The Nursing and Midwifery Council (NMC) is the professional regulator for nurses and midwives in the UK. We exist to protect the public. We do this by holding and controlling access to the register of qualified nurses and midwives and setting standards of education, training, conduct and performance for nurses and midwives. If an allegation is made that a registered nurse or midwife is not fit to practise, we also have a duty to investigate that allegation and, where necessary, take action to protect the public.

We welcome the opportunity to respond to the Health and Sport Committee call for views on the Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill. Given the remit of the NMC, we have only provided views on the proposals for a statutory duty of candour and provisions for wilful neglect from the perspective of professional regulation as opposed to from a service provider or other perspective.

Duty of candour

We firmly believe that healthcare professionals should be bound by a duty of candour in their practice. Following the events at Mid Staffordshire NHS Foundation Trust in England, we have worked hard to improve this element of how we regulate nurses and midwives. We welcome the proposals in the Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill as broadly reflective of our revised approach to promote openness, honesty and candour in the care that healthcare professionals provide.

All nurses and midwives in the UK are bound by standards set out in our publication *The Code: Professional standards of practice and behaviour for nurses and midwives*. Our revised Code took effect on 31st March 2015. It sets out the professional standards that nurses and midwives must uphold in order to gain and maintain registration to practice as a nurse or midwife in the UK. Where this is not the case, it may act as grounds for referral to us to consider whether the nurse or midwife’s fitness to practise is impaired. This could result in a nurse or midwife being struck off our register in the most severe cases, preventing them from practising in the UK.

The Code includes a section on the duty of candour for nurses and midwives; this can be found in paragraphs 13, 14, 16 and 17 of the Code. This has been supported by working closely with the General

Medical Council (GMC) and issuing joint guidance for professionals on their duty of candour on 29 June 2015.

6 In summary, the Code requires nurses and midwives to recognise and work within the limits of their own competence, be open and candid with service users about all aspects of care and treatment including when mistakes or harm have taken place. If a nurse or midwife believes there is a risk to patient safety or public protection, they have a duty to raise concerns; this may include through the local healthcare setting’s management, whistleblowing to the appropriate prescribed person, or making a referral to us about the fitness to practise of a nurse or midwife.

7 Our joint guidance makes clear that when things go wrong, a nurse or midwife should inform the patient (or an appropriate other person such as a carer or family member as the case may be), apologise, offer an appropriate remedy to put matters right and fully explain the short and long term impacts of what has happened. In addition, professionals must be open and honest with colleagues, employers and relevant organisations on such matters and raise concerns where appropriate. Again, this may include through the local healthcare setting’s management, whistleblowing to the appropriate prescribed person, or making a referral to us about the fitness to practise of a nurse or midwife.

Wilful neglect

8 Please refer to our 2014 response to the Scottish Government consultation on proposals for an offence of wilful neglect or ill-treatment in health and social care settings. The key points from our previous response that we would highlight are as follows:

8.1 To ensure consistency in public protection, it is key that cases of wilful neglect or ill-treatment are treated consistently across the UK;

8.2 The NMC believes that all patients should be afforded the same protection wherever wilful neglect or ill-treatment may have occurred. Limiting the application of the new offence by making a distinction between the settings it will cover would create an unhelpful discrepancy and conflict with the remit of professional regulators such as the NMC.

8.3 Our Code applies consistently across all sectors and roles that nurses and midwives undertake. All registered nurses and midwives are accountable for adhering to their professional standards as set out in the Code at all times. Failure to comply

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with the requirements in the Code may bring their fitness to practice into question.

8.4 The NMC believes that the offence should be entirely focused on conduct rather than outcomes; this is the approach we take with our Code. We also believe that there should be no harm threshold required to trigger the new offence. Should a healthcare professional’s behaviour constitute wilful neglect or ill-treatment, they should face the consequences of their actions irrespective of the harm caused by that behaviour.

Nursing and Midwifery Council