HOUSE OF COMMONS

Public Administration Select Committee

Oral evidence: Follow-up: Parliamentary and Health Service Ombudsman's Report into Midwifery Supervision and Regulation, HC 623

Wednesday 10 September 2014

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Watch the meeting

Members present: Mr Bernard Jenkin (Chair), Paul Flynn, Rt Hon Cheryl Gillan, Kelvin Hopkins, Greg Mulholland, Mr Andrew Turner

Dame Julie Mellor DBE, Parliamentary and Health Service Ombudsman, was in attendance.

Questions 1-49

Witnesses: **Dr Daniel Poulter MP,** Parliamentary Under-Secretary of State, Department of Health, **Jackie Smith,** Chief Executive and Registrar, Nursing and Midwifery Council (NMC), **Professor Juliet Beal,** Director of Nursing: Quality Improvement and Care, NHS England, **Richard Murray,** Director of Policy, The King's Fund, **Elizabeth Duff** Senior Policy Adviser, National Childbirth Trust (NCT), gave evidence.

Q1 Chair: We are missing the Ombudsman, but no doubt she will appear in a minute. Welcome to this second session on midwifery and the report entitled *Midwifery supervision and regulation: recommendations for change*, which was produced by the Ombudsman in December 2013. The principal issue arising here seems to be that we have a very outdated system of regulation of midwifery that predates the health service, dating from 1902, which gives supervisors statutory authority to supervise and to regulate and monitor the quality of the treatment of those under their control. Thus, they investigate serious untoward incidents for which they have direct line-management responsibility. Obviously, they should do this anyway, but the concern raised is that if this is the only regulation of midwives, they are naturally conflicted in trying to scrutinise the performance of people they may know very well in very difficult circumstances. Ombudsman, I do not know if you want to add anything to that. The Ombudsman has made two principal recommendations for change, and bear in

mind the Ombudsman presents a report to Parliament in this way when the Ombudsman has identified a generic problem that needs to be addressed, so it is exceptional. She recommends that midwifery supervision and regulation should be separated and that the Nursing and Midwifery Council should be in direct control of regulation.

Q2 Mr Turner: Dr Poulter, to what extent is the Department acting on the Ombudsman's recommendations to prevent the tragic cases described in their report happening again?

Chair: I beg your pardon. I should have asked the panel to identify itself for the record first. I do apologise.

Richard Murray: Richard Murray, Director of Policy with the King's Fund.

Jackie Smith: I am Jackie Smith, the Chief Executive and Registrar of the NMC.

Dr Poulter: I am Dr Dan Poulter, Parliamentary Under-Secretary of State for Health and have responsibility for maternity services and health-care regulation.

Elizabeth Duff: I am Elizabeth Duff; I am a Senior Policy adviser at the parents' charity NCT.

Professor Beal: I am Professor Juliet Beal; I am Director of Nursing for Quality Improvement and Care at NHS England and I am also a registered midwife.

Chair: Thank you. Minister.

Dr Poulter: Thank you, Chair. It is important to recognise that the events at Morecambe Bay have affected a number of families and clearly there are a lot of lessons for that trust to learn from. Indeed, the Ombudsman's report threw up some wider issues generally about regulation of midwives that need to be looked at very seriously. You will be aware that there is currently an investigation into the events at Morecambe Bay Trust being overseen by Bill Kirkup, which is looking into some of the broader issues at the trust and investigating what has taken place. Following the recommendations in the Ombudsman's report, the King's Fund was asked by the Nursing and Midwifery Council to undertake a piece of work to look at the regulation of midwives and, specifically, whether the status quo is acceptable, which I think there are concerns about, and how the situation can be improved in future. This is to make sure that there is no longer a concern that there is just a cosy conversation between a supervisor and a midwife on the ground and that, if there are concerns or problems with patient safety and clinical practice, that is always acted upon in an appropriate manner.

Q3 Mr Turner: When the report was made, there was a strategic health authority—SHA—who, it says, should have gone much further than it did. It said the decision by the

supervisor was sound when it clearly was not. However, the SHA has gone. What has substituted that or is it more of one looking at one's own?

