Ijeoma Omambala KC ( email to: omambala@oldsquare.co.uk )

Old Square Chambers

10 – 11 Bedford Row, London

WC1R 4BU

(5 pages)

8th December 2023

Dear Ms Omambala

**Re: Investigation into NMC Culture and Whistleblower**

We co-ordinate two support groups for nurses and midwives who are facing investigation, particularly though not exclusively by the NMC. Cathryn has an organization of nurses and midwives, as well as some other healthcare professionals, called NMC Watch: registrant care CIC (https://nmcwatch.org.uk/) . Deborah co-ordinates The Midwives Haven which supports midwives and student midwives (https://www.midwifery.org.uk/midwives-haven/).

We understand the Terms of Reference of your forthcoming inquiry into the NMC are focusing on:

1. The way NMC have responded to the concerns raised.
2. The FtP cases highlighted in the concerns raised. and whether you needs to look at other cases that are relevant to the concerns that have been raised.
3. Concerns raised about NMC culture.

We are aware that some of your work will be to seek to identify if, and how, the NMC culture influences their decision-making, looking at common themes and areas of improvement in casework is handled as well as their FtP guidance.

We have concerns about the underlying prejudicial attitudes that lead to the disproportionate investigation. This in turn influences poorer sanctioning of nurses and midwives from black and minority ethnic backgrounds and from overseas in the NMC's Fitness to Practice processes. NMCWatch have in particular over recent

months seen an increase in its members, from overseas on sponsorship visa's for example.

Whilst many of the reasons for this undoubtedly lie within the NHS and care sectors, the NMC itself is very blind to the forces at work that contribute. For example:

1. Expectations of use of language and expressions that may run counter to culture e.g expressions of remorse that are problematic in cultures where pride and "face" are valued such as in some middle eastern cultures. Reflections criticized when the registrant is doing their best and are truly sorry but their ways of expressing this fail to satisfy the panel.

2. Acceptance of complaints by white British members of the public against BAME registrants with no examination of the frissons of racism that may underlay these. Linked to this are charges that relate to behaviours and discussions where cultural misunderstandings or discomfort or mismatch have occurred in care settings and where the registrant is held at fault.

3. Lack of diversity in the panels especially in panel chairs and legal assessors.

4. The ongoing over-representation of registrants from minority groups in the FtP process - African, eastern European, Filipino etc.

5. Most referrals are made by managers, bands 7 and 8, about those they manage (bands 5 and 6). But registrants from some backgrounds are under-represented in the former group but not the latter. Linked to this is opportunities and support for ongoing professional development and access to that. Many BAME registrants are viewed as workhorses or even as, in some way, privileged to be working in "our" NHS. They can have difficulty moving out of the basic ward work, with all its staffing shortages and problems and where "things go wrong", resulting in disciplinaries and NMC referral. Without professional development opportunities, registrants' care may become outdated and old-fashioned and render them vulnerable to complaints and referral. The private care sector also patterns this.

6. Overseas registrants are inadequately prepared for working in the NHS and expected to hit the ground running after a brief period of orientation. But issues of consent, autonomy and choice may be very different and take much longer to acclimatize to; meanwhile they are vulnerable to complaints and referrals around these issues.

Both NMCWatch and Midwives Haven have many examples of where registrants under FtP have raised clear evidence of racial bullying by other registrants, prior to referral. This evidence also links this treatment to the ultimate referral to their

regulator. Whilst the NMC now asks registrants to complete a context form to gather such information, this rarely translates to any action by the NMC towards those registrants who have been identified. For example members of our group(s) have tried to refer others ( more responsible ) and the NMC refuses to explore this evidence, focusing solely on the person referred. The NMC neither uses this intelligence to unpick the route cause of the issues at the centre which would help to identify any systemic cultural aspects at work that could effect patient safety. What is very clear is that the assumption of guilt is there from the outset by the NMC, there is no neutral investigation but instead a gathering of documentation to prove guilt. This is not conducive to fair and proportionate process and does nothing to improve patient safety. One example is a member of NMCWatch who was employed as an EDI lead in her trust following general concerns raised by staff around racial discrimination for employment opportunities. During her role she highlighted a deeper culture and when her concerns were not taken seriously, she whistle-blew. She was placed on suspension and subjected to a long internal investigation by her employer. She defended her case and managed to get it closed in her favour. She was kept on suspension, the trust having not got the outcome they wanted started a second investigation, referring her to the NMC, for the same facts, instigated by the chief nurse - Alison Kelly. As you may be aware Alison Kelly is now under scrutiny for her handling of the Lucy Letby concerns. Our members case may show how the trust and herself punitised a black nurse where ignored other concerns in regards to a white nurse, Lucy Letby. The case against our member has been pursued to great lengths – she is still on suspension 20months later! The NMC to date have not done any work to unpick this, draw links to the Alison Kelly, or suggest any relevance to it for this nurse’s case which is extremely worrying. Anecdotally 80% of NMCWatch members have either raised concerns in their workplace prior to referral or have infact officially whistle blown. Again the question is asked on the context forms by NMC but no further exploration or weight given to this aspect.

