

# Special report to the Minister of State for Health Services on the Nursing and Midwifery Council

11 June 2008



**Contents**

Summary	2
1. Introduction	5
2. The scope of our performance review and our enquiries	5
3. Performance review of the Nursing and Midwifery Council	6
4. Conclusion	15
5. Recommendations	17
Annex 1	18
Annex 2	19

## Summary

On 14 March 2008 the Minister of State for Health Services, Ben Bradshaw MP, wrote to the Chief Executive of the Council for Healthcare Regulatory Excellence asking CHRE to expedite its annual performance review and if it would address ‘the central question of whether the NMC is fulfilling its statutory functions.’

This report is CHRE’s response to the Minister’s request.

CHRE reviews the performance of the health professional regulators against five key standards and a set of minimum requirements of each standard. The performance reviews focus on the outcomes for regulation and the protection of patients and the public. This report does not deal with individual complaints by or about individuals involved with the Nursing and Midwifery Council<sup>1</sup>.

This CHRE performance review concludes that the NMC is carrying out its statutory functions but fails to fulfil these to the standard of performance that the public has the right to expect of a regulator. The NMC maintains a register, takes action when a registrant’s fitness to practise is called into doubt, assures the quality of professional education, and sets and issues standards and guidance for the nursing and midwifery professions. These are the basic functions of a regulator. However, there are serious weaknesses in the NMC’s governance and culture, in the conduct of its Council, in its ability to protect the interests of the public through the operation of fitness to practise processes and in its ability to retain the confidence of key stakeholders.

The NMC’s relative strengths are in its standards and guidance and registration processes.

The NMC has had difficulties with the administration of fitness to practise for many years. There were real problems, including a large financial deficit, at the time of the transfer of responsibilities to the NMC from its predecessor body, the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, in 2002. These were daunting challenges but, although the NMC made a difficult but necessary decision to increase registrants’ fees significantly, it has not made the necessary long-term strategic investments in the infrastructure required to create a long-term solution. We are told that it is about to do so, and it must with a greater sense of urgency than it has shown so far on this matter.

We identify in this report six areas of significant weakness in the management of fitness to practise by the NMC. These are:

- the absence of an IT-based case management system
- delays in dealing with cases

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<sup>1</sup> For clarity we use the following in this report

The Nursing and Midwifery Council or NMC – the whole organisation

The Council – the elected and appointed body of trustees responsible for strategy and oversight

The Office Holders – The President, Vice-President and chairs of committees

The Executive – the senior staff team led by the Chief Executive, responsible for operations, for the delivery of the business plan and for ensuring the Council can fulfill its role.

- timeliness and poor quality of correspondence which is sometimes insensitive, misleading and/or discourages people from making complaints about a registrant's fitness to practise
- the quality, comprehensiveness and variability of information and statistics provided by the executive to Council members on fitness to practise cases
- concerns about delays in setting up systems for the assessment of fitness to practise panel members ('panellists') and decisions to extend the terms of office of existing panellists
- delays in providing agreed training for panellists on child protection issues.

They are dealt with in more detail in 3.3 below.

No one improvement would help rebuild the reputation of the NMC more than resolving the administration problems and backlog of cases in fitness to practise, and yet too often sectional interests and the internal difficulties of the NMC have distracted the executive and some members of Council from their task of protecting patients and the public.

Our other area of major concern about the NMC is its governance and external relations. We report in 3.5 below on four areas of concern:

- the inadequate operation of the governance framework, including policies, committees and decision-making, and organisational behaviour
- the inappropriate conduct of Council members and lack of strategic leadership
- the inconsistent availability and provision of information to Council to ensure effective planning and decision-making
- a lack of confidence from key stakeholders.

In meeting with members and reviewing the conduct of the Council and the executive we have borne in mind the allegations made in an Adjournment Debate in Westminster Hall on 11 March 2008 of a 'culture of bullying and racism'. No one made allegations of racism to us and we neither heard nor saw evidence of racism. We note that allegations of racism are the subject of an internal investigation and are also to be tested in a tribunal, and therefore draw no conclusions on this matter.

We have seen and heard evidence of inappropriate and aggressive language by Council members, between each other and towards staff, and have heard accounts of emotional or aggressive behaviour in meetings. This behaviour is undoubtedly experienced as bullying by many people involved. The immediate involvement of lawyers in all and any complaint is also perceived as intimidating by those involved. These behaviours are a symptom of the NMC's problems and also exacerbate them.

Allegations have also been made that the NMC wasted money on legal fees. The constant recourse to lawyers in all and every complaint has not been helpful. Nevertheless trustees have a duty to seek professional advice especially when dealing with disputed decisions.

In this context we conclude that the legal costs were not excessive. The unwillingness of office holders and the executive to disclose these costs clearly and fully to Council members was unjustified.

The NMC has made a number of commitments to improving its work and these are mentioned in this report. As this report and our recommendations make clear more are needed. We will keep the NMC's progress in addressing the issues identified in this report under review over the next year.

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## 1. Introduction

1.1 Complaints were made in a private letter from some members of the Council of the NMC to the Minister of Health of June 2007. These and other complaints became public in an Adjournment Debate in Westminster Hall on 11 March 2008. A number of allegations were made by Mr Jim Devine MP, in particular that the NMC appeared to be a 'fundamentally dysfunctional organisation' and that there was 'an ingrained culture of bullying and racism.' It was also alleged that 'legal fees are paid not to address the organisation's proper purposes', that the Council was not given the necessary information by the executive to hold it to account and that the Council's decisions were ignored by the executive.

1.2 On 14 March 2008 the Minister of State for Health Services, Ben Bradshaw MP, wrote to the Chief Executive of the Council for Healthcare Regulatory Excellence asking CHRE to expedite its annual performance review and if it would address 'the central question of whether the NMC is fulfilling its statutory functions.'

1.3 This report is the response to the Minister's request. In carrying out its performance review of the NMC, the Council for Healthcare Regulatory Excellence is acting under Section 26(2)(a) of The National Health Services Reform and Health Care Professions Act 2002, which says 'The Council may...investigate, and report on, the performance of each regulatory body of its functions'. Section 27(1) of the same Act states that 'Each regulatory body must in the exercise of its functions co-operate with the Council'.

