

Response to Peter Bell – Question 5 (see Observer questions 2)

Dear Peter

I write in response to the question you raised on 24 July 2024 during the Open Council meeting.

Your question

Will the NMC Council commit to undertaking a project, working with those with experience of this work including members of the public, to examine and propose changes to the NMC's rules and procedures, including legislative change if required, to bring the NMC into the forefront of this current work to improve access to Open Justice and the transparency and accountability of the organisation?

Our response

The NMC is committed to ensuring that it appropriately considers and applies the principle of open justice alongside its competing legal obligations of privacy and confidentiality in carrying out its statutory functions. I set out below how the NMC is currently balancing these important principles within its current legal framework and the NMC's engagement with future developments in this area.

1. Current Processes

a. Upcoming hearings

The NMC publishes information about upcoming substantive hearings on the NMC's website, under the heading 'Latest hearings and sanctions'. The following information is published:

- Registrant's name, PIN and the part(s) of the register on which they appear.
- Date and venue of the hearing.
- The local authority area where the events that are the subject of the allegation took place.
- The type(s) of allegation against the registrant which will be the subject of consideration by the panel.

b. Attendance at substantive hearings

- Hearings are held in public unless an application has been made under the Fitness to Practise Rules for the hearing to be heard either in all or part in private. This will be considered when dealing with matters relating to a registrant's mental or physical health, where issues are raised relating to the vulnerability of witnesses, the health of other witnesses or people identified, or to protect the anonymity of patients. The panel will be considering the balance between public interest and the individual's right to privacy and confidentiality.
- Members of the public are welcome to observe the hearings save for the hearings held in private. To ensure the smooth running of virtual hearings there is a limit on the number of observers.
- Further information on public and private hearings can be found on the NMC's website : [Hearings in private and in public - The Nursing and Midwifery Council \(nmc.org.uk\)](https://www.nmc.org.uk/learn-more/our-work/our-panels-and-hearings/our-hearings)

c. *Publication of panel decisions*

- When a panel makes a finding of impairment, the panel's written determination is published on our website. The determination will not publish any information which was heard in private.
- The NMC is required by law to publish the sanction imposed by the fitness to practise panel and recognises the public interest for doing so. However, there may be exceptional circumstances where the impact of publication on an individual would justify departing from our general approach. This principle derives from the recent High Court case of *General Medical Council v X* [2019] 1 WLUK 255.
- The NMC has produced guidance on publication of fitness to practise and registration appeal outcomes which set out the factors taken into consideration by the NMC such as legal obligations, transparency, fairness and confidentiality. This guidance can be found on the NMC's website: [publication-guidance.pdf \(nmc.org.uk\)](#)

d. *Bundles*

- If the NMC receives a request for a copy of the hearing bundle it will consider whether the disclosure is required in the public interest in particular, to satisfy open justice principles. This will be balanced against any adverse impact on the hearing and the fitness to practise process and any potential privacy implications.

This letter highlights the prominent issues but further information and detail concerning the NMC's approach to handling information during fitness to practise proceedings is set out in the NMC's fitness to practise information handling guidance which can be found on our website: [ftp-information-handling-guidance.pdf \(nmc.org.uk\)](#)

2. Regulatory Reform

The NMC's statutory functions and legal powers are set out in the Nursing and Midwifery Order 2001 and through various rules. The legislative framework can only be amended by Privy Council.

The government has been consulting and working on regulatory reform for healthcare regulators including the NMC. It is anticipated the reform will introduce substantive legislative changes and the NMC has been working closely with the government to provide detailed comment on the various proposals. Information regarding the government's regulatory reform proposals can be found on the following link: [Regulating healthcare professionals, protecting the public: consultation response - executive summary - GOV.UK \(www.gov.uk\)](#)

The NMC welcomes the government's proposal to grant more autonomy to regulators enabling them to set their own legislative rules detailing its regulatory procedures. The NMC would legally be required to consult on any rules it seeks to introduce. It is anticipated that the legislation will require regulators to publish decisions made in respect of registered individuals such as; when they are "automatically removed" from the register following convictions for specified offences and where the person receives particular decision within the course of fitness to practise proceedings. It is proposed that regulators will be required to make rules for its panel procedure. This is likely to cover any matter relating to the functions of panels and prescribe the circumstances where proceedings are to be held in private.

Furthermore, it is anticipated that the reforms will introduce a new governance structure for regulators and introduce new duties of transparency and proportionately. One of the government's proposals is to introduce a requirement in legislation for regulators, when discharging their functions, to do so in a way that is transparent, accountable, proportionate and consistent. Some of these duties will include; publishing information on its regulatory functions on annual basis, publishing its engagement policy and making board meetings available to the public (except for confidential matters).

The NMC has been fully engaged with the regulatory reform programme and has been working very closely with the government by providing constructive feedback on proposals and draft rules. The NMC has a dedicated team working on regulatory reform and also worked on the development of the draft Anaesthesia Associates and Physician Associates Order designed for the General Medical Council which is envisaged to be a blueprint for future reforms. The NMC will continue to feed into and respond to the proposals as the programme progresses.

The NMC's response to the government's regulatory reform consultation has been published on our website:

[Better, safe regulation. Our response to the DHSC consultation on regulating healthcare professionals, protecting the public. \(nmc.org.uk\)](https://www.nmc.org.uk/better-safe-regulation-our-response-to-the-dhsc-consultation-on-regulating-healthcare-professionals-protecting-the-public)

The NMC's response to the government's proposed reforms on the topics of transparency and accountability can be found at paragraphs 6-13 and 42.

3. Engagement with public consultations

In addition to the engagement of the regulatory reform public consultation. The NMC engages with public consultations it considers relevant to its ability to carry out its statutory functions.

In April 2024 the Civil Procedure Rule Committee consulted on proposed changes to a new CPR Rule 5.4C which concerns the access to court documentation by non-parties. As the NMC is frequently involved in litigation before the court the NMC considered it appropriate to respond to the consultation.

As a result of all the work carried out to date and the NMC's dedicated work with the government on the regulatory reform programme the NMC is satisfied that the relevant level of action is being undertaken within its current programme of work and a further project is not required.

Yours sincerely