A perusal of the NMC hearing lists (https://www.nmc.org.uk/concerns-nurses-midwives/hearings/hearings-sanctions/hearings-december-2023/) gives a flavour of our concerns. It is not simply that black and brown registrants are at risk, but Filipino, eastern European and those from the Arabian and Iberian peninsulas, amongst others, are also at risk. The NHS recruits many nurses and midwives from overseas, gives them a relatively brief period of orientation to the hospital working environment, technology and policies and then they are very much used as front-line staff (in services with chronic and serious staffing shortages).

The many and varied cultural approaches to important and key areas such as informed consent, choice, autonomy, and women’s rights are much harder for many overseas staff to absorb and this can make them very vulnerable. But the standard against which they are judged is that of native, UK-trained British registrants. This is a complex issue as no-one is arguing that consent or autonomy or patient rights

should differ according to the caregiver involved. Our issue is more that there has to be an approach that recognizes the cultural challenges facing registrants from overseas and a more restorative approach taken to complaints and referrals against them. Even this is not simple, as differing sanctions cannot be seen to be given for similar "offences" committed by registrants of different backgrounds. However, the current approaches to NMC referral itself and then the subsequent processes are, we feel, disproportionately affecting black, minority ethnic and overseas registrants.

The general handling of FtP cases is extremely poor. The NMC frequently makes basic administrative errors and their GDPR compliance is extremely poor. Both NMCWatch and Midwives Haven has been raising concerns about this for many years, with numerous member complaints in regards to GDPR breaches. The response is the same " we have looked into this matter" "we are sorry" etc etc but still the errors occur. The lack of transparency around evidence, non disclosure when their witnesses refuse to engage and lack of disclosure of full bundles and evidence at hearings is extremely worrying. The most concerning of all is the poor case management and the lack of openness around how the investigators are trained, their poor skills and qualifications to perform investigation and lack of audits / spot checks to ensure consistency of assessments. The general ignoring of The Nolan Principles is palpable. Despite there being an action point in council meetings last year and executive summaries to address the issues of support for non represented registrants, the recent council papers in November this year state this is now on hold. We are finding those overseas nurses we are seeing at NMCWatch are not in unions and so are a high risk in this aspect.

Whilst there are many dedicated individuals at the NMC trying to improve things, there is a underlying culture mainly within the legal teams, in our opinion, of prosecution rather than regulation and an inability to learn from mistakes. We are aware of 30 successful appeals in the High court over the past 10 years, all of which have had strong recommendations and comment by the presiding judges on poor process and behaviour by the NMC. Initially there may be some acknowledgment of these but generally the feeling is they are not agreed with and are seen as an annoyance rather than an opportunity to learn. We have raised this with the PSA but are told that their remit is to focus on appeals they have instigated against inadequate sanctions, rather than review any potential excessive sanction and the learning that may come from registrant's self represented successful appeals. We have seen with cases as recent as this month, the themes from these appeals occurring once more, confirming to us that no learning has occurred and no definitive change made to avoid repetition of same mistakes.

We have been raising complaints about the same issues for a number of years now. Despite NMCWatch being classed as a "stakeholder" now with quarterly meetings the issues of complaint continue to reoccur. We fear ultimately that the culture of the

NMC is not one to inwardly reflect and remediate on their own areas of poor practice. Examples are:

1. GDPR breaches – sending wrong files to registrants, disclosing case information without consent of registrant, publishing private hearings outcomes on the NMC website in the public arena
2. Lack of special measures put in place for neurodiverse registrants
3. Lack of safeguarding against harm to those under FtP despite evidence to show mental health impact and PTSD
4. No protection to whistle-blowers against further detriment.
5. No offer of specific interpretation support to those with English as second language to ensure nuances are not lost.

We would welcome sharing examples with you if you so wish and hope we can explore these aspects with you

Yours sincerely

Cathryn Watters - NMCWatch: Registrant

Deborah Hughes – The Midwives Haven

**c.c. David Martin, Concerns and Appointments Officer**
**Professional Standards Authority for Health and Social Care**
**16-18 New Bridge Street, Blackfriars, London, EC4V 6AG**