## 2. The scope of our performance review and our enquiries

2.1 CHRE reviews the performance of the health professional regulators against five key standards and a set of minimum requirements of each standard. The standards were developed during 2007 in collaboration with the regulators themselves, and focus on the outcomes for regulation and the protection of patients and the public. An initial self-assessment by the regulator is tested by CHRE through written and face-to-face exchanges. The five functions on which we assess performance are below. The full document appears at Annex 2.

- First Function: Standards and Guidance
- Second Function: Registration
- Third Function: Fitness to Practise
- Fourth Function: Education
- Fifth Function: Governance and External Relations

2.2 Our performance review of the NMC is against these standards as it is for all the other regulators. The overall performance review of health professional regulation will be published in summer 2008. We are publishing this separate report on the NMC to meet the request of the Minister and to enable us to examine in more detail its governance and the allegations made about its performance.

2.3 It is important to note, however, that it was not within the remit of the CHRE investigation to deal with specific complaints by or about individuals connected to the NMC and we have not done so. A number of formal complaints covered by six investigations are being taken forward by the NMC.

2.4 As the NMC is registered as a charity, we have discussed our investigation with the Charity Commission and kept it informed of progress throughout. The Charity Commission is an independent body and it is entirely a matter for it how it proceeds.

2.5 We have reviewed some hundreds of pages of Council and committee papers and minutes, other records, emails, reports and statistics.

2.6 We received numerous items of correspondence from interested parties, including copies of letters and emails written over the last four years, all of which we have noted although some were outside our remit. We have not taken account of anonymous letters as we have no means of validating them.

2.7 We have held face-to-face (or in a few instances telephone) interviews with 10 office holders, committee chairs, members and former members of the Council. We have also had interviews with the Chief Executive at both the beginning and end of our investigation. These interviews were confidential to enable full and frank discussion to take place.

2.8 We have received complete co-operation throughout from everyone concerned. The NMC has been open and helpful, and has provided us with all the information we asked for without hesitation including arranging for us to view legally privileged documents under a confidentiality agreement. Everyone we asked to speak to agreed. The NMC and some individuals have gone to considerable trouble to provide us with background documentation.

### **3 Performance review of the Nursing and Midwifery Council**

#### **3.1 Standards and Guidance**

3.1.1 Publishing standards and guidance is a strong area of the NMC's work. The NMC's general standards prioritise patient safety and interests. Additionally, there are separate standards where needed and relevant for particular groups of nurses or midwives. Guidance is comprehensive and new guidance is developed when new practices require it. We particularly welcome the NMC's recognition that it needs to strengthen the advice given to nurses in the care of older people, and that this has come about from the analysis of fitness to practise cases. Guidance also takes account of developments in nursing and midwifery in the four countries of the United Kingdom.

3.1.2 The NMC has reviewed its Code of Professional Conduct and published a new document: *The Code: standards of conduct, performance and ethics for nurses and midwives*. The code has now been publicly launched.

3.1.3 The Website provides the information that registrants and members of the public need and has a useful *A-Z of Advice*.

3.1.4 The NMC sets satisfactory standards for Continuing Professional Development. We note, however, that the Council decided on the basis of cost not to proceed with auditing CPD undertaken by nurses and midwives in order to work towards revalidation.

## 3.2 Registration

3.2.1 The NMC receives over 30,000 applications for registration annually and in 2007 its call centre processed over 600,000 enquiries. The NMC also receives very large numbers of international applicants. This volume creates significant challenges, nevertheless applications are processed efficiently and there are procedures for bringing in additional staff during busy periods of the year.

3.2.2 The NMC has effective checks on applicants' identities, qualifications and good character. The NMC has a process set up with the British Council to check the International English Language Testing System certificates of nurses without European Economic Area rights.

3.2.3 The Register is clear and accessible and shows whether a nurse has been struck off or is subject to sanctions. The Register records when conditions have been imposed on a registrant but does not inform members of the public what these conditions are. This is not satisfactory as it is important that the Register is complete and accurate. The NMC tells us that remedying this is part of its ICT strategy. When checking the Register we found two cases where sanctions had been imposed on a registrant but no record of this appeared on the Register. We were told this was a technical error, and that it has been rectified since CHRE brought it to the NMC's attention. In order to protect the public the Register should be complete and accurate, and we will check on progress in next year's performance review.

3.2.4 The NMC does not collect diversity or ethnicity data on its registrants and is the only regulator that does not attempt to do this. The NMC is intending to collect this data under its Equality and Diversity Strategy. We welcome this and will note progress next year.

## 3.3 Fitness to Practise

3.3.1 The NMC has made progress in carrying out some aspects of its fitness to practise function but we have serious concerns about whether all of its current processes are fit for purpose. Without doubt some of the weaknesses are the result of historical problems. The NMC had a large financial deficit at the time of the transfer of responsibilities to it from the United Kingdom Central Council for Nursing, Midwifery and Health Visiting.

3.3.2 Fitness to practise is generally the most high profile of the regulators' functions. Ensuring that fair, proportionate and timely action is taken when a registrant's fitness to practise has been called in to question is crucial for the following reasons:

- to ensure that the patients are protected from direct harm
- to maintain public confidence in the profession



- to maintain public confidence in the system of regulation
- to ensure that registrants are treated fairly
- to ensure that registrants have confidence in their own regulatory body.

3.3.3 Since the latter part of 2006 there have been a number of important achievements and improvements in relation to fitness to practise and we appreciate that these have been achieved in circumstances which are far from ideal. The following are all notable developments and achievements in the view of CHRE:

- progress made in reducing the backlog of cases that have been referred to the Conduct and Competence Committee
- an increased volume of cases heard by the Conduct and Competence Committee
- improved feedback to fitness to practise panel members ('panellists'), including CHRE learning points, especially through the 'Best Practice' publication
- the establishment of an Appointments Board to oversee the recruitment, training and assessment of fitness to practise panellists.

3.3.4 In spite of these achievements the current fitness to practise processes of the NMC are not always sufficiently robust to protect the interests of the public and hold the confidence of the profession.

