Royal College of Nursing response to the Council for Healthcare Regulatory Excellence’s Performance Review 2012/13 (response submitted via online survey)

- What was your experience in dealing with the regulator? Please tell us what was good about your experience and where your experience could have been improved.

The Royal College of Nursing (RCN) welcomes the opportunity to respond to this annual review and comment on our engagement with the Nursing and Midwifery Council (NMC) over the last year.

The RCN acknowledges that 2012 has been a very challenging year for the NMC and we fundamentally agree with many of the central findings of the CHRE’s own review of the organisation earlier this year.

RCN is clear that the historical mismanagement of the NMC – from financial failure to the failure to develop effective strategic oversight and clarity of purpose - has resulted in an organisation which was unable to effectively perform its core duties. RCN believe that hard working nurses deserve better than this. We recognise however, that the NMC has acted on the recommendations made by the CHRE, and has an action plan in place to address failures in regulatory performance, financial management and governance.

We recognise that it is of fundamental importance that the professional regulator for nursing has the confidence of the public, and that public safety is paramount. However, it is also essential for the nursing profession to have full confidence in the regulator.

Registration fee increase

The RCN was strongly opposed to the NMC’s proposals to raise the registration fee to £120. We made it clear in our response that we believe it is unfair and unacceptable for registrants to have to subsidise the failures of the NMC to get to grips with their finances and deliver an effective service. This financial failure is particularly disappointing given that the NMC has been operating within the security of a fixed budget since its inception.

RCN mounted a major engagement exercise with our members in order to respond as comprehensively as possible to the NMC’s consultation on this issue. In total 85,720 members responded online and on paper to our survey. 99.3% stated that they did not agree to the proposed fee raise.

RCN also reported to the NMC further results from our survey which showed that 79.6% of members did not support the £800,000 annual payment to the CHRE. We
also asked whether nurses felt the government ought to contribute to the cost of professional regulation and 87.3% agreed that they should.

Having called on the government to contribute to the NMC’s increased costs, the RCN welcomed the Department of Health’s offer of a £20million grant to the NMC. We support the NMC’s acceptance of this grant.

We also welcome the NMC’s decision to commit to an annual review of the registration fee. We hope and expect that when the NMC has achieved the key performance indicators necessary and fitness to practise caseloads have stabilised, that the annual review will be a mechanism for considering a reduction in the registration fee.

**Engagement between organisations**

RCN attends meetings with senior NMC staff to share information and progress on matters of mutual interest. We find these meetings to be useful.

We recognise, for example, that when the NMC took the decision to close its professional advice line, the RCN was given prior notice of this.

RCN regulatory attends the NMC’s open council sessions and we welcome the increase in transparency and quality of documents available to the public and to council members for scrutiny.

**Professional advisers in the NMC and provision of professional advice**

The RCN believes it is important that the NMC has the appropriate specialist nursing expertise within the organisation in order to develop standards and guide registrants. We believe this ‘professional intelligence’ is critical to maintaining the confidence of the nursing profession and ensuring that the NMC meets its core regulatory functions. We are therefore concerned at what we believe to be a reduction in registrants working at the organisation, and note also a knock-on impact on the RCN from the closure of the NMC’s professional advice line.

Staff within the RCN’s professional nursing department highlighted the loss of education advisers, and posts specific to learning and disability and midwifery. For example, RCN welcomed the decision to appoint a specialist learning disability adviser within the NMC and were disappointed that this never came to fruition. We believe this function is particularly important given the public protection agenda and in light of cases such as Winterbourne view. We also believe the midwifery post is needed in recognition of the separate framework for practice and supervision of midwives. A professional post within the NMC should help support the work of the midwifery committee, many of the members of which have ‘day jobs’ elsewhere, to ensure the NMC remains abreast of developments relating to midwifery practice.

Colleagues in RCN Northern Ireland have also noted that a post established in recent years to liaise with stakeholders in Northern Ireland and Scotland has been
abolished. RCN is unsure how the NMC proposes to ensure it will continue to communicate effectively and engage with registrants and stakeholders in Northern Ireland and Scotland in light of this decision.

In the past RCN has worked in partnership with NMC advisers to facilitate some common interpretation of legislation, based on collective professional expertise. We believe this has been useful in trying to achieve clarity on some of the more complex issues. We are concerned about how clarity and consensus on such matters may be achieved as effectively in the future.

The RCN has always provided, and is happy to continue to provide, professional advice on nursing practice to our members. We note that when the NMC decided to close the professional advice line, the RCN was involved in discussions on this, and agreed that the NMC would refer RCN members seeking professional advice to the RCN.

Since the NMC helpline closed, RCN Direct, RCN’s helpline for members, has been picking up an increased rate of calls. RCN’s nursing advisers have also noticed an increase in enquiries on issues, with RCN members being directed to RCN nursing advisers by the NMC.

We note however that registrants who are not RCN members may now be lacking an appropriate source of professional advice.

**Cessation of NMC projects**

Restructuring, instability and reduction of activities at the NMC have resulted in frustration from the RCN that some projects are no longer going forward. For example, RCN staff working on a project around record keeping standards made a very promising and productive start to engaging with colleagues at the NMC, but this was abruptly ended.

RCN is also concerned about the cessation of other projects this year such as student indexing. We believe student indexing would aid public protection by preventing students who have been removed from one course for gross misconduct from applying to another course.

