

NMC response

EU Consultation on the legal framework for the fundamental right to protection of personal data

The Nursing and Midwifery Council (NMC) is the UK regulator for two professions, nursing and midwifery. To be eligible to work as a nurse or midwife in the UK, a professional must be registered with the NMC. There are currently more than 664,000 nurses and midwives on the register. The primary purpose of the NMC is to safeguard the health and wellbeing of the public. It does this by maintaining a register of all nurses and midwives eligible to practise within the UK and by setting standards for their education, training and conduct.

The NMC welcomes the consultation on the protection of personal data. We wish to comment and provide recommendations on the questions which are of relevance to nursing and midwifery regulation:

Our views on the new challenges for personal data protection, in particular in the light of new technologies and globalisation:

In recent years, and particularly after the transposition of Directive 2005/36 on the recognition of professional qualifications, the migration of European nurses and midwives to the UK has increased twofold. While the NMC welcomes the increased mobility of health professionals across Europe, we have concerns about the lack of coordinated data sharing about professionals' fitness to practise records.

In an effort to protect patients and mothers, the NMC runs background checks on all nurses and midwives who apply for registration in the UK. One of those checks regards disciplinary sanctions for professional misconduct. However, we regularly encounter difficulties to obtain some of that information for nurses and midwives whose country of origin has unclear guidance on what personal data regulators can share and with whom. This situation may be used by dishonest professionals to gain registration in one country without informing the regulator of a ban on their practice in another country. EU healthcare regulators have identified this as a risk and are looking for a way forward to ensure that increased mobility of healthcare professionals does not compromise patient safety.

How the current legal framework meets these challenges:

The divergence of national data protection laws across the EU can be a barrier to the fluid exchange of essential information which health regulators need to ensure public protection. As much as personal data should be protected, it is important that a balanced solution be reached on the exchange of professional information, especially for healthcare professionals. Such data would not be made publicly available but rather shared among competent authorities.

Health authorities of many EU member states have identified this problem and have tried to resolve it in different ways. This includes the Healthcare Professionals Crossing Borders (HPCB) initiative, an informal partnership between regulators of healthcare professionals within the EEA. HPCB, of which the NMC is a member, has drafted a memorandum of understanding which details the process for the sharing of information about healthcare professionals who have been subject to disciplinary sanctions. This initiative has met relative success but its implementation is challenged by the inability of some regulators to become signatories because of unclear national data protection laws.

Directive 2005/36 on the recognition of professional qualifications calls for the close collaboration between competent authorities. It also instructs them to exchange information regarding disciplinary actions or criminal sanctions, while respecting the provisions of Directive 95/46/EC on the free movement of personal data. However, the latter is unclear and poorly implemented; many competent authorities do not know their rights and obligations under Directive 95/46/EC. This leads to precautionary attitudes from regulators which put off sharing personal data with their counterparts in other member states.

Proposed future action to address the identified challenges:

Directive 95/46/EC on the free movement of personal data should be clarified. Guidance for health regulators should be drafted in order to bring absolute clarity as to what personal information can be exchanged and with whom.

Because of the significance of the public protection mission of healthcare regulators it is important that their right to exchange personal data be ascertained. To this end it would be useful to clarify that all health regulators listed as “competent authorities” under Directive 2005/36/EC operate in compliance with article 7 (e) of Directive 95/46/EC. This would clarify that their processing of personal data is necessary for the performance of a task carried out in the public interest and would emphasize their official authority.

In addition to this, the use of a single secure electronic channel of communication between regulatory authorities would help bring confidence that their exchange of personal data is done in a manner that respects individual rights. It would also facilitate the compliance with Directive 2002/58/EC on privacy and electronic communications. To this end, we believe that the EU Commission’s Internal Market Information system (IMI) should be used to exchange personal data between regulatory authorities in the EU. The IMI system has already proved to be a very helpful communication tool. It is however supposed to be used on an ad-hoc basis. It would therefore be useful to

change the legislation around the IMI system so as to allow regulators to use it systematically for background checks on EU healthcare workers who seek to register in a new member state.

Summary of recommendations:

- 1- Produce a user guide for competent authorities about their rights and obligations under Directive 95/46/EC on the free movement of personal data.
- 2- Establish that all health regulators listed as “competent authorities” under Directive 2005/36/EC operate in compliance with article 7 (e) of Directive 95/46/EC.
- 3- Use IMI as a secure communication tool for competent authorities to exchange personal data on health professionals.

A handwritten signature in black ink, reading "A. J. Hazell". The signature is written in a cursive style with a large, looped "H" and "Z".

Professor Tony Hazell
NMC Chair
17 December 2009