3.3.5 The NMC does not always provide a good level of service to complainants. Delays in dealing with cases and, on occasions, insensitive, misleading or unhelpful communications from the NMC do not assist in the timely and appropriate assessment of fitness to practise cases. Our biggest concern is that some complainants or potential complainants might be put off from pursuing legitimate concerns about registrants. This cannot be in the public interest.

3.3.6 Our main areas of concern about the NMC's fitness to practise work relate to the following areas:

- the absence of an IT-based case management system
- delays in dealing with cases
- timeliness and poor quality of correspondence which is sometimes insensitive, misleading and/or discourages people from making complaints about a registrant's fitness to practise
- the quality, comprehensiveness and variability of information and statistics provided by the executive to Council members on fitness to practise cases
- concerns about delays in setting up systems for the assessment of fitness to practise panellists and decisions to extend the terms of office of existing panellists

- delays in providing agreed training for panellists on child protection issues.

#### *The absence of an IT-based case management system*

3.3.7 In CHRE's view the absence of an IT-based formal case management system is a fundamental weakness. Many other problems stem from the absence of a formal system which would allow for the recording and tracking of all cases. In particular, it is very difficult for managers to track the progress of cases and to identify those cases which have become delayed or on which action is outstanding.

3.3.8 We are concerned that evidence from complaints which we have received suggested that the NMC had failed to follow up issues in a timely manner, in particular where a complainant had failed to provide enough information in their original letter. Although the NMC assured us that it is their policy to write to complainants at least twice in such circumstances, we believe that it is essential for managers to be able to check that this happens in all such cases. An IT-based case management system is necessary to be able to do this systematically.

3.3.9 The absence of a case management system also makes it difficult for staff to provide reliable and meaningful statistics to Council members and others.

3.3.10 We welcome the fact that the NMC now recognises the importance of having an integrated case management system and that this is a prioritised part of the NMC's ICT strategy. The introduction of a case management system should be taken forward in the context of potential changes to the NMC's fitness to practise procedures. It is important that the NMC ensures that any database can be modified to adapt to future changes in the NMC's fitness to practise rules.

3.3.11 We note that the development of a case management system is now identified as a top risk in the corporate risk register. However, this should have been identified sooner and is essential that the NMC takes this work forward without any further delay. The NMC might find it helpful to find out how other regulators and CHRE developed their databases.

#### *Delays in dealing with cases*

3.3.12 It is not in the interests of complainants, registrants or the public for there to be delays in resolving fitness to practise issues. We appreciate that there will be some cases which, for a variety of reasons, will unavoidably be delayed. This can include cases in which there is an ongoing criminal investigation or where there have been difficulties in getting witnesses to give evidence.

3.3.13 The NMC has made progress in the last year in dealing with the backlog of cases which have been referred to the Conduct and Competence Committee and the Professional Conduct Committee, which continues to hear some cases under the NMC's old fitness to practise rules. However, we are concerned that there are still many delays in the system. In particular, there are delays in dealing with initial complaints or enquiries and referrals to the Investigating Committee. In addition, it would appear that the Investigating Committee adjourn many cases several times which builds in additional delays. According to the NMC, during the last year the average period between receipt of an allegation and closure of the case at a final hearing has been 29 months. This represents an improvement, as in the previous year the timescale was 35 months. However, it is still too

long and the NMC recognises this. Over the same period the average time from a case entering the system to it being closed was 16 months. This figure is for all cases handled by the NMC and includes cases closed at the pre-enquiry, Investigating Committee and final hearing stages.

3.3.14 CHRE have received a number of complaints from people raising legitimate concerns about delays by the NMC in dealing with fitness to practise cases. We are concerned about public safety implications of failure to resolve these issues quicker. Additionally it is unfair on registrants to have cases against them unresolved for long periods of time. The NMC executive assured us that these delayed cases are now exceptions and most related to cases started under the old procedures. We will want to assess whether there have been fewer complaints of this sort in the next 12 months.

*Timeliness and poor quality of correspondence which is sometimes insensitive, misleading and/or discourages people from making complaints about a registrant's fitness to practise*

3.3.15 In addition to the complaints about delays in resolving cases, we have received complaints from people about delays in receiving replies to their correspondence. This includes queries about the progress of cases. When they do receive a response this is not always helpful, accurate or sensitive. Some members of the public are not receiving the service to which they are entitled.

3.3.16 By way of example, one complainant who wrote to us had written to the NMC with a complaint about a registrant. In their letter to the NMC they explained that they had already raised the issue locally with the registrant's employers. The NMC's response was unhelpful and appeared to us to discourage a complaint. The complainant was told that the NMC could not, for statutory reasons, take action on the complaint unless it had been raised and investigated locally. Not only did this ignore the fact that the complainant had already raised the issues locally but it was also untrue that the NMC cannot act unless a complaint has already been investigated locally. Although the NMC assured us that this letter was not a standard letter we are aware that the same misleading comment, that the NMC could not take a case forward for statutory reasons unless it had already been investigated locally, appeared on the NMC's website at the time. The comment was removed from the NMC's website after CHRE made the NMC aware of it. In another case the NMC responded in an inappropriate manner to a complainant who had lost a baby with a letter that failed to acknowledge this and express any sympathy.

3.3.17 The NMC has assured us that it intends to review its standard letters shortly, and that this had been delayed because it has been concentrating on tackling the backlog of cases. This review of the letters must be done quickly.

*The quality, comprehensiveness and variability of information and statistics provided by the executive to Council members on fitness to practise cases*

3.3.18 One of the important roles of Council members is to scrutinise the work of the executive. Bearing in mind the public protection issues involved, we feel that it is particularly important that members scrutinise the work of the fitness to practise function.

3.3.19 A number of members and former members raised with us concerns about the quality of information which they received about fitness to practise cases. They felt that the information, particularly statistical information, was not always clear or comprehensive.

They also felt that the way in which the information was presented was not consistent which made it difficult for them to judge whether progress was being made, especially with regard to timescales. We were also told that committee members themselves asked for data to be presented in different ways thus making comparisons difficult.

