

## Justice Committee

### Apologies (Scotland) Bill

#### Written submission from the Nursing and Midwifery Council

1 The Nursing and Midwifery Council regulates nurses and midwives in England, Wales, Scotland and Northern Ireland. We exist to protect the public. We set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare throughout their careers.

2 We make sure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards. We have clear and transparent processes to investigate nurses and midwives who fall short of our standards. We maintain a register of nurses and midwives allowed to practise in the UK.

#### The Apologies (Scotland) Bill

3 The Apologies (Scotland) Bill relates to the use of apologies in civil proceedings.

4 We share the intention of encouraging openness and honesty when things go wrong. *The Code: Professional standards of practice and behaviour for nurses and midwives* sets out a professional duty of candour that nurses and midwives must be open and honest with patients when something that goes wrong with treatment or care causes, or has the potential to cause harm and distress.

5 We have only very recently become aware of the potential implications of this Bill for our work as the professional regulator of nurses and midwives – specifically that it may constrain us in exercising one of our statutory functions.

6 In light of the Committee's timetable we are making a short submission which sets out some of our initial concerns about the implications of the Bill.

7 We commit to reviewing this Bill and considering its implications in greater detail and we will seek to provide a full submission to the Committee in due course. We will also play a responsible role in the Scottish Parliament's consideration of this bill.

#### The Bill and our fitness to practise processes

8 Being fit to practise requires a nurse or midwife to have the skills, knowledge, good health and good character to do their job safely and effectively. We will investigate if an allegation is made that a nurse or midwife does not meet our standards. Our fitness to practise panels can impose a range of sanctions if they consider that a nurse or midwife's fitness to practise is impaired.

9 We consider that our fitness to practise processes are civil proceedings as defined in the Bill.

10 A panel must consider the facts of the case which can include any apologies made by the nurse or midwife in question. When determining whether there is impairment, and

if so whether to apply a sanction, a panel considers aggravating and mitigating factors which might include a lack of insight into failings or apologies to the person affected.

11 If this Bill is passed, we understand that we may not be able to place any reliance on any apology (and the words surrounding it) that is made outside of the proceedings when it comes to proving the factual part of any fitness to practise case. We are concerned that our role in public protection could be undermined.

12 Similarly, we understand that a fitness to practise panel may not be able to consider an apology when it comes to deciding whether a registered nurse or midwife is currently impaired.

### **The professional duty of candour**

13 We will shortly be publishing joint guidance with the General Medical Council on the professional duty of candour, which is about openness and honesty when things go wrong.

14 The guidance will state that apologising to a patient does not mean that a registered doctor, nurse or midwife is admitting legal liability (referring to a clinical negligence claim) for what has happened and that a fitness to practise panel may view an apology as evidence of insight.

Nursing and Midwifery Council  
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