Dr Poulter: This is a very important point. I had meetings very early in my tenure as a Minister with James Titcombe and some of the other families who were affected by the events at Morecambe Bay. There was a feeling that a number of the issues had not been properly or independently looked at and discussed about the quality of care, and the families were concerned that there had been internal inquiries that had potentially covered up certain aspects of failings at the trust. That was why we took action to set up the Kirkup inquiry: to make sure that this issue can be examined more independently and with some external scrutiny about what lessons can be learned from what took place.

Q4 Mr Turner: You are happy that you are acting on the Ombudsman's recommendations.

Dr Poulter: I believe that we have taken the issues at Morecambe Bay and the tragic events very seriously, and the inquiry that has been set up will, I think, be very helpful in helping the families to better understand what really happened, and also in terms of making sure that we can make improvements at the trust itself and learn wider lessons for the future.

Q5 Chair: Ombudsman, how satisfied are you with the pace of the implementation of your recommendations?

Dame Julie Mellor: I was just concerned by what the Minister was saying, because I think this report is not about events at Morecambe Bay. This report is based on three investigations that exposed an inherent conflict of interest, an inherent problem with regulation, and so I think the Kirkup investigation does not have anything to do with this report that is being considered by this Committee today. In terms of pace of change, I was hoping that the healthcare regulation Bill would have been part of the Queen's Speech, as most of the regulators were as well, and it was not. However, I am pleased that the NMC has commissioned the review by the King's Fund, which will lead to the development of proposals and would be interested to know what the appetite is for acting on those proposals when they come through.

Q6 Chair: Where is the resistance to change coming from?

Dr Poulter: There is absolutely no resistance to change at all. As I outlined in my opening remarks just very recently, Ombudsman, the broader issue is the one that we are concerned about going forward in terms of healthcare regulation. The broader issue is whether or not it is appropriate, as I think we all have concerns over the current arrangements about the reporting mechanism into the NMC about individual midwives and how that also interacts with the clinical governance arrangements in individual trusts, because there is not necessarily a correlation between the two. If I can indulge the Committee for about two minutes in explaining the complexity of this, Chair, it may be helpful.

The current arrangement is that a midwife will have a supervisor of midwives who is a peer midwife and a supervisor often within the same organisation, and conversations will take place on an annual and review basis about how that midwife is performing and how she or he is doing his or her job in the workplace. It is then the responsibility of that supervisor to work with that midwife effectively to address those issues. There is no link necessarily in that with the clinical governance arrangements at a particular trust or organisation, so if there are issues that have come up through those conversations with a supervisor of midwives, which may be important issues about how to improve the quality of care on that maternity unit or the safety of the maternity unit, there is no onus necessarily for those issues to be directly engaged with the trust more broadly. There is a lot of power in the hands of the supervisor of midwives to decide how to act upon the conversations that have been had with the midwife who is being supervised.

Q7 Chair: Yes, but, Minister, what do you understand to be the conflict of interest that we are talking about?

Dr Poulter: The conflict of interest is that the supervisor who is supervising the midwives has a key role to play here in whether they decide to escalate any concerns they may have with a midwife that they are supervising.

Q8 Chair: What is the effect of that conflict, do you think?

Dr Poulter: The concern that was raised by the Ombudsman is whether it is the case that sometimes things that should be escalated, either from a clinical governance point within the trust or, more broadly, from the point of view of needing to act appropriately in a regulatory function, are being raised in the way that we would feel appropriate.

Q9 Chair: Yes, but what we are talking about—is it not?—is when there has been a possibly avoidable death, there are some of these cases that are not being escalated for proper investigation, so there is no proper learning and a proper review of what has gone wrong. That is what is happening, is it not?

Dr Poulter: Yes, which is exactly the point regarding clinical governance.

Q10 Chair: What is so complicated about this that does not affect other professions in the health service?

Dr Poulter: This is the very point.

Q11 Chair: What is so complicated?

Dr Poulter: This is the very point and why the midwifery arrangement is relatively unique amongst healthcare professions.

Q12 Chair: Yes, but it needs some legislation, that is all.

Dr Poulter: It may well do, but obviously if we want to legislate, we want to legislate in an appropriate way and we want to work with the NMC to make sure that regulation is appropriate.

Q13 Chair: There are tens of other medical professions in the health service, which you could simply copy.