3.3.20 It may be that the reason why it has been difficult for the executive to provide comprehensive statistics is the absence of the case management system. It also appears from our reading of the papers that the statistics have focussed on the backlog of cases which have been referred to the Conduct and Competence Committee and that there has not always been full information on those cases earlier in the process. This includes the initial queries and cases referred to the Investigating Committee which are stages at which we are aware there have been considerable delays in some cases.

3.3.21 In conclusion, we do not feel that the executive has always provided sufficiently clear and comprehensive information to members. However, we believe that Council members should have thought about this issue more thoroughly and been clearer and more consistent about what information they needed, and in what format, in order to scrutinise appropriately.

*Concerns about delays in setting up systems for the assessment of fitness to practise panellists and decisions to extend the contracts of existing panellists*

3.3.22 The NMC, like most of the regulatory bodies, has been developing proposals for the assessment of panellists for a number of years. Some members and former members raised concerns with us about delays in setting up this system. Particular concerns were raised with us that some existing panellists' terms of office have been extended in the past without systematic assessment of their performance.

3.3.23 It is important that there are robust assessment arrangements. Some other regulators have now set up a process for assessment of panellists. However, we are aware that this is an issue with which a number of regulators are still grappling and it is important that the system developed is effective. We suggest that the NMC should consult with the other regulators with the aim of developing an assessment system as soon as possible.

*Delays in providing agreed training for panellists on child protection issues*

3.3.24 It is essential that panellists receive appropriate and relevant training to ensure that they have the necessary knowledge and skills to adjudicate on fitness to practise cases. We were concerned to see long delays in arranging training for panellists on child protection issues, including assessment of cases involving child pornography. This issue was originally raised by a Council member in March 2003 and acknowledged to be necessary by the then President. It was not formally agreed by the Conduct and Competence Committee until April 2005. In July 2006 the Conduct and Competence Committee was told that training would take place in September/October that year. The training did not happen, however, until October 2007.

3.3.25 The former Professional Conduct Committee and the Conduct and Competence Committee dealt with a number of cases involving child pornography between early 2003 and late 2007, including some in which CHRE expressed concern about the outcome. We

understand that the training was very effective. Whilst this is good to report, we feel that the delay in providing this training was very unfortunate.

### 3.4 Education

3.4.1 The NMC currently approves 90 programme providers across the UK covering pre-registration nursing and midwifery. The NMC has created a UK wide Quality Assurance Framework to support greater consistency in the quality of nursing and midwifery education. In 2006-7 80 per cent of approval events were subject to conditions which had to be met before the course was approved for commencement. A base-line review of all providers and programmes has taken place to support quality assurance activity in coming years.

3.4.2 We note that there have been tensions at times between the NMC and some parts of higher education, for instance relating to the introduction of the new UK-wide Quality Assurance Framework. We consider that improvements to communication and stakeholder management would help in this area.

3.4.3 The NMC assures us that they always seek the views of students on their experiences of their course when inspecting programmes and providers. We feel it is important that the NMC also seeks the views of patients on the care that they receive from student nurses as part of its inspections.

3.4.4 The NMC is currently reviewing pre-registration nursing education as part of the project undertaken by the health departments in the four countries following the Modernising Nursing Careers report. This aims to deliver a nursing workforce equipped with the competencies required for contemporary healthcare practice. The first stage of this review, which began in November 2007, focuses on the future framework of pre-registration nursing education. The second stage, taking place this year, will look at the proficiencies, outcomes and other requirements needed for this future framework, following which the NMC anticipates the issuance of new standards of proficiency for pre-registration nursing education.

### 3.5 Governance and External Relations

3.5.1 The NMC recognises the limitations and the weaknesses of its governance and set up a Governance Working Group to examine the issues. This resulted in the formation of a Governance Committee and we acknowledge that the NMC is seeking to improve its practice. The creation of an independent Appointments Board to appoint fitness to practise panellists is welcome.

3.5.2 We have four main areas of concern about governance and external relations in the NMC. These are:

- the inadequate operation of the governance framework, including policies, committees and decision-making, and organisational behaviour
- the inconsistent availability and provision of information to Council to ensure effective planning and decision-making

- the inappropriate conduct of Council members and lack of strategic leadership
- a lack of confidence from key stakeholders.

*The inadequate operation of the governance framework, including policies, committees and decision-making, and organisational behaviour*

3.5.3 The NMC has some of the right processes and policies in place but these do not seem to have general acceptance and are sometimes disputed or disregarded. An overhaul and simplification of the governance framework of the NMC is needed.

3.5.4 We do not think that the decision-making processes are clear and transparent. A great deal of time is spent on the interpretation and application of standing orders. There are 13 committees dealing with different aspects of the NMC's work. It does have a large programme but the numerous committees obscure the lines of accountability for decisions and inhibit the strategic oversight of the Council. For example, long-standing members of fitness to practise panels were reappointed by the Appointments Board outside the processes for reappointment that had been anticipated. The Conduct and Competence Committee was told that the reappointment of panellists is the Appointments Board's responsibility and was outside its remit. We understand, however, that the Appointments Board was under the impression that the Conduct and Competence Committee's priority of tackling the backlog and the scheduling of case-hearings required urgent reappointments if the NMC was to be able to run panels, leaving no time for the proper processes to take place. It appears that neither committee was provided with the timely information or support that would have enabled this problem to be addressed.

3.5.5 The NMC has an Audit and Risk Committee, and recently some of its responsibilities were passed to the Governance Committee. The assessment of internal risk, particularly risks arising from disagreements within the Council and between the Council and executive, has led to regular and continuing recourse to lawyers. The expense is regrettable but given the breakdown in relationships this appears largely unavoidable since the trustees have responsibility to seek appropriate professional advice when making decisions. Stronger leadership and a more conciliatory attitude on all sides should have enabled these issues to be resolved without recourse to law.

3.5.6 The NMC has published an Equality Scheme and created an Equality and Diversity Unit to lead its work in this area. We did not observe any racism or receive any accusations of racism although we note this allegation is to be tested in a tribunal and is also subject of an internal investigation. We therefore draw no conclusions on this matter.

