

1.) Introduction to issue

The issue relates to how the Nursing and Midwifery Council should be classified. This case was looked at previously but no formal decision was reached. New rules regarding Market Regulatory Bodies have been introduced in MGDD 2014 and this body will be assessed against these rules.

2.) Background

The Nursing and Midwifery Council (NMC) was established in 2002. It is an organisation which was set up by parliament through the Nursing and Midwifery Order 2001. The NMC is the regulator for nurses and midwives in England, Wales, Scotland and Northern Ireland. Their core function is to establish and improve standards of nursing and midwifery in order to serve and protect the public. The NMC is a registered charity and they are accountable to the charity commission and the Scottish charity commission. Their main activities are:

- Maintaining the register - NMC keeps the register of nurses and midwives who are legally allowed to practise in the UK. As at 31 March 2014 there were 6080,858 nurses and midwives on the register.
- Standards promotion and development - They set standards for education and training ensuring that nurses and midwives admitted to the register are qualified to practise.
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- Fitness to practise - They protect the public from nurses or midwives whose fitness to practise may be impaired. They have the power to stop or restrict a nurse's or midwife's practice in the UK if they pose a risk to public safety.

3.) The Unit

The first question to consider is whether NMC is an institutional unit. ESA 2010 chapter 2.12 defines and characterises an institutional unit as;

2.12 Definition: an institutional unit is an economic entity characterised by decision-making autonomy in the exercise of its principal function. A resident unit is regarded as constituting an institutional unit in the economic territory where it has its centre of predominant economic interest if it has decision making autonomy and either keeps a complete set of accounts, or is able to compile a complete set of accounts.

To have autonomy of decision in respect of its principal function, an entity must be:

- (a) entitled to own goods and assets in its own right; it will be able to exchange the ownership of goods and assets in transactions with other institutional units;
- (b) able to take economic decisions and engage in economic activities for which it is responsible and accountable at law;
- (c) able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts; and
- (d) able to draw up a complete set of accounts, comprised of accounting records covering all its transactions carried out during the accounting period, as well as a balance sheet of assets and liabilities.

NMC is:

a) owns goods or assets in its own right, including buildings and other operational assets like vehicles and IT equipment according to its annual accounts for 2013/14. The UKCC (the NMC's predecessor body) acquired the leasehold interest in 23 Portland Place, London W1B 1PZ from the General Nursing Council for England and Wales at nil cost. The lease expires in the year 2933.

b) able to take economic decisions and engage in economic activities for which it is held accountable at law. It is accountable to Parliament through the Privy Council. The Nursing and Midwifery Order

2001 sets out the reporting mechanisms required from NMC.

c) able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts. According to its 2013/14 accounts it had creditors of about £49m. Furthermore it is also able to invest its surplus funds as it considers appropriate to generate income.

d) able to keep a set of accounts and has been filing annual accounts since 2002/03.

As such, NMC meets the requirements for classification as an institutional unit.

4.) Assessment of Control (NPI Indicators)

4.1) Governance

The Council members are appointed by the Privy Council. The Privy Council is classified to the central government sector.

According to the NMC website:

"The 12 members of the Council are appointed by the Privy Council. The Nursing and Midwifery Order 2001, and other applicable legislation, states that one half of Council members (six members) must have a background in nursing or midwifery. The other half are known as 'lay members' and are selected for skills and expertise gained in other professional fields."

The Privy council is *"[...] is one of the oldest parts of Government, but it has, over time, adapted to reflect the fact that the United Kingdom is a constitutional monarchy. Appointment to the Privy Council is for life, but only Ministers of the democratically elected Government of the day participate in its policy work."*

The Professional Standards Authority for Health and Social Care (PSA) oversees their work and reviews their performance each year. The NMC's work is also scrutinised by the UK parliamentary Health Committee.

4.2) Contractual Agreements

The Nursing and Midwifery Council Standing Orders 2001 is designed to ensure that Council and committee business is conducted as effectively as possible. The following committees have to be established:

- Investigating Committee
- Conduct and Competence Committee
- Health Committee
- Midwifery Committee

The council can establish other committees as it considers appropriate and delegate functions to them other than the power to make rules.

The Nursing and Midwifery Council Standing Orders 2001 is attached in the background information tab.

