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Unite the union response to the consultation on improvements to the Nursing & Midwifery Council (NMC) Fitness to Practise process

Introduction

This consultation response is submitted by Unite the union - Britain and Ireland largest trade union. Unite's members work in a range of industries including manufacturing, transport, financial services, print, media, construction, not-for-profit sectors and public services.

Unite is the third largest trade union in the NHS and represents 100,000 health sector workers. This includes seven professional associations – the Community Practitioners and Health Visitors' Association (CPHVA), Guild of Healthcare Pharmacists (GHP), Medical Practitioners Union (MPU), Society of Sexual Health Advisors (SSHA), Hospital Physicists Association (HPA), College of Health Care Chaplains (CHCC) and the Mental Health Nurses Association (MNHA) – and members in occupations such as allied health professions, healthcare science, applied psychology, counselling and psychotherapy, dental professions, audiology, optometry, social work, building trades, estates, craft and maintenance, administration, information and communications technology (ICT), support services and ambulance services.

Unite also has 80,000 members in local authorities and 50,000 in the voluntary and community sector many of whom work in services directly involved with or linked to health and social care.

The following response was submitted via the NMC online survey that was available for completion between 3 November 2025 and 26 January 2026 via:

<https://www.nmc.org.uk/about-us/consultations/improvements-to-our-fitness-to-practise-process/>.

Consultation response

Are you responding as an individual or on behalf of an organisation?

Individual
Organisation

Please tell us the name of your organisation: Unite the union

Please tell us your name: David Munday

Please select the options that best describe the type of organisation you are representing.
Please select all that apply

Government department or public body
Local authority
Regulatory body
Professional organisation or trade union
Employer of nurses, midwives and/or nursing associates
Agency for nurses, midwives and/or nursing associates
Education provider
Consumer or patient organisation
Charity/voluntary sector
Other

Does your organisation officially represent the views of nurses, midwives or nursing associates and/or members of the public who share any of the following protected characteristics? Please select all that apply

Older (i.e. 65 years and over)
Younger (i.e. under 18 years of age)
Disabled (including mental health)
Ethnic minority
Gender-based difference
Lesbian, Gay and/or Bisexual
Trans/gender diversity
Pregnancy/maternity
Religion or belief
Other
None of the above

Where is your organisation based?

England
Northern Ireland
Scotland
Wales
Across the UK
Within the European Economic Area (EEA) / European Union (EU) but not in the UK
Outside the UK and the European Economic Area (EEA) / European Union (EU)
Prefer not to say

Proposed changes to the Fitness to Practise (FtP) rules survey

I would like to continue

I would like to skip this section

Proposal 1: Powers to appoint legally qualified chairs

***To what extent do you agree or disagree with our proposal to introduce the power to appoint legally qualified chairs, who can provide legal advice to the panel which they chair?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

You said you "Agree" with our proposal to introduce the power to appoint legally qualified chairs, who can provide legal advice to the panel which they chair. Please give a reason for your answer. This question is optional. You may leave it blank if you do not wish to respond.

Whilst in principle we agree with the NMC having the power to appoint legally qualified chairs, we do believe that there are some concerns that the NMC should acknowledge and ensure are mitigated.

This proposal represents a significant structural change to the adjudicatory process, replacing the current model—where panels are advised by independent legal assessors—with panels chaired by individuals possessing legal qualifications.

The question is whether this reform enhances fairness, efficiency, and public confidence, or whether it risks undermining transparency and participatory rights. Drawing on experience from other regulators, including the General Medical Council (GMC), and the Scottish Social Services Council (SSSC), we set out below the principal arguments for and against the proposal, followed by recommendations.

Arguments for LQCs

1. Improved Legal Compliance and Consistency

Legally qualified chairs ensure deliberations are conducted in accordance with law and procedural fairness without reliance on external advice. This reduces the risk of error and inconsistency in applying complex statutory frameworks, particularly where human rights considerations under Article 6 ECHR are engaged. Experience in other regulators suggests this has strengthened decision-making quality and reduced successful appeals.