*The inconsistent availability and provision of information to Council to ensure effective planning and decision-making*

3.5.7 Our review of minutes and background papers and our discussions with Council members suggests that considerable information is provided to Council and its committees. However, Council members told us that they do not always have confidence that they have received full information or that the information they were given is always accurate or presented in a manner to support them to make decisions. Statistics on fitness to practise cases are an example. We make further comments on this in paragraphs

3.3.18-21 above. We have also seen and heard examples of Council members asking for information outside of meetings and not receiving it.

3.5.8 Decisions of Council are not always based on information of sufficient quality. An example of this is that the NMC had to overturn its decision to allow direct entry to a third part of its Register for Specialist Community Public Health Nurses. Specialist Community Public Health Nurses had previously been required to maintain their original registration on the nursing or midwifery part of the Register. The decision taken by the Council in December 2005 to remove this requirement came into effect in December 2006. However, the decision had to be revoked in December 2007 when it became apparent that the NMC had misinterpreted its own legislation, with consequent difficulties for the individuals involved and damage to the NMC's reputation. The decision has been the subject of a threat of judicial review, which has not yet materialised, and resulted in a vote of no confidence in the NMC by Unite/CPHVA. This is also another example where sectional interests within the professions, rather than public safety and good regulation, seem to have influenced the NMC's decision-making.

*The inappropriate conduct of Council members and lack of strategic leadership*

3.5.9 There has been a breakdown of confidence and trust between some office holders and some members of the Council of the NMC and between some members and the executive. These problems are long-standing and show no sign of immediate resolution. There is little evidence the Council has the leadership to extract itself from these difficulties.

3.5.10 We have seen and heard evidence of inappropriate and aggressive language by and between Council members and between Council members and the executive. We have also heard accounts of emotional and aggressive behaviour in meetings. This behaviour is undoubtedly experienced as threatening and bullying by many Council members and staff involved.

3.5.11 There is a code of conduct for Council members but this has clearly not been adequate. An appraisal system for Council members is being developed and this is urgently required.

3.5.12 Council members are drawn from a wide range of stakeholders, including appointed public members. Appointed members must meet a defined set of competencies, elected members need not. The fact that registrant members are elected from different groups within nursing and midwifery does not mean that they do or should represent the interests of those groups however it appears to us that decisions have sometimes been influenced by the interests of professionals rather than the public interest. An example is the ongoing position of the Council not to require midwives to demonstrate that they are covered by indemnity insurance as a condition of registration.

3.5.13 Council should scrutinise and hold the executive to account but it should do so primarily on matters of strategic or organisational importance. In other words, scrutiny should be proportionate to the other tasks of ensuring strategic planning and demonstrating leadership. Some of the requests for information we have seen seem disproportionate but in other cases members of Council have not been provided with the information they need to fulfil their role.

3.5.14 The strife within the Council has inevitably had an impact on the NMC's effectiveness as a regulator, notwithstanding the efforts of members and staff to maintain and continue its day-to-day work.

*A lack of confidence from key stakeholders*

3.5.15 The NMC does not have the confidence of all its stakeholders and has not always managed to get its communication strategy right. In particular, stakeholder groups, while they should not unduly influence the NMC's decisions, do need to be consulted on their viability. In some cases this is a requirement of the legislation. For example, the NMC issued a circular in 2005 changing the arrangements for progression of students in pre-registration nursing programmes. After two months the circular had to be deferred and was subsequently withdrawn because the proposals were impractical. A new circular was reissued following consultation. More recently there have been tensions with education providers over the introduction of the NMC's new Quality Assurance Framework.

3.5.16 It is important that the NMC upholds the highest standards of public communication. In a Press Statement issued on 14 March 2008 the NMC stated: 'At no stage has any Council member raised any formal concerns regarding the use of the NMC's finances on legal fees'. This appears to us to be misleading. We have seen evidence of repeated attempts by a Council member to elicit the details of legal costs, and have also been told by others of an unwillingness to disclose these costs in meetings.

## **4 Conclusion**

4.1.1 This CHRE performance review concludes that the NMC is carrying out its statutory functions but fails to fulfil these to the standard of performance that the public has the right to expect of a regulator. The NMC maintains a register, takes action when a registrant's fitness to practise is called into doubt, assures the quality of professional education, and sets and issues standards and guidance for the nursing and midwifery professions. These are the basic functions of a regulator. However, there are serious weaknesses in the NMC's governance and culture, in the conduct of its Council, in its ability to protect the interests of the public through the operation of fitness to practise processes and in its ability to retain the confidence of key stakeholders.

4.1.2 The NMC's relative strengths are in its standards and guidance and registration processes.

4.1.3 The NMC has had difficulties with the administration of fitness to practise for many years. There were real problems, including a large financial deficit, at the time of the transfer of responsibilities to the NMC from the United Kingdom Central Council for Nursing, Midwifery and Health Visiting in 2002. These were daunting challenges but, although the NMC made a difficult but necessary decision to increase registrants' fees significantly, it has not made the necessary long-term strategic investments in the infrastructure required to create a long-term solution. We are told that it is about to do so, and it must with a greater sense of urgency than it has shown so far on this matter.

4.1.4 The NMC has made a number of commitments to improving its work and these are mentioned in this report. As this report and our recommendations make clear more are



needed. We will keep the NMC's progress in addressing the issues identified in this report under review over the next year.

## 5 Recommendations

### 5.1 Recommendations to the NMC

5.1.1 The NMC should commit itself to work towards more effective governance. This should include reviewing its committee and accountability structure, and agreeing on the level of detail of reporting to meetings. It should also include introducing and enforcing an effective statement of organisational values and code of conduct for Council members and staff, and appraisals for all Council members. Collectively and individually office holders and other Council members should accept responsibility for the current difficulties and for their future resolution.

5.1.2 The NMC must introduce an IT-based case management system in fitness to practise as a matter of urgency and should direct the necessary resources towards this. The NMC must improve its service to both the public and registrants in fitness to practise processes.

5.1.3 The NMC should examine its stakeholder relations and communications strategy so that it is clear the NMC exists to protect patients and the public, and that it has effective and mutually respectful relationships with interested parties to achieve this. This improvement in communication also needs to include communication with patients, the public and registrants.