Dr Poulter: There are, but it is important that, when we are putting in place changes to arrangements, we make sure that it is appropriate and correct, and we need to wait for the outcome of King's Fund report, which has been kicked off as a result of this, in order to inform how that legislation and how those changes may take place. It is also important to note that, even though we want to have broad consistency across the different healthcare regulators, when you are regulating different healthcare professions there inherently are going to be some differences in the clinical practice and arrangements for some of those healthcare professionals. Therefore, there will be some differences in regulatory frameworks, so the next step, Chair, is to wait for that King's Fund report and then that will put us in a place where we can legislate as required.

Q14 Chair: When I was saying it was simple, Ms Duff, you were implying by the shake of your head that I had not understood something. Would you like to enlarge?

Elizabeth Duff: Thank you. I would like to put forward the idea that has come to our organisation through feedback from parents who have been users of midwifery services where that service, at its best, is very dependent on the midwife being able to develop a continuing relationship of trust with the woman and her partner as she goes through the journey of pregnancy, birth and the postnatal period. I believe there is considerable evidence to show that that continuity of carer really does improve not only the experience but the outcome for women. I do believe, particularly because midwifery care is for the woman and, first, her unborn baby and then her newborn baby, there are real differences between that type of care and most other health professionals, who are treating people who are sick or injured and their main duty is to fix that problem of sickness or injury.

Q15 Chair: What is your concern about the alteration recommended by the Ombudsman in the regulation of midwives?

Elizabeth Duff: I believe there are strengths in midwifery supervision in the way that midwifery supervision is somewhat different from most other health professions.

Q16 Chair: Why do you need statutory supervision though?

Elizabeth Duff: If it is not statutory, it always runs a risk of being less well carried out, less well supported.

Q17 Chair: What is the evidence of that, because most supervision in the health service is non-statutory?

Elizabeth Duff: I am not aware of a study that has compared directly one with the other. I do know of strengths of supervision of midwives that have directly benefited women.

Q18 Chair: This sounds like where the resistance is coming from. We all love midwives and midwives do a marvellous job, and I just want to pay tribute to the profession of midwifery.

Elizabeth Duff: So do I.

Q19 Chair: I am not making any criticism of midwifery. This might feel like a very big change to midwifery when, in fact, you will not feel a thing.

Elizabeth Duff: I am not resistant to there being change; I am not resistant to there being improvement; and I am certainly not resistant to there being increased support for those fulfilling the function of supervising midwives.

Q20 Chair: However, you want to keep statutory supervision.

Elizabeth Duff: I want to keep a very strong function of supervision that is helpful for midwives, but also directly helpful for and benefits women using the service.

Q21 Chair: Juliet Beal, what is your reaction to this? You are a midwife.

Professor Beal: I am a midwife and supervision is something that has been very important to the midwifery profession. Surrounding supervision there are many areas of good practice. However, I have seen other cases, other than in the Ombudsman's report, where there has been a conflict between supervisors of midwives, their organisation and their understanding of how to work within a clinical governance system, which has meant that serious cases have then not been reported through to the management and governance systems of that organisation, and that has affected the learning taking place. I do know that there are cases where women find supervisors of midwives very supportive, and we would not want to take away the good practices around supervision. However, I think we should be waiting for the review of the King's Fund report to come out from that, and I would question whether there is a need for statutory supervision. There is a need for support for the profession, absolutely. As to whether there is a need for statutory supervision in this function, we need to wait for the King's Fund report to come out.

Q22 Chair: It would not say much about the midwifery profession if they were all going to behave much worse because there was not an Act of Parliament, would it?

Professor Beal: No, it would not. Indeed, as the LSA function, which now sits at NHS England, we have looked at the Ombudsman's report very closely, and whilst we are awaiting the report from the King's Fund, we have looked at how we can continue to

protect women, mothers and babies. We have looked at ensuring that each local supervising authority midwifery officer has now a requirement to look at the Ombudsman's report and the recommendations when she—and they are all she—are looking at hospitals and the provision of supervision within hospitals. We have been looking at how supervisors of midwives can do independent investigatory reviews, so they come from another trust or another site to ensure that there is independence within that investigation. When the supervisors of midwifery officers go into a trust, they now look to ensure that supervision is within the governance systems of that trust and it is fed through those processes. We have put several different aspects into supervision to ensure that mothers and babies stay safe in the meantime.

