NMC's registration team by email: UKenquiries@nmc-uk.org or by phone: 0207 333 9333.

Annex 3: NMC's fitness to practise process

Being fit to practise requires a nurse, midwife or nursing associate to have the skills, knowledge, good health and good character to do their job safely and effectively. All qualified nurses, midwives and nursing associates must follow *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates*, available at: www.nmc.org.uk/standards/code

The NMC will investigate if an allegation is made that a nurse, midwife or nursing associate does not meet its standards for skills, education and behaviour. If necessary, the NMC will act by removing them from the register permanently or for a set period of time. The NMC investigates a range of impairments including:

- misconduct
- lack of competence
- caution or conviction
- determination by another body
- not having the necessary knowledge of English
- fraudulent/incorrect entry to the register
- serious ill health

The NMC's website has further information about the fitness to practise process: www.nmc.org.uk/concerns-nurses-midwives.

Interim orders

The NMC's fitness to practise panels can place interim conditions on the registration of a nurse, midwife or nursing associate. They can also suspend them from registration for a period when they are facing serious allegations and it is appropriate to restrict their practice during investigation – known as an interim order. These restrictions and suspensions are included on the NMC's online search facility, but it is important to note that these allegations have not been investigated or proven.

Annex 4: Whistleblowing and speaking up

The need for an independent National Guardian for the NHS was highlighted in Sir Robert Francis QC's *Freedom to Speak Up* review in February 2015. It found that patients and people using services could be put at risk of harm because information of concern was not being raised routinely by NHS staff.

The creation of the National Guardian was one of the key recommendations from the review for which the Secretary of State for Health confirmed his support in July 2015.

The National Guardian is now in place and advises and supports a network of individuals within NHS trusts in England, appointed as Freedom to Speak Up Guardians, who are responsible for developing a culture of openness. Further information can be found on CQC's website: www.cqc.org.uk/content/national-guardians-office.

The NMC and CQC staff should use the appropriate channels to speak up:

- NMC: Staff can raise concerns by following the guidance for nurses, midwives and nursing associates which sets out broad principles to help think through the issues and take appropriate action in the public interest: <https://www.nmc.org.uk/standards/guidance/raising-concerns-guidance-for-nurses-and-midwives/read-raising-concerns-online/>.

Please also see: www.nmc.org.uk/standards/guidance/raising-concerns-guidance-for-nurses-and-midwives/whistleblowing/.

- CQC: Staff can raise concerns about how patients and people are being treated, their welfare or safety, dignity or privacy. The concerns do not have to be restricted to people using the service and can cover any risk, malpractice or wrongdoing that affects patients, the public, other staff or the provider itself.

Alternatively, NMC and CQC staff can contact other organisations that may be able to help, such as:

- the NHS and social care whistleblowing helpline: www.wbhelpline.org.uk
- Protect – a charity that aims to protect society by encouraging workplace whistleblowing. It advises individuals with whistleblowing dilemmas at work, supports organisations with their whistleblowing arrangements and informs public policy, seeking legislative change: www.pcaaw.org.uk.

Signed off by the Joint Working Group
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