2. Efficiency and Case Management

Panels chaired by legally qualified persons can make real-time rulings on evidential and procedural issues, avoiding delays caused by seeking advice from legal assessors. Also improving clarity and consistency throughout proceedings. The Medical Practitioners Tribunal Service reported that hearings chaired by legally qualified chairs were more likely to conclude on time or early after their introduction in 2016.

3. Cost Reduction and Resource Allocation

Removing the requirement for a separate legal assessor reduces duplication and costs. While initial recruitment and training of legally qualified chairs involve expense, long-term savings arise from streamlined hearings and fewer adjournments. Similar regulators (e.g., GMC,) have seen increased efficiency and quality of hearings after shifting to legally qualified chairs.

4. Enhanced Public Confidence and Transparency

Public perception of independence and professionalism is improved when panels are chaired by individuals with legal expertise, particularly in cases involving serious allegations. It reinforces confidence in the fairness of the regulatory process. The Home Office cited transparency and justice as key drivers for introducing legally qualified chairs in police misconduct hearings.

5. Alignment with Other Regulators

Introducing legally qualified chairs brings NMC in line with GMC, GPhC, and SSSC, promoting consistency across health and social care regulation. This harmonisation supports the overarching objective of protecting the public and maintaining confidence in professional regulation.

Arguments Against

1. Risk to Transparency and Right to Comment on Legal Advice

Under current rules, legal advice from assessors must be given in the presence of parties, allowing submissions. When advice is given privately by a legally qualified chair during deliberations, parties may lose this opportunity. The BMA judicial review against GMC reforms highlighted this as a potential breach of natural justice and Article 6 ECHR (R (on the application of the BMA) v GMC [2016] EWHC 1015 (Admin)).

2. Concentration of Power and Reduced Checks and Balances

Combining the roles of chair and legal adviser removes an important safeguard. Legal assessors are independent and external; a legally qualified chair is part of the decision-making tribunal, which may create perceived or actual bias in applying legal principles for or against a party whose credibility and reliability will already be being assessed by that individual.

3. Potential for Increased Complexity and Cost in Recruitment

Recruiting and retaining suitably qualified chairs (solicitors or advocates with regulatory experience) may be challenging and costly, particularly in Scotland where the pool is limited. Qualified solicitors or barristers typically command higher fees than lay legal assessors. This could lead to delays or reliance on a small cadre of individuals, raising concerns about diversity and independence.

4. Risk of legal dominance over professional insight

Reliance on a legally trained chair could overshadow essential nursing or midwifery perspectives, shifting focus away from professional context toward purely legal considerations.

5. Transition risks

Shifting from the established legal assessor model to LQCs involves complex rule amendments, significant training needs, and temporary uncertainty. We assume that the NMC, in needing to increase the number of chairs that are legally qualified, will concomitantly reduce the number of chairs that are not legally qualified. We assume that this is likely to dramatically reduce the years of experience that the organisation currently benefits from. With other internal cuts to staff at the NMC, including in its fitness to practise function, we are concerned that this 'brain-drain' have negative impacts that this consultation has not identified or considered.

Recommendations and Safeguards

If the NMC proceeds with this reform, safeguards should include:

- **Mandatory Disclosure of Legal Advice:** Any legal advice given during deliberations should be recorded and disclosed in the written decision.
- **Provision for Additional Legal Assessors:** Panels should retain discretion to appoint an independent legal assessor in complex or novel cases.
- **Careful Recruitment, Clear Guidance and Training:** Chairs must receive specialist training in healthcare regulation and human rights law. Whilst some people who are legally qualified will have the skills to chair panels it must be recognised that some will not. Therefore, recruitment to these roles must be carefully carried out.
- **Recruitment Strategy:** Ensure diversity and independence in the pool of legally qualified chairs, ensuring that appointees have experience representing both regulators and registrants. Whilst covered elsewhere in this consultation, we also believe that this issue must be fully considered in your equality impact assessment. We believe there is a risk that having an increased focus on legally qualified chairs will mean some people with a protected characteristic will be more likely excluded from the role. We are concerned that in that exclusion the efforts of the NMC to de-bias its approaches could be negatively affected.

- **Monitoring and Review:** Conduct a formal review after two years to assess impact on fairness, efficiency, and appeal rates.