Q23 Greg Mulholland: To follow up on that point, it is important to remind ourselves that these were three cases, and in all three cases the consistent thing identified by the Ombudsman was that supervision and regulatory arrangements failed; in all three they failed, which suggests that they are inadequate. With the greatest respect to the King's Fund, whose work we all respect, the Ombudsman has given two very clear and, it seems, pretty obvious recommendations for a system that is still the same as when it was put in place in 1902: that midwifery supervision and regulation should be separated, which is the obvious one, and then that the Nursing and Midwifery Council should be in direct control of regulation. Why has that not just happened? Why have another review?

Jackie Smith: Can I perhaps help the Committee here? As soon as we received the Ombudsman's report, it was considered by the NMC council. The fundamental issue here is if we wish to make changes to midwifery regulation, we have to do so through changes to our legislation, because the LSA function is prescribed in the NMC's Order. It is set out in the Order, as is statutory supervision, so the NMC is not in a position to simply say, "We accept the recommendations and therefore we are going to implement them."

There is another point I would like to make. We are talking about England here. We are a four-country regulator, and the system for regulation across the four countries differs. It was very well articulated by Dr Poulter, but it does differ in some of the other countries. What we must ensure is that we do not have unintended consequences of implementing these recommendations. It is very important that we understand what the outcome will be of simply implementing these recommendations, which is why we asked the King's Fund to do this piece of work.

Q24 Greg Mulholland: I can understand that from your organisation's point of view. However, going back to the question I was asking with regard to the previous panel, going back to the Minister, do you not understand, Minister, that people who had concerns about the restructuring of the NHS in the Health and Social Care Bill will see this again as another example of ministers saying, "Oh well, it is nothing to do with us. We are not going to micro-manage," when what it needed was political leadership to say, "Yes, the Ombudsman is right. The Ombudsman has shown that there is chronic and serious problem

here that can be solved politically. It needs a new Act of Parliament." It can be solved through political will, political leadership from Ministers, and that has not happened. Instead the buck is passed, let us have another review, let us look at this in a different way. Is that not what we are seeing consistently in these two cases?

Dr Poulter: No, this has been treated in exactly the same way as any other recommendations that will come in to the Minister. The Health and Social Care Bill has nothing to do with healthcare regulation. As the Coalition Government, we passed that Bill, of course, but it has nothing to do with regulation. The regulatory arrangements have not changed significantly as a result of that Bill.

Q25 Greg Mulholland: I am talking about the style of management.

Dr Poulter: There is no style. If you look at healthcare regulation—

Greg Mulholland: Minister, you are the one who did not want to micromanage.

Dr Poulter: Let me answer your question. Let me answer your question about political leadership.

Chair: Minister.

Dr Poulter: We have a record number this year of what are called Section 60 Orders going through, potentially, during the programme this year in order to improve and tighten regulation among health-care regulators, from the GMC to the GDC; we have one going through the Nursing and Midwifery Council now. It is important that the regulators are largely independent from Government as well, because it is important that the professions have independence in that, and there is obviously inbuilt lay representation into many of the regulators. That has always been a consistent approach. It is important when we do have recommendations about patient safety that we act upon them very quickly, but to bring in a Section 60 Order, from a governmental point of view, takes a bit of time, because it is important to make sure that we do not have unintended consequences of legislation that affect sometimes more than just England but also the United Kingdom, and we have taken action on those. For example, we introduced language testing through the General Medical Council for overseas doctors to protect patients through a Section 60 Order to give the General Medical Council powers to do language testing for inside EEA doctors.

There is a lot of activity that has been going on here that I have personally led—a record amount of activity, in fact, I believe, during this Parliament, and we will continue to do so. Where patients are at risk we will always take action, but it is important that action is proportionate; it is important it is seen in the context of the United Kingdom and sometimes regulation can be different. For example, there are sometimes complications and issues that are distinct to Northern Ireland with some of the regulation of some of the professions, and it is important that we do it in the right way. That is why we have worked with the NMC to put in place a review, to make sure that reports back and brings those

forward, and then we will act appropriately when that review comes forward. That is a responsible act of Government to do that.

Q26 Greg Mulholland: Of course it is important that regulators should be independent, but where regulation has been deemed to have failed, which is the situation we have here—regulation is deemed to have failed and is failing, because of the structure of the way it was set up in 1902—do you not accept that the clear political responsibility to deal with that then is clearly not the regulator but clearly Ministers?