### 5.2 Recommendations to the Department of Health

5.2.1 We recommend that plans to create a new governance structure for the NMC should proceed as rapidly as possible and sooner than currently planned. There should be no representative members on the new Council and no reserved places for interest groups. All members, whether registrant or public should be appointed against defined competencies and be subject to appraisal. The President should be appointed not elected.

5.2.2 We recommend that consideration be given to the relevant responsibilities of the NMC's Conduct and Competence Committee being transferred to the new Office of the Health Adjudicator at an early stage, thus allowing the NMC to concentrate its resources on investigations and the efficient management of cases.

### 5.3 The Charity Commission

5.3.1 We hope that the Charity Commission, as an independent body, will take note of this performance review and will work with the Council and executive of the NMC to improve governance and to support all parties to act appropriately at all times.

**ANNEX 1**

**CHRE are grateful to the following people who have met with us and given their time to contribute to this enquiry.**

Nancy Kirkland	President
Moi Ali	Vice-President
Andrew Middleton	Chair, Audit and Risk Committee
Rosemary Carter	Chair, Governance Committee
Brenda Poulton	Member of Council, former chair of the Governance Committee
Sandra Arthur	Former President
Anthea Rose	Former member of Council
Stephen Powell	Former member of Council
Sarah Thewlis	Chief Executive and Registrar

And one member and one former member of Council who have asked to remain anonymous.

## ANNEX 2



## Standards of good regulation

### Introduction

CHRE has decided that the performance review process should be built on a set of standards. The standards aim to remain at a high level and focus on outcomes. The development of the draft standards has been informed by previous work carried out in 2003 by CHRE Council members and by the work of the Better Regulation Task Force (BRTF, now called the Better Regulation Commission). The BRTF defined five principles of good regulation:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting

The BRTF principles apply across all regulatory functions and have been central to the definition of the draft standards. The draft standards were revised following comments from regulatory bodies.

There are eighteen draft standards spanning five regulatory functions: standards and guidance; registration; fitness to practise; education; and governance and external relations.

### Definitions

**Standards** are the foundation of the performance review process and will evolve over time. They describe what the public should expect from regulators and enunciate principles of good practice. Regulators are asked to demonstrate how they ensure that they meet the standards. For each standard, a number of minimum requirements and supporting evidence are described.

All **minimum requirements** must be met to meet the standards, but are not standards in themselves. They are not exhaustive, in that regulators can demonstrate that they meet the standards in additional ways. Minimum requirements vary: they sometimes describe current duties, give examples of current practice, or indicate best practice.

**Supporting evidence** is the evidence that we suggest regulators can draw upon in demonstrating how they meet the standards. Supporting evidence is only an indication of the evidence that can support the declaration of whether the standards are met, and how. It only illustrates the kind of information that can be used, and is not exhaustive. We do not ask for supporting evidence to be provided with the performance review responses. We may ask for some evidence at a later stage.

We would not expect that regulators should change their own information gathering or reporting cycles to fit in with the performance review cycle. For the purposes of the performance review regulators should just use the most up-to-date information they have.

Supporting evidence will normally be considered to be in the public domain, except where the regulator specifically indicates that this information is provided in confidence only.

## 1 First function: standards and guidance

**Aim:** all registrants comply with a suitable set of standards, and the public are aware of the standards that they can expect.

### 1.1 The regulator publishes standards of competence and conduct<sup>2</sup> which are appropriate, comprehensive, prioritise patient<sup>3</sup> interests and reflect up-to-date professional practice.

#### Minimum requirements

- i) Standards prioritise patient safety and patient interests.
- ii) Core standards are formulated as general principles which apply widely to all situations and areas of practice.
- iii) The core standards are easy to understand for registrants and clearly outline registrants' personal responsibility for their practice.
- iv) The core standards include, as a minimum, the principles expressed in the Statement of Common Values<sup>4</sup>.
- v) Where appropriate, supplementary guidance is produced to help registrants apply the core standards about specialist or specific issues.
- vi) Standards form the basis for all regulatory functions.
- vii) The regulator regularly reviews its standards to ensure that they are up-to-date, and revises its standards and produces supplementary guidance as required.

#### Supporting evidence

- *Standards and guidance*
- *Documentation showing the development process of the standards, e.g. consultation documents*

### 1.2 The regulator makes its standards available and accessible proactively to registrants and potential registrants in the UK, and informs them of their current or future responsibility to meet these standards.

#### Minimum requirements

- i) Standards are published in formats that are easily accessible to potential registrants and registrants.
- ii) The regulator has a clear communications strategy, which is targeted to meet the needs of registrants, to promote the standards.

<sup>2</sup> There is a variety of terminology for standards of conduct and standards of competence across regulators. Standards of conduct govern professional behaviour, whereas standards of competence (standards of proficiency or standards of practice) can include clinical and management skills, knowledge, and how to apply these. The focus, amount of details and presentation of standards vary. Extracted from *Regulation of the health professions: a scoping exercise carried out on behalf of CRHP, 2004*.

<sup>3</sup> We use the word 'patients' to include all those to whom health professionals provide healthcare services, including clients, customers or service users. The concept also include members of the public.

<sup>4</sup> *Common Values Statement by the Chief Executives Group of the Health Care Regulators on professional values, 2004*, available on CHRE website.

### **1.3 The regulator informs the public of the standards that professionals should meet and the action that they can take if these standards are not met.**

#### **Minimum requirements**

- i) Information on the standards that professionals should meet is available in accessible formats.
- ii) The regulator has a clear and targeted communications strategy to inform the public, employers and other stakeholders.

#### **Supporting evidence (1.2 and 1.3)**

- *Information on how the standards are published*
- *Communication strategy*

### **1.4 The regulator requires registrants to maintain standards through a process of continuing professional development (CPD) or equivalent systems, and is working towards a system of revalidation.**

#### **Minimum requirements**

- i) The regulator requires / encourages registrants to complete an appropriate amount of CPD, the amount and type varying between registrants proportionally to risks identified by the regulator (e.g. clinical or regulatory).
- ii) CPD is targeted to the specific learning needs of individual registrants and focused on public protection.
- iii) The regulator produces clear guidance for registrants on how they should meet their CPD requirements.
- iv) The regulator works with others towards a system of revalidation carried out at appropriate intervals and with appropriate intensity proportionate to risk for each registrant, and with targeted remedial action.