4.3.) Funding

The NMC raises its funds from the registration and re-registration fees. These are £120 per registrant. The budget for 2013-14 according to their annual accounts is £62.8m. They also receive a grant of about £1.4m from the government. based on their 2013-14 annual accounts, they received the following in income:

- periodic Fees (membership) £61m
- registrations £1m
- verifications £0.1m

- interest receivable £0.7m

4.4.) Government Risk Exposure

The NMC is sponsored by the Privy Council which is classified to the central government.

Based on the above evidence it appears that the NMC is public sector controlled.

5.) Market Regulatory Bodies

5.1) Is the NMC a market regulatory body?

MGDD 2014 I.6.1: 7-9 chapter covers market regulatory bodies:

7. This chapter also discusses market regulatory bodies (also named authorities, agencies, regulators, etc.) which do not distribute subsidies or grants to producers and do not act on markets in order to smooth market fluctuations by purchasing/selling goods in a contra-cyclical perspective (these are covered by ESA 2010 20.53-20.54). Market regulatory bodies described by this chapter are entitled by law with the powers to elaborate some regulations (norms, provisions, obligations, etc.). These regulations are legally binding and any actor on the market for a given activity is obliged to follow, at the risk of possible prosecution (sanctions). Thus, market regulatory bodies exert decision-making on some key variables influencing the way in which units carry out an activity and to receive revenue from it.

8. Market regulatory bodies may also be responsible for controlling such norms although this task could be delegated to a specialised unit without normative powers. In addition, market regulatory bodies may also exert ex-ante control on the agents wishing to take part in an activity in order to assess their competence, professional capacity (licenses, permits to operate), provide some assurance to consumers on the professional expertise and qualification of the professional category (doctors, lawyers, etc.). There are different models among EU Member States as regards the units responsible for such tasks. In recent decades, such units have been developed e.g. in the telecommunication, transportation or energy sectors.

9. Apart from the market regulatory bodies described above, in most EU Member States, there are numerous "professional associations", of which a membership may be compulsory or voluntary. The main aim of these entities is the "defence" of the interests of their members as a whole, notably by contacts with government or regulatory authorities, but they may also not be confined to this. Notably, professional associations may also exert professional control on these actors, as mentioned above. Generally, the entities use legal provisions established by government but they may also have more or less extended normative and regulatory powers which influence the way in which some actors in specific fields carry out their activity, by delegation from government. Government may, for instance, set up a general legal framework and these entities are then given the task of elaborating practical guidance on how to meet the requirements. Professional associations may even have the power to impose some (possibly financial) sanctions in cases of professional negligence.

Looking at the above rules, specifically I.6.1:8, the NMC say this about themselves according to their website and annual accounts for 2013-14:

"1. The Nursing and Midwifery Council (NMC) is the independent regulator for nurses and midwives in the UK. Our primary purpose is to protect patients and the public through effective and proportionate regulation of nurses and midwives. We are accountable to Parliament, through the Privy Council, for the way in which we carry out our responsibilities.

2. We set and promote standards of education and practice, maintain a register of those who meet these standards, and take action when a nurse's or midwife's fitness to practise is called into question. By doing this well, we promote public confidence in nurses and midwives and in regulation.

3. The Professional Standards Authority for Health and Social Care (PSA) oversees our work and reviews our performance each year. Our work is also scrutinised by the UK parliamentary Health Committee. The findings and recommendations of both help inform and shape our work."

From the above evidence it appears that NMC is a market regulatory body.

5.2) Treatment in National Accounts of Market Regulatory Bodies

MGDD 1.6.2: 21 says this about treatment of Market Regulatory Bodies in national accounts:

21. In many cases, market regulatory bodies are usually considered government units (in the central government sub-sector as they exert their authority on a whole country), whatever their legal status, the way the members are appointed, the degree of independence from executive units, etc. The reason is that they do not act only in the interest of the market operators, but also (and possibly essentially) for collective purposes, i.e. for the benefit of the community, notably in order to enhance the confidence of consumers and/or because of the importance of such activity in the production system.

The NMC sets standards of education, training, conduct and performance so that nurses and midwives deliver high quality healthcare. The investigate nurses and midwives who fall short of standards and maintain a register of those who are allowed to practice in the UK. Their core function is to establish and improve standards of nursing and midwifery in order to serve and protect the public.

The above evidence indicates that the NMC act in the interest not only for the industry (in this cases those who hire nurses and midwives) but also for the benefit of the community as a whole.