Whilst the consultation states that the current arrangements, of providing legally qualified advisors, come at a 'considerable cost', it does not provide any information to back this statement up, nor any projection on how much money would be saved by this new proposed approach.

Proposal 2: Strengthened case management powers

***To what extent do you agree or disagree with our proposals to broaden and strengthen our case management powers?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

You said you "Agree" with our proposals to broaden and strengthen our case management powers. Please give a reason for your answer. This question is optional. You may leave it blank if you do not wish to respond.

This seems to be similar to the way other healthcare regulators manage cases. We do have a concern where trade union member's do not approach the union for support until 'late in the day' so we are not always able to comply with directions. In these situations we would usually seek extensions and/or make submissions on the service of any late documents and would expect that the NMC will accommodate this.

Proposal 3: Ability to send and share information via an online account or portal

***To what extent do you agree or disagree with our proposed change to allow us to share documents via an online account or portal where the registrant has agreed to this?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

We agree that this is appropriate but only under the stated proviso that registrants must explicitly consent to this way of sharing information. We also believe there should be extra safeguards put in place that include the NMC considering any reasonable issues that a registrant may have accessing any future online accounts, for example if the NMC has a period of lack of access due to a fault in their systems.

It is not clear in the consultation whether the NMC believe that once consented this would be a decision that cannot be reversed. We believe there should be a clear statement that a registrant has the option to withdraw their consent at any time and return to, for example, a paper-based process. If this was not included in the final rules, we would withdraw our agreement.

The NMC should also provide easily accessible technological support to registrants when they have lost access to their accounts. We know that the fitness to practise process causes considerable distress to registrants and this could be further compounded by a system that creates further stress rather than a more streamlined system.

We are aware that the NMC have yet to procure a suitable online account or portal via a provider. We must stress that we are assuming that the NMC will procure a service that enables registrants and representatives to properly interact with them. For example, we assume there will be a system where both registrant and representative will receive a noticeable alert that a new document has been placed on the system. We reserve the right to remove our agreement if the system procured falls below the standard that we believe should be expected as a minimum.

It is also of considerable importance that representatives have access to the information system, including that information added to the online account before the date of notification is also fully available.

Proposal 4: Increased flexibility for inviting representations

***To what extent do you agree or disagree with our proposal to amend the rules so that it is no longer a requirement to invite representations at the end of the process if no further regulatory action is necessary?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

You said you "Strongly agree" with our proposal to amend the rules so that it is no longer a requirement to invite representations at the end of the process if no further regulatory action is necessary. Please give a reason for your answer. This question is optional. You may leave it blank if you do not wish to respond.

We strongly agree in the explicit situation where Case Examiners are satisfied that they have enough information to decide no further regulatory action is necessary.

Proposal 5: Increased flexibility for timescales for representations

***To what extent do you agree or disagree with our proposal to replace the fixed requirement to respond in 28 days with a more flexible timeframe of at least 28 days?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

You said you "Agree" with our proposal to replace the fixed requirement to respond in 28 days with a more flexible timeframe of at least 28 days. Please give a reason for your answer. This question is optional. You may leave it blank if you do not wish to respond.

We agree with this proposal as long as the flexibility to agree extensions continues. It is our experience that where registrants request for an extension to the deadline, this is usually granted. We would disagree with this proposal if in getting this extra flexibility, the NMC looks to be less flexible in future in agreeing reasonable requests for extensions.

Proposal 6: Increased flexibility for minimum notice of meetings or hearings

***To what extent do you agree or disagree with our proposal to provide flexibility to shorten the 28-day notice period for fitness to practise meetings or hearings in certain circumstances?**

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

Whilst we would strongly agree with this proposal if it was limited to where a registrant consents to a shorter period of notice, we are concerned that 'justified in the public interest' is too wide a reason for imposing this decision on a registrant. We have therefore disagreed with this proposal. We would consider amending this response if you could demonstrate that there were appropriate safeguards in place where a registrant could challenge the decision to reduce the notice period without their consent. We also believe that this change could disproportionately negatively impact those registrants who are not represented through the fitness to practise process.

Proposal 7: Supporting vulnerable witnesses to provide evidence

*To what extent do you agree or disagree with the proposed change to allow our Committees to better support vulnerable witnesses?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Not sure / don't know

We agree with this proposal.