#### **Supporting evidence**

- *Information on the CPD system or equivalent*
- *Revalidation proposals*

## **2 Second function: registration**

**Aim:** applicants to the register who meet the standards of competence and conduct are registered, while applicants not meeting the standards are prevented from entering the register. The Register is accurate and accessible to employers and the public.

### **2.1 The regulator has efficient, fair and transparent processes for entry to the register and periodic renewal of registration.**

#### **Minimum requirements**

- i) The process is well-defined and details are accessible.

- ii) All applicants are treated fairly and assessed against a well-defined set of criteria (e.g. using the concept of good character) that are linked to the standards of competence and conduct.
- iii) Applications are processed efficiently.
- iv) The regulator takes steps to ensure against fraudulent or erroneous entry to the register.
- v) There is a process to appeal registration decisions.

#### **Supporting evidence**

- *Information on applications dealt with within statutory deadlines or performance target*
- *Information on the process for registration, e.g. on the website*
- *Information on whether there is someone available with whom a potential registrant can discuss their application.*
- *The appeals process*
- *The process for considering applications for registration.*
- *Customer satisfaction surveys*

### **2.2 Registers are accessible to the public and include appropriate information about registrants.**

#### **Minimum requirements**

- i) The regulator makes its registers accessible to the public.
- ii) The public and where applicable employers are easily able to find a specific registrant and identify if they are eligible to practise.
- iii) Relevant fitness to practise history and sanctions are included within registration information.

#### **Supporting evidence**

- *The register*
- *Information on the content of register and how it can be accessed*
- *Customer satisfaction surveys*

### **2.3 The regulator takes appropriate action to prevent non-registrants practising under a protected title.**

#### **Minimum requirements**

- i) The regulator publicises the importance of checking that a professional is registered.
- ii) The regulator has procedures for dealing with a person found to be fraudulently using a protected title, or undertaking a protected act (where this applies).
- iii) It uses the means at its disposal to seek to stop them from using that title.

#### **Supporting evidence**



- *Information on the measures in place to publicise the importance of checking registration and to deal with those using a protected title fraudulently.*
- *Information on the usage of the register and the number of detected cases using a protected title fraudulently*

### 3 Third function: fitness to practise

**Aim:** all concerns about the fitness to practise of registrants are dealt with appropriately, and necessary action is taken to protect the public.

#### 3.1 The regulator has a process through which patients, the public and others can raise concerns about registrants and understand how their concerns will be dealt with.

##### **Minimum requirements**

- i) The regulator has a process to raise concerns<sup>5</sup> against registrants that is publicly available and easy to understand.
- ii) The regulator ensures that there is someone available with whom a potential complainant can discuss a concern about a registrant.

##### **Supporting evidence**

- *Complaints leaflet.*
- *Website content.*
- *Feedback and outcomes from surveys involving people who have made complaints.*

#### 3.2 The regulator keeps all relevant parties informed of progress on cases at all appropriate stages.

##### **Minimum requirements**

- i) The registrant, complainant and, where appropriate employers, are informed of progress at the following stages at least:
  - a) initial consideration;
  - b) referral to a Fitness to Practise panel;
  - c) final outcome.
- ii) The regulator has a disclosure policy and complies with it and/or any legislative requirements on disclosure.
- iii) The regulator publishes the outcomes of final FtP hearings, apart from health cases.

##### **Supporting evidence**

- *Disclosure policy.*
- *Feedback and outcomes from surveys involving the members of the public, employers and others.*

#### 3.3 Fitness to practise cases are dealt with in a timely manner at all stages.

##### **Minimum requirements**

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<sup>5</sup> Some regulators use the word 'allegations' to refer to complaints against registrants.

- i) Cases are listed and heard quickly by Fitness to Practise panels after referral.
- ii) Serious cases are identified and prioritised and, where appropriate and possible, referred to a panel to consider whether it is necessary to impose an interim order.
- iii) There are systems and guidance to identify serious cases and cases which have become delayed.
- iv) The regulator has service standards or equivalent and monitors its performance against them.
- v) The regulator has a case management system.

#### **Supporting evidence**

- *Audits and management reports.*
- *Feedback and outcomes from surveys involving people who have made complaints.*

### **3.4 There are quality processes for the appointment, assessment and training of Fitness to Practise Panel members. Panel members also have clear guidance on how to assess cases.**

#### **Minimum requirements**

- i) The regulator has comprehensive Indicative Sanctions Guidance, which facilitates consistent and appropriate decision making.
- ii) Where appropriate the regulator has guidance on criteria for referral from initial stage committee to final committee.
- iii) The regulator uses clear and appropriate competences when recruiting panel members.
- iv) There is an assessment and appraisal process for FtP panel members.
- v) Members receive feedback in relation to cases they have considered.
- vi) There is a training programme for panel members.

#### **Supporting evidence**

- *Committee handbooks.*
- *Appraisal scheme.*
- *Appointments process.*
- *Training schedules.*
- *Recruitment criteria.*

### **3.5 Decisions made at the initial stages of the fitness to practise process (pre-Fitness to Practise Panel stage) are quality assured.**

#### **Minimum requirements**

- i) Staff and panels involved in taking decisions at the initial stages receive appropriate training and guidance.
- ii) There are internal audits of decisions.

#### **Supporting evidence**

- *Number of judicial review or appeal cases upheld against the regulator.*

- *Internal audit reports.*

**3.6 Fitness to Practise panels make appropriate, well reasoned decisions on cases.**

**Minimum requirements**

- iii)* The regulator ensures that its panel members take account of learning from Court outcomes and feedback from CHRE.

**Supporting evidence**

- *Number of Section 29 and registrant appeals upheld.*
- *Feedback to panel members on learning points arising from Court outcomes and CHRE feedback.*

## 4 Fourth function: Education

**Aim:** students<sup>6</sup> are given appropriate training that equips them to meet the standards of competence and conduct set by the regulator, and registrants maintain appropriate standards within their scope of practice.