Dr Poulter: Yes, and I have just said to you that following the King's Fund report we will take action, as appropriate, to protect the public. The other point that the Chair made about this is very important. We have here a situation in one trust that I believe is not representative of midwives in general. Midwives, as a whole, do look after their patients and women exceptionally well. I believe that the supervisory function works well. There is a discussion on whether it should be statutory or non-statutory, because it is unique, as the Chair raised in his earlier comments. However, there is something here that needs to be looked at. I am sure the King's Fund will come forward with some recommendations and we, as a Government, will then make sure that we act in a way, working with the NMC, so that we can facilitate the protection of women and patients. The broader issue here is that our maternity outcomes are some of the safest in the world, but where there are recommendations we take those seriously and we work up how we can act upon them, and that is exactly what is happening at the moment.

Q27 Greg Mulholland: Finally, Richard—you may or may not feel you can answer—can you give us any insight into how your review is going and what direction of travel it might be taking?

Richard Murray: We are about halfway through, and it is true to say that some of the complexity around the four countries is quite difficult to work through and it is one of the things that means that we only report in December, so I think I am meeting with Dame Julie on Monday. I am meeting with the Welsh Ombudsman on Friday, and so each time we engage with stakeholders there is a mirror across the four countries. I think there is recognition that there needs to be change. The thing that we have to recognise is that both in England and across the other countries some of them have already made changes in response to the Ombudsman's report, and it has left rather more of a patchwork of different arrangements across the four countries and even, indeed, differences within those countries. We need to understand the impact pulling out regulation from that system would have.

Chair: Mr Flynn, you might want to pursue this.

Q28 Paul Flynn: The situation in Wales changed last month with the supervisors of midwives being set up who will work, I understand, for an 18-month period—and they are

midwives; they are not line managers. How do you react to this as an attempt to attack the perceived problem by prevention rather than cure?

Jackie Smith: We are aware of the position in Wales, and I know that the King's Fund is very much interested in that. The danger that emerges with this is that we simply respond to suggestions that are happening across the four countries without taking a holistic view. The Ombudsman identified two issues: the potential for conflict in relation to supervision, investigation and regulation, and the NMC's ability to have regulatory control. The way in which this is structured prevents us having that control in the way that we need it, which is best to protect the public. Therefore, we are interested in what is happening in the other countries, but I think that simply feeds in to the overall view that the King's Fund will take and report to us at the end of this year. It is complicated, as I said in my original answer. It is not just about England and we do have to think about what is best for the public, and that is why this is relevant, but we will take a view when the King's Fund reports to us.

Q29 Paul Flynn: I think the word "holistic" is one that does not carry a great deal of merit with it now, because it assumes a uniform situation throughout the United Kingdom, which is, possibly, not likely to remain united in future and people will not want to seek holistic views. Do you accept the view that it is possible to legislate, supervise, investigate a service into inefficiency by putting a layer of bureaucracy and a level of fear on a service, so that they become box tickers and do not do the common-sense job of following the system, but seek to obey the latest edicts that come down from on high? People talk about legislation and I have been frequently convinced over the years that much legislation that goes through this place does more harm than good. The Welsh change has been put through without legislation. Is this not the sensible way forward?

Jackie Smith: One of the questions that I am sure the King's Fund will ask itself is, does that give the NMC regulatory control? As I say, I think it is encouraging; it is sensible; it is responsible to respond to the Ombudsman's recommendations. I apologise for using the term "holistic", but I suppose what I am saying here is understanding this in the round and coming up with a structure that works best to protect the public. It is the public protection element of this that is so important.

Q30 Paul Flynn: I think we would all agree with that. That is the ultimate aim, but is there not a danger that we have a greatly respected profession who have been beleaguered, who have been subject to a great deal of the blame game that has gone on and would be more reassured by supervision from their fellow midwives rather than from a line manager or someone in a hierarchical position above them? Is this not the best way to reassure the midwives as a profession, which will certainly increase the way that they can improve the service they provide?

Jackie Smith: I do not think anyone would doubt the benefit of supervision. The question here is whether it needs to be in our legislation and what the best way is of ensuring that midwives get the support that they need during their practice and the public is protected.

Q31 Paul Flynn: I understand that the amount of compensation paid out in the area of midwifery in England was about a fifth—£482 million—of the cost of the service. Is this a very large amount compared with other services?

Jackie Smith: I am not in a position to answer that.

