

## **Response of the Nursing & Midwifery Council, UK, to the consultation regarding Community action on health services**

The Nursing and Midwifery Council (NMC) is pleased to respond to this important consultation. The NMC is the regulatory body for nurses and midwives in the UK. We are established by statute and our primary purpose is to safeguard the health and well-being of patients and the public who use or need the services of nurses and midwives. We regulate in excess of 680,000 nurses and midwives and are the largest regulator of these professions in the European Union.

The NMC has carefully considered the issues raised in the consultation and although we have comments to make on most of the questions we intend to provide a more detailed response to those questions that specifically fall within our remit as regulators. We welcome the development of this initiative and the opportunity to contribute to its development to ensure patient safety and consumer protection in the efficient provision of health care services. We are of the view that such protection is more likely if the services provided are of high quality and delivered in a safe and effective manner by competent and regulated professionals.

### General comments

We agree that both patients and the public require greater certainty about their rights to funded health care services in another Member State. There is a need for a single point of contact in each Member State that can be readily accessed by patients, the public and healthcare professionals that makes clear the entitlements to healthcare.

In addition to systems that regulate healthcare professionals, some Member States have regulatory systems that are responsible for assuring the quality of care delivered. This good practice could usefully be shared with other Member States. The point of contact will also need to provide information as to how the quality of services is assured. We believe that there are some common standards and principles of health care that patients have a right to expect from regulated healthcare professionals. These should be emphasised within existing national standards, codes and/or guidance.

Finally, any action resulting from the analysis of the consultation responses must be fit for current and future purpose.

### Comments on specific questions

Question 1: what is the current impact (local, regional, national) of cross – border healthcare on accessibility, quality and financial sustainability of healthcare systems. and how might this evolve?

To date the UK has been a net importer of healthcare professionals from Europe and Overseas (see annex 1). Consequently the NMC has considerable experience of managing the regulatory implications of high levels of professional mobility. We will draw on this experience in responding to this consultation.

It is likely that mobility of professionals will increase as a result of extending the ability to all professional to provide temporary services under the Recognition of Professional Qualifications Directive 2005/36/EC. We are concerned that the quality

of services could be diluted due to the lower entry requirements for those providing temporary services.

From a regulatory perspective, the continuing development of information technology will have a significant impact on the accessibility of cross border services. Healthcare professionals will need to ensure the secure transfer of information across borders so that patient confidentiality is maintained. Further, the information will need to be translated in either the home or receiving country. This highlights the importance of healthcare professionals being proficient in the language or languages of the country in which they are working and with whom they are communicating. Effective communication is essential to high quality and safe care. We refer to this issue again in our response to question 6.

Question 2: what specific legal clarification and what practical information is required by whom to enable safe, high-quality and efficient cross-border health care?

#### *Information sharing between competent authorities*

In a European Union of increasing patient and professional mobility, it is vital to identify what information and legal clarity is required for safer and better quality health care. There are two aspects to this:

- the information the regulator needs to be assured that a professional seeking registration from another European Member State is fit and safe to practise; and
- the information patients require about the relevant professionals, standards of practice and regulatory redress when they access healthcare in another European Member State.

The Directive on Recognition of Professional Qualifications already sets out that regulatory authorities/competent authorities must co-operate more closely on information exchange. The Healthcare Professionals Crossing Borders initiative, involving all healthcare regulators in the EEA, including the new accession countries, aims to develop information sharing solutions in support of this provision of that Directive. It has also established a base line for sharing information both reactively and proactively between regulators on a voluntary basis.

#### *Legal duty to share information*

The NMC would strongly recommend that the European Commission explores the establishment of a legal duty upon regulatory/competent authorities to inform and provide information about registration status and disciplinary action being taken against a healthcare professional to other regulatory/competent authorities. The information needs to be of sufficiently high level to ensure that the public and patients are not put at potential or actual risk from nurses or midwives who are not fit to practise. We wish to avoid the situation of a nurse or midwife being removed from the register in country A, who registers in country B and can therefore exercise rights to free movement. This has occurred in at least one high profile case in the UK concerning a medical consultant.