Reviewing the drafting of the rules amendments

***Would you like to complete this section?**

Yes

No

Please review how we have drafted the rules for each proposed change. For each change, please say how effectively or ineffectively the drafting reflects the policy as set out in the consultation document.

Very effectively

Effectively

Neither effectively nor ineffectively

Ineffectively

Very ineffectively

Not sure / don't know

Not relevant to my area of interest

Powers to appoint legally qualified chairs - Effectively

Strengthened case management powers - Effectively

Ability to send and share information via an online account or portal - Ineffectively

Increased flexibility for inviting representations - Effectively

Increased flexibility for timescales for representations - Effectively

Increased flexibility for minimum notice of meetings or hearings - Effectively

Supporting vulnerable witnesses to provide evidence - Effectively

Would you like to share any feedback or suggested amendments to the drafting of any particular rules? Please select all you would like to feedback on.

Powers to appoint legally qualified chairs

Strengthened case management powers

Ability to send and share information via an online account or portal

Increased flexibility for inviting representations

Increased flexibility for timescales for representations

Increased flexibility for minimum notice of meetings or hearings

Supporting vulnerable witnesses to provide evidence

None of the above

You said you would like to feedback or suggest amendments for "Ability to send and share information via an online account or portal". Please feedback below.

In 34.(3)(c) it does not make clear as to whether the recipient who has agreed to accept communications via the account is able to remove this permission or if once given it is always in place. As we have highlighted in our response above, we believe there should be the explicit option for the registrant to withdraw that consent at any time.

Implications of our proposals

***When thinking about the proposed changes to Fitness to Practise rules, can you identify any potential impacts – positive or negative – on some individuals more than others based on their protected characteristics?**

Yes

No

Don't know / unsure

Prefer not to say

You said you think the changes to the Fitness to Practise rules could impact individuals – either positively or negatively - based on their protected characteristics. Which protected characteristics do you think this could impact? Please select all that apply

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Prefer not to say

What impact/s could it have? This question is optional. You may leave it blank if you do not wish to respond.

While it is welcome that the NMC appears to have better considered the impact of its planned fitness to practise rule changes on equality, diversity and inclusion, versus its lack of consideration of its fee rise we remain concerned that it will only publish the impact at the same time as responding to this consultation, thus removing the opportunity for the public to consider this alongside the consultation, and to respond to it.

We have already highlighted in an early question that we have concerns that a move to legal qualified chairs may mean some people with a protected characteristic will be more likely to be excluded from the role of chairing panels. We are concerned that in that exclusion the efforts of the NMC to de-bias its approaches could be negatively affected.

We are also concerned that some of the proposed changes may make it more difficult for unrepresented registrants, and it may be that people with a protected characteristic will be more likely to be unrepresented.

***When thinking about the proposed changes to the Fitness to Practise rules, can you identify any potential impacts – positive or negative – on either the promotion of the Welsh language or on Welsh speakers?**

- Yes
- No
- Don't know / unsure

Prefer not to say

Could the proposals be revised in any way to increase opportunities for people to use the Welsh language and to help treat it no less favourably than English?

Yes

No

Don't know / unsure

Prefer not to say

You said you think the changes to the Fitness to Practise rules could impact either the promotion of the Welsh language or Welsh speakers and/or that the proposals could be revised to increase opportunities for people to use the Welsh language. Please tell us more about the impact/s the changes could have and how they could be revised. This question is optional. You may leave it blank if you do not wish to respond.

Whilst the consultation on changes to your rules and the consultation easy read was reproduced in Welsh for this consultation process, we could not see a copy of the draft rules or Keeling Schedule in Welsh. It may be that this excludes Welsh speakers from a part of this consultation and impedes their ability to make suggestions that should be considered. We therefore recommend that if you wish to be fully inclusive, both documents are provided in Welsh.

Thank you for your time sharing your views on our proposals. Is there anything else you would like to share on the Fitness to Practise proposed rules changes that wasn't covered in the previous questions?

We have attached a complete copy of this consultation response as will be shared with our members.

26/01/2026

This consultation response was submitted on behalf of Unite the union by:

Richard Munn

National officer, Unite the union

For further information, please contact:

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