Dr Poulter: It is certainly true that the litigation bill for maternity care is relatively large as a proportion of the overall NHS litigation budget. However, putting that into context, when things go wrong in maternity, we are dealing with the tragic event of a child who will need care for the rest of its life and, quite rightly, the family need to be supported in order to deliver the right support and care, and that is expensive. A lifetime of care costs is, of course, expensive. In terms of the quantity of claims, though, we can be reassured. I think about one in 1,000 births ends up in any form of litigation, but it is not the quantity but the quantum of the claims that is the issue that we are dealing with here that is the main driver behind litigation.

What that also says to me is that we do have some very dedicated and very hard-working midwives and obstetricians who deliver generally very safe birth outcomes. The important thing is that we continue to look at every measure we can to address things when they go wrong and to learn from clinical governance arrangements to improve things, which is what the Ombudsman's report is about. It is saying that on the clinical governance side at the moment there is a disconnect between the supervisory relationship of midwives under the NMC regulation and how that interacts with clinical governance in trusts. That is something that does need to be improved, because if we want to stop bad things—which, fortunately, do not happen very often—from happening, we need to make sure that appropriate steps are being taken by supervisors of midwives to feed in when things that they hear or pick up in their supervisory role may affect the quality of care that is being provided to women.

Q32 Paul Flynn: Why should midwives be in a different position from other professions in the health service? I know the legislation and rules go back a long time, but are there any other professions in which supervision is protected by statute in this way?

Dr Poulter: Not that I am aware of, no. I think this is a unique position.

Q33 Paul Flynn: The Nursing and Midwifery Council regulate nurses and midwives, I understand, but there is no equivalent of supervision in the nursing sector. Why is there a difference in supervision between midwifery and general nursing?

Jackie Smith: Well, as we have said, this is something that has been in place since 1902, so this is a system that was devised over 100 years ago when midwives were working in very different environments. That is why I think it is important that we do look at the recommendations that the Ombudsman has made and think about what is best going

forward. It is a structure that has been in place a long time, but it does not exist for other healthcare professionals.

Q34 Paul Flynn: I do not think the fact that it goes back to 1902 is such a bad thing. That was the time of the great Liberal Party reforms that came in that, in many cases, have not been improved upon to this day. I am just agreeing with my colleague here. There is this great pattern about different systems throughout England and in Wales now. Knowing that legislation is likely to be slow and often likely to be self-defeating, it is going to expose the whole of the profession to a further tranche of criticism against them and morale is pretty low as it exists now, is it not better to follow the Welsh model? It is far from perfect, but it is popular with the profession, it will increase their morale and be acceptable generally to them, and a happy midwifery profession is almost certainly one that is going to deliver in a superior way to one that feels under attack and beleaguered.

Jackie Smith: My response to that is we need to wait to see what the King's Fund says. It is an interesting move. It is one that we will consider, but we need to see what else is happening out there. You are right it is just three cases, but three very important cases. They pose some questions that we need to answer. I am not sure at the moment that we have those answers. I do not want to pre-empt what the King's Fund will say, and it is important to wait to see where their review takes us.

Paul Flynn: Okay, we wait for the King's Fund then.

Q35 Mrs Gillan: Chair, what strikes me about this is that the Ombudsman published this report on 10 December 2013 or at least it was printed in this House, and yet again we seem to have lots of organisations involved, lots of people co-ordinating, producing reports and raising doubts, but the uncertainty still exists and we just do not seem to be getting on with it. Would the panel care to comment on that and what can we look at as a timescale for getting this matter sorted out?

Jackie Smith: Can I start by offering a comment? We have created the impression here that nothing has happened with midwifery regulation since 1902, and that is not the case.

Q36 Chair: Well, nothing has happened since 2013. That is the point we are making.

Jackie Smith: We have introduced midwives' rules and standards, which we did at the beginning of 2013, to look at strengthening the process that we have, bearing in mind that it is set out in our legislation. We said to supervisors of midwives and LASMOs that there needs to be clear separation around investigation and supervision.

Q37 Chair: I respect all that, Ms Smith, but what the Ombudsman's report says is that whatever you have done prior to 2013 is not working and we need to change it.

Jackie Smith: Absolutely, and we accepted those recommendations. We are limited, of course, because we cannot make fundamental changes unless our legislation changes.