### *Practical information*

The single point of contact will be critical in providing sufficient information about how health services are organised, how quality of care is assured and who may be involved in supplying healthcare services. This is important for patients when making decisions about taking up healthcare services in another Member State and for professionals supporting the referral of patients to another Member State. Patients and purchasers are likely to have expectations of care and professionals based on their experiences of their home Member State. Such information needs to include a glossary of terms since there is no standardisation of terminology used across Europe and familiar words and phrases can have different interpretations in other Member States.

Question 3: which issues (eg: clinical oversight, financial responsibility) should be the responsibility of the authorities of which country?

### *Clarity over regulatory responsibility of professionals*

There is a diverse approach to healthcare regulation of professionals across the European Union. In some Member States regulatory functions are fragmented across different organisations or government departments, and in some cases decentralised to the regional level. In others, regulatory responsibilities are integrated within a single organisation. Where there is fragmentation and/or decentralisation it may be difficult for regulators to access full registration and disciplinary information accurately and in a timely manner about individuals who are seeking registration elsewhere.

The NMC has worked with the Federation of European Nursing Regulators (FEPI) to establish a database of competent authorities for nursing across Europe, which can be found on FEPI's website. The database has been made available to the European Commission and contributes to providing clarity on the correct sources of nursing regulatory information. We believe that the European Commission has a role to play in facilitating easy identification of all healthcare competent authorities for regulators, patients and the public.

### *Registration status of healthcare professionals delivering cross-border healthcare*

There is an important principle to be adhered to in the interests of patient safety and that is that all healthcare professionals should be registered in the Member State in which they are providing services.

It must be clear to patients and healthcare professionals as to where responsibility lies for care delivery when elements of care are delivered in different Member States. This is important for the safe and effective continuation of care. Therefore any future legislation will need to make clear when the regulatory responsibility passes from one Member State to another. Legal certainty is necessary for both patients and healthcare professionals.

In a future that increasingly makes use of telemedicine, it will be important that where healthcare professional A in a Member State is asked to provide advice on care to a professional or a patient in another Member State, that the credentials of A are determined. The NMC would welcome the opportunity to contribute to a debate with the European Commission and other regulators as to how healthcare professionals

who work in this way can be regulated. This will be important if, for example, the advice, care or treatment turns out to be detrimental to patient health, since the right to redress will need to be clear.

Question 4: who should be responsible for ensuring safety in the case of cross-border healthcare? If patients suffer harm, how should redress for patients be ensured?

The NMC welcomed the removal of the country of origin principle from the proposed Services in the Internal Market Directive and would be concerned if there were moves to re-introduce it into any legislation around health services. The NMC believes that healthcare professionals must be regulated by the Member State in which they are providing services. In this way patients can be assured that the healthcare professionals are required to meet high standards of care and competence and comply with codes of conduct. In those rare cases where such standards are not met, such clarity will contribute to patients' ability to seek redress.

In the event that the healthcare professional concerned had returned to his/her home Member State, data protection should not preclude exchange of information between healthcare competent authorities, as this would be against the interests of patients and the public. The Recognition of Professional Qualifications Directive places a requirement on all regulators to work co-operatively. Building on this, NMC would like to see greater regulatory co-operation, not only to ensure patient safety in the country where problems have arisen but also across borders.

It is important for there to be legal clarity for regulatory responsibility for professionals in each of the four categories of cross-border health care provision, to guard against any confusion for patients, the public and healthcare professionals and providers. There should be no disproportionate or unnecessary regulatory burden for competent authorities in fulfilling their regulatory responsibilities.

Question 6: are there further issues to be addressed in the specific context of health services regarding the movement of health professionals or establishment of healthcare providers not already addressed by Community legislation?