The RCN has also been explicit in all relevant dealings with the NMC (and others) that we believe that healthcare staff regulation should be extended to cover healthcare support workers. We believe the public will best be protected through mandatory regulation of healthcare support workers, ensuring clear standards for practice and minimum training.

**Fitness to practise**

The RCN was pleased to be involved in the NMC consultation on consensual panel determination and case management. There has been opportunity to both supply comments and to discuss the outcome of the consultation. We also very much
welcome the likely adoption of consensual panel determination and voluntary erasure in the near future

The Indicative Sanctions Guidance, which last year was imposed, was withdrawn following correspondence. The guidance that was produced after consultation was a more balanced document, in our view, and we were pleased to have had the opportunity to contribute to the process.

Last year the RCN also noted, as part of its response to CHRE, a disappointment that a standard operating procedure had been introduced for interim orders. This had to be withdrawn following a challenge from the RCN in the courts, and there was a good deal of cost involved in reaching that point. Overall, it does seem that consultation with stakeholders has produced better outcomes.

More recently, the NMC has introduced without discussion a change to its method of scheduling interim order hearings that has resulted in considerable wasted costs for representative organisations. Prior to the change, the NMC allowed registrants and their representatives to stipulate whether a morning or afternoon hearing suited them better. The NMC overbooks interim order hearings. However, previously, the registrant was unlikely to have to wait for more than half a day for their hearing. Now it is a regular occurrence that registrant and their representatives wait all day for their interim order hearing or review and even sometimes remain unheard. This is putting a considerable resource strain upon the RCN. The NMC has justified this change by saying that they had panels that were underemployed on occasion, but have not stated how often this was happening. No notification of this change was given prior to its introduction.

Similarly, there have been changes to the way in which stakeholders can use photocopiers at hearing centres and to the way transcripts are prepared that were introduced by the NMC without discussion at the regular fitness to Practise forum meetings. It seems to us that consultations with stakeholders have had good outcomes, and these admittedly less important departures from that approach can create difficulties.

The NMC tells us that they have plans to increase their turnover of hearings to 22 per day. We understand that they hope to clear their backlog by this measure, and we welcome this endeavour. We are pleased to find that the hearing centre in Aldwych has increased numbers of registrant rooms, which is a great improvement to allow the registrant to hold conferences with their representatives in private, and with a measure of dignity, particularly when they are distressed. However, the facilities at the Old Bailey site do not allow for this.

It is a cause for concern that so many hearings are part heard. We commend the plans of the NMC to restructure and create the role of case preparation officers with smaller case numbers in order that their own case presenters will engage with registrants and their representatives before hearings. In our view, this could radically reduce the risk of cases going part heard. There are many issues that could be agreed before a case begins, and currently much panel time is wasted in hearing applications that were susceptible to agreement prior to hearing. We are very...
hopeful that the introduction of consensual panel determination will also improve the situation, and bring about much more common sense outcomes without the wasteful use of resource of hearings in cases where there is no public interest in a drawn-out procedure. We are hopeful that the necessity to consider commonsense outcomes will change our interactions with the Regulatory Legal Team. At present, we note something of a determination within the Regulatory Legal Team to seek only the most serious sanction which, in our view, can stand in the way of finding a fair solution.

If case presenters were more focussed on analysing the merits of cases, which consensual panel determination will encourage, we anticipate that cases without merit can be sifted out earlier. The case presenters would then have more time to engage in good time with the issues of the cases with merit and ensure that the documentation is ready for the hearing. Hearing time is regularly lost while the case presenter sorts out the bundle at the outset of the case.

The introduction of a new role for panel secretaries has been consulted upon, which was welcome. However, there is a perception that there has been a slow down of production of panel decisions since their introduction. We have been informed that the NMC is aware of this and is working towards improving the through-put of this aspect of hearings, which is welcome.

The RCN is concerned that there continue to be basic case management issues at hearings (and in the lead up to hearings) which is suggestive that the case management system is either not suitable for purpose, staff have not been trained in how to get the most from it or that case handlers have too high a case load. Examples in the last 2 months include:

- the RCN representative arranging for a complex 400 page bundle to be copied for a panel of the CCC on the morning of a complex interim orders hearing as the NMC had failed to send papers to the panel in advance. This led to a hearing with a time estimate of 1.5 hours taking all day;
- The NMC failing to warn on 2 occasions in the last 8 weeks its medical expert in 2 health committee hearings. The RCN was able to arrange for the expert to be contacted by telephone in one case and the Panel were able to ask question by telephone conference. In the other case, the expert could not participate and the case had to proceed on the papers only;
- Medical report and medical test results obtained two weeks prior to the final hearing not being copied and sent to the Panel until the day of the hearing;
- Despite best efforts in the case management form stage, there continues to be confusion at final hearings in relation to which witnesses are attending to give oral evidence or where statements are to be read. This leads to many cases being delayed while witnesses are traced and asked to attend or for cases to be adjourned.
Issues for the future

The RCN notes that the upcoming public inquiry report by Robert Francis QC into Mid Staffordshire Foundation Trust hospital may have implications for the NMC’s work in 2013.

We would highlight three areas in which we hope to see significant improvement in progress and performance by the NMC: the NMC should demonstrate it has learnt the lessons from past financial mismanagement. The organisation must also make urgent progress with filling vacant posts in the fitness to practise directorate and on plans to take forward revalidation which is key to public protection.

Policy and International Department
Royal College of Nursing, December 2012