### 4.1 The regulator ensures that its standards for the education and training to be met by students are appropriate, comprehensive, prioritise patient safety and interests and reflect up-to-date professional practice.

#### Minimum Requirements

- (i) Standards for education and training prioritise patient safety and patient interests and link in with the standards of competence and conduct for registrants.
- (ii) The regulator has taken steps to ensure that standards are widely applicable and appropriate to the different stages of training and education. Standards outline students' future personal responsibility for their own practice as well as for inter-professional working.
- (iii) Standards of education and training are focused on the abilities required for that profession.
- (iv) The regulator regularly reviews its standards to ensure that they are up-to-date and reflect modern practice, revising standards or producing supplementary guidance as required.
- (v) All standards development is carried out in consultation with stakeholders.

#### Supporting Evidence:

- *Standards for the education and training of students (this can be in the same document as standards for the delivery of education)*
- *Documentation showing the development process of the standards*

### 4.2 The regulator ensures that its standards for the delivery of education and training are appropriate, comprehensive, prioritise patient interests and reflect up-to-date professional practice.

#### Minimum Requirements

- (i) Standards for the delivery of education and training prioritise patient safety and patient interests and link in with the standards of competence and conduct for registrants.
- (ii) The regulator has taken steps to ensure that standards are applicable to all situations, including placements.
- (iii) Standards balance the requirements for safety of patients and consistency of educational outcomes with the encouragement of innovation.
- (iv) The regulator constantly reviews its standards to ensure that they are up-to-date, revising standards or producing supplementary guidance as required.

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<sup>6</sup> The term students include all those in accredited education and training which aim to provide entry to a regulated profession.

- (v) All standards development is carried out in consultation with stakeholders.

**Supporting Evidence:**

- *Standards for the delivery of education (this can be in the same document as standards for the education and training of students) and additional guidance*
- *Documentation showing the development process of the standards, e.g. how relevant developments in higher education are taken into account*

**4.3 The regulator has a transparent and proportionate system of quality assurance for education and training providers.**

**Minimum Requirements**

- (i) The regulator assesses education and training providers, including arrangements for placements, at appropriate intervals which may vary between establishments proportionally to risk.
- (ii) Educational providers that meet the required standards are approved, and appropriate and targeted steps are taken where a provider falls short of the standards.
- (iii) Students' and patients' perspectives are taken into account as part of the evaluation.
- (iv) Information on the assessment process and final results of assessments are accessible to all stakeholders.

**Supporting Evidence**

- *Training of educational assessors*
- *Quality Assurance process*
- *Assessment reports*

## 5 Fifth function: governance and external relations

**Aim:** the regulator is a transparent and accountable organisation with effective processes, focused on protecting the public working in partnership with all its key interest groups and continuously improving all areas of its work.

### 5.1 The regulator is a transparent and accountable organisation and significant policy decisions are demonstrably based on the public interest.

#### Minimum requirements

- (i) The regulators' decision making is based on the best available information and directed to protecting the public.
- (ii) The regulator has a clearly defined aim and a strategy.
- (iii) It has a Code of Conduct for Council members.
- (iv) The Council includes expertise from a range of stakeholders and no one group dominates.
- (v) Individuals are appointed against defined competencies<sup>7</sup>.
- (vi) Council and the executive have clear lines of accountability.
- (vii) The decisions and the decision making processes of the Council are open, transparent and accessible.

#### Supporting evidence

- *Mission statement*
- *Code of Conduct*
- *Council policies and decisions.*
- *Information on number of public Council meetings and publication of papers and decisions; attendance at public Council meetings*
- *List of competences against which members are appointed*
- *Appraisal policy for Council members*
- *Schemes of delegation, standing orders and financial instructions*

### 5.2 The regulator establishes and works within efficient and effective organisational processes.

#### Minimum requirements

- (i) The regulator has an effective planning process which ensures that functions are resourced appropriately.
- (ii) The regulator ensures that its planning documents take account of risk.
- (iii) The regulator sets appropriate key performance indicators or equivalent and publishes information on its performance against them.
- (iv) There are effective appraisal systems and processes.

<sup>7</sup> Until all Council members are appointed, this is likely to apply to lay members only.

- (v) The regulator meets its statutory responsibilities in sharing information and in seeking and retaining confidential information.
- (vi) The regulator is committed to promoting equality and diversity and ensures that all activities are free from any discrimination.

#### **Supporting evidence**

- *The published business plan*
- *Reports from internal and external auditors*
- *Published accounts*
- *HR policies, including appraisal policy*
- *Strategic plan*
- *Annual plan*
- *Risk register*
- *Rules or procedures for raising fees*
- *Equality and Diversity Policy and reports from the Equality and Diversity Committee*
- *Information on how responsibilities under the Freedom of Information and Data Protection Acts are met*

### **5.3 The regulator fosters a culture of continuous improvement within the organisation.**

#### **Minimum requirements**

- (i) The regulator has a culture of continuous improvement.
- (ii) The regulator gathers evidence from its activities and external information and disseminates it throughout the organisation. This evidence informs policy development.
- (iii) Evidence-based decision making and innovation are promoted. Audit is carried out at appropriate intervals and focuses on areas of high risk.

#### **Supporting evidence**

- *Processes for complaints against the organisation and information on how complaints are taken into account.*
- *Systems for measuring quality and effectiveness and information about how these bring about improvement.*
- *Annual plan/assessment process*
- *Audit reports*

### **5.4 The regulator co-operates with stakeholders and other organisations.**

#### **Minimum requirements**

- (i) The regulator engages with stakeholders, in particular patients and the public, in all of its work.
- (ii) The regulator cooperates with other organisations with a common interest, developing strategic alliances and coordinating goals and project planning.



- (iii) The regulator engages in cross-regulatory work and projects, and takes account of recommendations from CHRE and others about cross-regulatory projects, best practice and its performance.
- (iv) The regulator takes into account the differences between England, Scotland, Wales and Northern Ireland when devising its policies and processes and in engaging with stakeholders.

**Supporting evidence**

- *Strategy for involving stakeholders*
- *Council policies and decisions*
- *Consultation documents*

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