Q38 Chair: This would not be a controversial change to make though. It would not be something that takes up a huge amount of parliamentary time. If the legislation had been drafted it would have been in the Queen's Speech, so why was it not drafted?

Dr Poulter: What we can do on legislation is we can perform what I outlined earlier. We have had a record programme this year of what are called Section 60 Orders, which effectively allow us to amend legislation concerning various regulators and there is a lot of work going on with that at the moment. However, because of the complexities that were outlined earlier involving not just England but more broadly, it was important to ask for a bit more work to be done on this.

Q39 Chair: What is timetable now, to answer Mrs Gillan's question?

Dr Poulter: After the King's Fund report back in December this year, discussions will be had between the Department and the NMC looking at how to make sure that we can act to then protect the public, having taken into account the report and the complexities.

Q40 Chair: When could we expect the legislation to be ready? Presumably, this will be a Section 60 Order, so you have a streamlined process.

Dr Poulter: If we are to act immediately, my understanding is we would have to use that form of Order, and it would take, usually, about six to nine months for that to be enacted. There is a consultation period; we have to respond to the consultation; it then has to go through and then be laid before Parliament and then receive Royal Assent, so about that sort of period. That will be doing it very quickly, but I am prepared to undertake to the Committee that we will take this forward with great vigour when we have the King's Fund report.

Q41 Kelvin Hopkins: It looks like, as and when we get the legislation, it will be after the next election, so it may even be somebody from my party rather than the Minister's, but there we are, we will see.

Mrs Gillan: Or possibly not.

Kelvin Hopkins: Possibly not. I raise that as a possibility; I personally hope, but there we are. I know from my own background that there are many problems in midwifery: shortages, of midwives working under terrible pressure where there are high birth rates, such as in my own constituency. They do a fantastic job, but every now and again there are cases, as we have heard about, which are very distressing indeed. Nothing is more distressing than a child perhaps not surviving birth and so on, and that has happened in my own constituency, I may say, as well. There are plans eventually to legislate, even though they might be very slow. Is that the case?

Dr Poulter: Yes, absolutely. We will receive the report, and then we will take into account the Ombudsman's report and what comes in that report. I give you my undertaking that I will immediately take appropriate action to legislate, where that is appropriate, to protect patients. I would hope that an incoming Government, whichever persuasion that may be in the future, would always act in that responsible manner as well.

Q42 Chair: Ombudsman?

Dame Julie Mellor: I wanted to ask for view from the NMC. In our report, we said, "We recommend these changes are considered in the context of the anticipated Bill on the future of healthcare regulation more broadly." I would just like to ask Jackie Smith for her view. How would you like this legislation taken forward, if there is a need for legislative change?

Jackie Smith: As we said earlier, we had hoped that we would see the Law Commission Bill, but that is not the case. Depending on what the recommendations are, there would need to be a question around what we do with the LSA function and whether that needs to exist. If it does, where should it sit? Should the NMC have control over it? Also, what happens to supervision? There are two key areas here that need to be considered as part of the legislation.

Obviously, as Dr Poulter has said, there is an election looming, so it does depend on the incoming Government. However, if the recommendations are that the NMC must have control, we have to think about how that is going to best work in the four countries, because this is not a simple piece of legislation. There are a number of factors at play here. If I could return to the comment earlier, in terms of legislation it appears relatively straightforward, but there is clearly a depth of feeling around the value of supervision, which does make this a complicated area, particularly for the King's Fund and for the NMC when we come to consider next steps.

Q43 Chair: We all understand that depth of feeling, because the midwifery profession relies on a huge degree of personal responsibility of midwives and autonomous decision making. For that reason, we value the midwifery profession very highly. However, I cannot think of any other profession where this conflict of interest would be allowed to persist when we know that it is maybe not costing lives but certainly resulting in far less scrutiny than there should be when mistakes are made—and therefore lost opportunities to learn and improve midwifery in this country.

I think I speak for the Committee: once again, we feel the system is making a great meal of something that should just be got on with. If the dozen or so key decision makers put themselves in a room for a few days, I bet this could be sorted out and a recommendation could be made. I would urge the King's Fund absolutely to speed up what you have been asked to produce—and perhaps we can introduce this legislation before the election, which, as I say, should not be controversial. It is difficult for us to understand why an urgent

recommendation that is brought to the House in an exceptional report from the Ombudsman should be treated in this way.