6.) Classification recommended

The Nursing and Midwifery Council is a regulatory body which act not only in the interest of market operators but also for the benefit of the community as a whole and should therefore be classified to the central government sector (S.1311).

7.) Decision

The case has been reviewed by Ed Moskalenko (ESCC trainee member) and Leonidas Akritidis (Full ESCC member) and have agreed with the recommendation that the Nursing and Midwifery Council is a market regulatory body and should be classified to the central government sector (S.1311).

This decision was approved by the ESCC committee on the 18th of November 2015

8.) Implementation

9.) Impacts

TRANSACTIONS

1.) Issue

The Nursing and Midwifery Council receives its income from compulsory membership fees. In 2013-14 This amounted to about £62m.) The membership are paid on registration and every 3 years after for re-validation. These fees are also used to carry out 'Fitness for Practise' hearings where nurses or midwives are being investigated.

2.) Analysis

Extract from NMC's Annual accounts												
	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Incoming Resources	14,944	17,650	20,213	23,656	27,447	34,063	49,395	51,708	52,467	52,781	53,324	63,513
Resources expended	-18,172	-19,525	-20,902	-23,477	-23,666	-30,725	-35,556	-36,738	-44,716	-61,191	-61,972	-62,053
Net (outgoing)/incoming resources from operations	-3,228	-1,875	-689	179	3,781	3,338	13,839	14,970	7,751	-8,410	-8,648	1,460

Incoming resources are mainly from fees and registrations.

Resources expended are mainly for standards promotion and policy development, education, maintaining the register and fitness to practise.

MGDD14 I.6.2:22 says this about the funds received:

Market regulatory bodies may be financed by government but they may be also entitled to directly receive funds from the regulated agents, whether these are regular or not. The classification of such receipts must follow the general rules set in ESA 2010. If the producer units are required to pay globally an amount which corresponds to the cost incurred by the regulator in performing its missions, this should be recorded as a service fee. If the levies are largely above the regulatory costs ("out of all proportion to the costs" according to ESA 2010), they are rather recorded as a tax.

3). Membership Fees

The principle source of NMC revenue comes from charging the regulated actors. The initial charge is described as a registration fee which is followed by mandatory re-registration (membership) charges. As described in the section above, the unit has characteristics of a market regulatory body, which offers two options for the classification of these fees: as either taxes on production (D.29) if it is not required and charged with aim of raising revenue for government, or as output (P.1) if charged for a genuine regulatory service in proportion to the costs of regulation. NMC's 2013-14 annual accounts describe the registration fee as follows:

"The registration fee level is reviewed annually by the Council. The volume and complexity of fitness to practise referrals have continued to increase, together with a need to invest in our other regulatory commitments. This means that despite significant efficiency improvements and savings that we have made, and with no immediate prospect of legislative change, the cost of regulation remains at £120 per registrant."

From the above evidence, NMC set their membership fees according to the cost of regulating the nurses and midwives. There is no evidence to suggest that NMC redistributes the raised funds to other parts of the general government sector, which could be an argument for treating the fees as a charge for the genuine regulatory service (P.1). The further (yet an easier) question would then be whether the 'service' is a market or non-market one. The nurses and midwives are required through legislation to register with the NMC in order to practice and therefore cannot change the 'services' they wish to receive. The NMC are obligated to act as regulators through legislation and therefore they will have to continue to provide the services regardless of the price of the membership fees;

generally, it can also be argued that market for regulatory activities is not a likely economic construct with the supply side fixed by the regulatory framework with the functions delegated to NMC in this specific instance. On that basis, the classification of the fees as fees for non-market output (P.131) seems most appropriate. .

According to ESA2010 chapter 3.23:

Definition: non-market output is output that is provided to other units for free, or at prices that are not economically significant.
Non-market output (P.13) is subdivided into two items: 'Payments for non-market output' (P.131), which consists of various fees and charges, and 'Non-market output, other' (P.132), which is output provided for free.

4.) Conclusion

Based on the evidence above and ESA2010 chapter 3.23 the service will be classified as 'Payments for non-market output' (P.131)'

5.) Decision

The case has been reviewed by Ed Moskalenko (ESCC trainee member) and Leonidas Akritidis (Full ESCC member) and have agreed service is a fee and should be classified as 'Payments for non-market output' (P.131)'

This decision was approved by the ESCC committee on the 18th of November 2015

6.) Implementation

7.) Impacts