#### *Patient and public safety*

There are a number of issues related to the effective sharing of information about healthcare professionals amongst competent authorities that require clarification in the interests of patient safety. Currently the different ways of interpreting the data protection act across Member States means that patient safety can be compromised. In many Member States it is not possible for a competent authority to identify to another Member State in which a healthcare professional is practising that the person is under investigation.

In the interests of patient and public safety it must be made possible for such information to be shared and for the host Member State to determine the most appropriate action, consistent with national legislation. Additionally it must be possible for competent authorities to share information about those who have been investigated and where limitations/conditions/sanctions have been put on their practice.

We believe it was for these very reasons of patient safety that the ability to provide temporary services for up to 16 weeks without having to register in the host Member State was removed from the Recognition of Professional Qualifications Directive. A decision that the NMC welcomed.

In order to reduce any confusion we believe that it would be helpful to make a statement in any future legislation and/or communication on health services that the Recognition of Professional Qualifications Directive takes precedence. This was considered to be particularly helpful when clarifying its relationship with the Services in the Internal Market Directive.

Consequently, we believe that there should be no further expansion of freedom of movement of professionals until the impact of the implementation of the Recognition of Professional Qualifications is known.

#### *Common standards*

It is the commitment of professionals to high standards of ethical conduct that provides the most effective public and patient protection. The NMC has contributed, through FEPI, to the development of the common values proposed by CEPLIS, that provides a common framework within which each country and profession can produce ethical codes. The NMC is currently engaged with FEPI in undertaking work to develop a common code of ethics for nurses, which would provide greater certainty for patients, particularly with respect to confidentiality and consent.

#### *Patient safety through effective communication*

Safe and effective practice is also dependent on good communication. Although EC law enables competent authorities to ensure that healthcare professionals hold relevant qualifications, they are unable to satisfy themselves as to the individual's language competence. Since there are increasing numbers of healthcare professionals, who work independently, there is not always an employer body to undertake an assessment of language competence. This is all the more significant if the professional is providing services on a temporary basis. In a recent and widely publicised case in the UK, a French doctor had insufficient English language skills to enable him to summon an ambulance for a patient who had collapsed in his surgery. The patient died while waiting for emergency help to arrive.

The NMC strongly recommends that European legislation be amended to allow healthcare regulators across Europe to establish, at the point of registration, that a healthcare professional has the level of language proficiency necessary for safe and effective practice.

The NMC would also support an initiative that enables language development for healthcare professionals that could coincide with the 'Year of Multilingualism' in 2008.

*Patient and public involvement*

The 'Common values and principles' set out by the Health Ministers in May 2006<sup>1</sup> makes reference to the patient-centred aims of European healthcare. NMC would welcome working with the European Commission and other healthcare regulators to promote greater public and patient involvement in European healthcare regulation.

Question 8: in what ways should European action help support the health systems of the Member States and the different actors within them?

Again we would wish to make reference to the work of 'Healthcare Professionals Crossing Borders' and the need for information sharing in the interests of patient safety. The Healthcare Professionals Crossing Borders group has developed and is piloting a form to allow such exchange of information entitled "the certificate of current professional status". We believe that such a tool would contribute significantly to patient safety provided that existing barriers to the free exchange of information were removed. We believe that this tool would contribute considerably to information exchange when linked in with the Internal Market Information System project.

The NMC is a member of the Federation of European Nursing Regulation (FEPI) and we endorse its response.

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<sup>1</sup> Council of Europe, *Common values, principles in European health Systems*, Brussels, 18 May 2006 9504/06

Numbers of nurses and midwives registered from the EU/EEA and Overseas by NMC

<b>Year</b>	<b>EU/EEA</b>	<b>Overseas</b>
2005/6	1,782	8,862
2004/5	1,239	11,477
2003/4	1,030	14,122
2002/3	836	12,730

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