Minister, may I charge you to take away that feeling from this meeting?

Dr Poulter: Yes, absolutely. I have already given my commitment. As in a number of areas of healthcare regulation, where there is any risk to patients or the public, I will take action in a swift manner as soon as we have the report back. We will then engage about how we can do that. Ultimately, this is about making sure we protect patients and the public from harm.

Q44 Kelvin Hopkins: I have just one more question. I come from a trade union background, particularly with a union with a major interest in the health sector. Are workplace representatives going to be consulted directly as well to make sure their view is heard rather than just all the professional bodies that surround the health industry?

Dr Poulter: The King's Fund can outline what they are doing as part of their discussion, but, more broadly, if we were to achieve legislative changes through a Section 60 Order, there is a consultation period on that, which can be as little as six weeks but is normally about eight weeks. It can be longer than that—up to 12 weeks sometimes. Representations can be made and any questions can be heard.

To reassure you, I am not aware of great trade union or workforce interest in these issues beyond being broadly supportive, because, actually, it is in the interests of the integrity of the healthcare workforce. The reason we are in business as doctors or midwives is to protect and look after patients. Where a legislative change is about protecting patients, the workforce are generally very supportive and behind those.

Jackie Smith: Of course, the Royal College of Midwives will have very strong views. I know they are a key stakeholder that the King's Fund are consulting with.

Q45 Chair: The Royal College of Midwives recognises that statutory supervision is not appropriate.

Jackie Smith: I am not sure that is their position. They recognise there is an issue here that needs to be resolved. They absolutely see the benefit of statutory supervision and would wish to see that retained. That is my understanding.

Q46 Chair: Quite near the beginning of this session, I asked, "Where is the resistance to this change coming from?" It seems to be coming from your organisation and you.

Jackie Smith: Certainly not, no. We acted very quickly on the back of the Ombudsman's report; we commissioned the King's Fund; we accepted that there was a structural flaw.

We accept that this needs to change. It is a system that has been in place since 1902. There is certainly no resistance from the NMC.

Q47 Chair: I have been handed a note from the Royal College of Midwives. It is a letter to me, in fact, and it says, "The view of the Royal College of Midwives is that the current shortage of midwives and the lack of a capacity within the system to provide support of this nature… It will not happen if it is not retained in statute." I see no evidence for that. Where is the evidence that is actually the case?

Dr Poulter: Sometimes, changes can always be concerning. One of the issues is that all health-care professionals value supervision or peer review if you are, say, a senior professional. That is something that should happen automatically in organisations. Generally, the strength of the midwifery system is that, because of the regulatory structure, notwithstanding the issues we have discussed, there is a structure for supervising midwives and for giving support to newly qualified midwives and other midwives through that. That is a great strength of the process.

Depending on the recommendations of the report, if changes are going to be made, as it appears there is a strong case for, there needs to be reassurance that the supervisory and supportive structure that is in place will not be affected by that. Actually, whether it is on a statutory footing or not, that should not affect that supervisory structure.

Q48 Chair: Minister, this is a challenge for your leadership. It requires your leadership to reassure midwives, if I may use a rather apt phrase, that the changes in the regulation are not going to throw the baby out with the bathwater. We want to retain what is good about midwifery, but that might not necessarily mean retaining statutory supervision. The kind of support that midwives give to each other is about how they behave and the values that midwives have as a profession. I doubt very much it is actually to do with the statute. However, we need to reassure them on that point as quickly as possible in order to make progress on that.

Juliet Beal, you are itching to make a final comment—and it will be the last, because we must wind up.

Professor Beal: When looking at supervision, there is a fear among the profession that if supervision is not statutory it will not continue. They look at nursing colleagues, where supervision for nurses, which is not statutory, has not been put in in a full way and not implemented in organisations, because there is not enough capacity in the system.

Q49 Chair: There is a lack of trust that the system will deliver the kind of support without statutory unpinning.

Professor Beal: Yes.

Chair: That is a very important point to make and we take that on board. I hope the Minister takes it on board as well. However, that might not mean that the statutory supervision has to remain, and it certainly must not mean that the current regulatory arrangements remain. There is nothing else to add. Can I thank the Panel very much indeed? You have been very open with us. We do look forward to swift progress, Minister. We are charging you with that responsibility. Thank you for coming today.