

Beyond the cross roads: the changing face of midwifery regulation

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In 2010 I wrote an article for *MIDIRS Midwifery Digest*: 'Is midwifery at a cross roads? Questioning the need for Midwives rules and standards'. I posed the question: *Do midwives still need a set of practice rules to provide them with support in ensuring that women, babies and their families remain safe in their care?* (Way 2010).

This question was raised at a time when the Nursing and Midwifery Council (NMC) was consulting on the midwives rules as part of the review of the *Midwives rules and standards* (NMC 2004). I argued whether the midwives rules were actually necessary in order to provide the professional framework needed for midwives to practise safely and effectively. I suggested that there was a considerable history to the regulation of the midwifery profession and there was potentially a danger that actions are taken because of a historical motive, rather than for reasons of contemporary practice. I also argued that there was considerable repetition between the midwives rules and standards and in circulation at the time: *The Code: standards of conduct, performance and ethics for nurses and midwives* (NMC 2008). You could therefore conclude that midwives were being 'doubly regulated' as there was already a sufficiently comprehensive safety net to safeguard the health and well-being of women, babies and their families.

Conversely, the various Midwives Acts that were passed across the UK ([The Midwives Act 1902 \(2 Edw. VII c.17\)](#), [The Midwives \(Scotland\) Act 1915](#) and [Northern Ireland 1922](#)) all sought to regulate the practice of midwives for the protection of the public underlining the responsibilities of midwives, their sphere of practice and the necessary educational and clinical framework to achieve this. Midwifery requires high standards of independence and competence, so surely there should be a requirement to have a sufficiently robust framework to uphold these standards.

The 2010 NMC consultation resulted in a revised version of the *Midwives rules and standards* (NMC 2012), where statutory supervision and its requirements were the major component of the document. The practice of midwifery, as defined by the Rules was primarily confined to Rule 2: Interpretation, Rule 5: Scope of practice and Rule 6: Records. Perhaps today the question takes on a different resonance as the decision is being made for the profession, rather than the profession being part of the decision. The Secretary of State for Health announced on 16 July 2015 that the government will change the legislation governing the NMC's regulation of midwives. The NMC requested this change following a number of

critical incidents and independent reports confirming that the current regulatory arrangements for midwives are not appropriate for public protection. The main effect of the changes will be to take supervision out of their regulatory legislation. This move has meant that the midwives rules and standards are yet again under scrutiny as the Department of Health (DH) moves to modernise how the NMC regulates midwives (NMC 2015a).

In order to modernise the regulation of midwives the NMC is proposing to remove Article 41, 42 and 43 from the *Nursing and Midwifery Order 2001* (DH 2002). The removal of these three Articles will mean that the NMC's requirement to make rules 'as to midwifery practice' and all the functions of the Local Supervising Authority will be removed, as removal of the Statutory Midwifery Committee. The NMC state they are removing the additional tier of regulation that applies to midwifery, on the grounds that there is no risk-based evidence to justify a different approach to that for other health care professionals (NMC 2015b). The removal of statutory supervision has received a large amount of professional publicity, but the removal of the midwives rules and standards as well as the statutory status of the Midwifery Committee may be lesser known. As stated above, the 2012 NMC *Midwives rules and standards* is primarily comprised of rules related to statutory supervision and the profession is resigned to the changes that are being made in respect of this. However, crucially Rules 2 and 5 will also be removed. The removal of Rule 6 may not be as problematic, as the revised edition of *the Code* comprehensively covers maintaining records (NMC 2015d: Section 10).

So what does this mean for the profession? Importantly, there will be no change to the protected title of 'midwife' as identified in Article 44 of the *Nursing and Midwifery Order* (DH 2002). It remains unlawful for anyone to falsely represent themselves as being on the NMC register. Likewise, the protected function '*attendance on a woman in childbirth*' will remain (DH 2002, Article 45), and other than in an emergency or as part of training, only a midwife or medical practitioner can deliver a baby. Rule 2 went further by stating that 'childbirth' included the antenatal, intranatal and postnatal periods. However, the view of the NMC is that childbirth cannot be extended out to the intranatal and postnatal period as it would criminalise any professional treating pregnant women. This justifies the removal of Rule 2.

Rule 5 covers the scope of a midwife's practice including working in partnership with women, emergency treatment, medicine administration and meeting the skills and competencies set out in standard 17 of the *Standards for pre-registration midwifery education*

(NMC 2009). The NMC argue that Rule 5 will be removed as *The Code* and the *Standards of competence for registered midwives* (NMC 2015c) clearly cover these requirements.

So, is there any reason to feel nervous about the removal of such long-standing legislation and regulation of midwives? Perhaps not, if you believe that the processes proposed by the NMC to modernise the regulation of midwives is appropriate, such as the scope of midwifery practice being reflected in the *Standards of competence for registered midwives* (NMC 2015c) and *The Code* (NMC 2015d).

However, it may be useful at this point to consider the current role of the Statutory Midwifery Committee and what will replace it in the future. The Midwifery Committee is comprised of lay members and practising midwives, and has up until now ensured a clear understanding to Council of the role of the midwife, and has guided how best to ensure the safety of the health and well-being of women and their babies. The question is how will this function be carried out when the Committee is no longer statutory and the NMC has no obligation to continue with such representation? How will the NMC secure midwifery advice to the Council? Currently there is only one registered midwife on the Council, Lorna Tinsley, compared to the five registered nurses. Admittedly this may change in the future when terms of office come to an end and nurse or midwife registrants are invited to come forward and be appointed to the Council. We could see more midwives appointed, or more worryingly, none at all. There is no requirement for the Council to have at least one registrant from each profession as part of its constitution. In September 2015 the NMC took the move to appoint a Senior Midwifery Advisor, Donna Ockenden for one day a week, but it could be questioned if this is enough. At a time when midwifery is under-represented at Council and the role and function of the Midwifery Committee is hanging in the balance, we need to wait and see if the contribution of midwives in shaping how the NMC protect the public is a reality or just lip service.

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