

Royal College of Nursing response to Nursing and Midwifery Council consultation on *COVID-19 emergency rules.*

1.0. OVERVIEW

1.1. The RCN welcomes the opportunity to share our views on these emergency powers which have now become permanent. We are supportive of the use of email communication to notify registrants of meetings and hearings. We are also supportive of the use of virtual hearings, although we have some areas where further assurance is needed. Our main concerns relate to public access to virtual hearings and the use of panels which do not include registrants. There is a need for the NMC to collect evidence and ensure fairness, through formal evaluations of the virtual hearing process as it becomes more commonly used for every type of hearing. Our priority is that hearings can be conducted in a way in which registrants are assured about the security and fairness of their procedure. We expect registrants to have a choice about how their hearing is conducted.

1.2. We recommend that:

1.2.1. The NMC undertake evaluation to assess the impact of virtual hearings upon outcomes and experiences of registrants and put measures in place to protect registrants from disadvantage. Registrants should be offered a choice about how their hearing is conducted.

1.2.2. The NMC should not give members of the public remote audio or visual access to hearings, but if they choose to watch they should be able to access a supervised hearings centre at which safeguards are in place to prevent filming or recording.

1.2.3. The NMC takes all reasonable steps to avoid situations in which the panel for a hearing does not include a registrant.

1.2.4. The NMC reviews the use of virtual hearings and the guidance in 2022 to assess whether they are appropriate and fair. We feel that this time would give more opportunity for evaluation and an assessment of fairness.

2.0. RCN RESPONSE TO SPECIFIC CHANGES

2.1. Virtual meetings and hearings

2.2. *Q1. Do you think there are any reasons why we shouldn't continue to hold hearings virtually, once the emergency period ends?*

2.3. We believe that there are benefits to virtual hearings and think that they should continue once the emergency period ends. Previously participants may have been

faced with significant travel or accommodation requirements which can now be avoided.

- 2.4. At this stage, there have been insufficient numbers of virtual hearings to determine whether they are fair, and whether there might be any disadvantage to particular groups. We urge the NMC to undertake evaluation to assess this impact and put measures in place to protect registrants from any potential disadvantage.
- 2.5. We feel that registrants should be able to 'opt-out' of a virtual hearing if they have concerns about fairness, security or complexity of the case and should not be penalised for doing so.
- 2.6. If the outcome of this consultation does not produce a system in which registrants can 'opt-out' of virtual hearings, we request an independent process to determine the most appropriate venue. There should be no limitations from the NMC on the factors which the registrant is able to raise within this process, for independent consideration.
- 2.7. Public access to hearings**
- 2.8. *Q2. How do you think that members of the public should have access to our virtual hearings?*
- 2.9. Our view is that members of the public should only have access to virtual hearings in a supervised hearing centre. We have concerns about public access to virtual hearings, including access by members of the media or parties involved in the case. Our concerns include:
 - The possibility of screenshots or recordings of proceedings that then appear on social media
 - The possibility of observers sharing evidence with witnesses prior to them giving evidence
- 2.10. These concerns would lead to avoidable distress being caused for the registrant, and any potential witnesses, and could impact the outcome of the case. We anticipate that witnesses would be less willing to participate if they are exposed to the risk of uncontrolled public access. In criminal proceedings there is a 'contempt of court' process which would allow for sanctions against members of the public who act in this way. This is not available in regulatory proceedings.
- 2.11. In response to these concerns, the NMC implemented a system where the general public be offered virtual audio access, and now proposes that they also allow virtual visual access. We are concerned that this is not in alignment with the approach taken by the regulator of Doctors, and this could lead to unequal treatment for nursing staff. The Medical Practitioners Tribunal Service (MPTS) for the GMC have set up viewing galleries. These only allow public access at a physical site and all the current safeguards against misuse apply. Members of the public who prefer not to travel can be provided with a transcript of every word spoken during the hearing.

- 2.12. We are particularly keen that doctors and nurses involved in the same case or incident (especially where there is heightened public interest) should receive equal protections from unfair treatment from public observers.
- 2.13. NMC registrants should not be exposed to the risks attached to giving direct access to virtual hearings, when the duty to be open can be met in other ways and other healthcare practitioners will be spared such risks.
- 2.14. Our position is that members of the public should not be given remote audio or visual access to hearings, but if they choose to watch they should be able to access a supervised hearings centre at which safeguards are in place to prevent filming or recording. If this is not possible, virtual audio only should be maintained and virtual visual access should not be given.
- 2.15. Constitution and appointment of panel members**
- 2.16. (In reference to meetings with two panel members instead of three, or where there is not a panel member who is a registrant). Q3a. Do you agree with this approach? Q3b. Do you think there are any other circumstances where it would be reasonable for us to have a panel without a registrant member?
- 2.17. The NMC has given assurances that *“we don’t think there are circumstances outside of the emergency period in which we would use the power to hold a panel event with only two panellists or where we don’t have a panel member who is a nurse, midwife or nursing associate”*. We are reassured by this and continue to have concerns about situations in which a panel does not include a registrant.
- 2.18. We ask that the NMC takes all reasonable steps to ensure that situations are avoided in which panels do not include registrant members or where there are only 2 panel members.
- 2.19. Sending notices of events**
- 2.20. Q4. Do you think we should continue to send notices of our hearings and meetings by secure email?
- 2.21. We are supportive of the changes which allow registrants to be contacted via email to be notified of progress within the hearing process. We support the use of recorded delivering in situations where an approved email address is not available for a registrant. We think this should continue following the emergency.
- 2.22. Revalidation and fee payment**
- 2.23. Q5. Do you think we should continue to grant revalidation and fee payment extensions in limited circumstances such as those outlined?
- 2.24. We are supportive of this change.
- 2.25. Other comments**

- 2.26. Q6. If there is anything else you would like to comment on in relation to whether and how we should use our powers under the rules after the emergency period ends, please do so here.
- 2.27. As stated, we expect the NMC to undertake regular reviews of these changes and the impact they have upon the experiences of registrant.

About the Royal College of Nursing

The RCN is the voice of nursing across the UK and the largest professional union of nursing staff in the world.

For further information, please contact:

Charli Hadden, Policy Adviser (charli.hadden@rcn.org.uk).

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