

Professional Standards Authority for Health and Social Care

Annual Report and Accounts and Performance Review Report 2014/2015

Volume II

Performance Review Report 2014/2015

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Volume II: Performance Review Report 2014/2015

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About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care¹ promotes the health, safety and well-being of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health and care professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement, we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.² We monitor policy developments in the UK and internationally, and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at www.professionalstandards.org.uk.

¹ The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence.

² CHRE, 2010. *Right-touch Regulation*. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation> [Accessed 11 May 2015].

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1. Chief Executive's foreword

- 1.1 Regulators are sometimes thought to live and work in worlds of their own, disconnected from both the public and the professions they oversee. This is by no means true and, as this Performance Review Report shows, regulators are increasingly engaged with patients, service users and the public, with their own registrants, with each other and with the wider public debate on safety and quality in health
- 1.2 That wider public debate was, of course, given greater energy by the report of the Francis Inquiry and, in particular, its call for greater information sharing and collaboration between regulators of all kinds.
- 1.3 At the same time, the Law Commissions published their long awaited report and draft Bill. The aim of the Law Commissions' review of professional regulation was to enhance public protection and simplify the regulatory legal framework. While the Authority considered that they had not fully succeeded in that aim, we recognised, as did the regulators, that there were many technical improvements needed which were contained in the Bill and there was consequently great enthusiasm for the government to bring forward legislation in the 2014/2015 session of Parliament. Rather, the government decided to address some of the most pressing issues through Section 60 Orders and a Private Members' Bill.
- 1.4 There remains, in the Authority's view, a continuing need for serious regulatory reform, more radical than that proposed by the Law Commissions, and we hope that the new government will proceed with bringing a Bill before Parliament that is focused on public protection and simplification of professional regulation.
- 1.5 In this, our Annual Report on the regulators we oversee, we briefly describe the legal changes that have been made and touch upon their implications for the regulators and for the Authority. We draw attention to areas of the regulators' work that are of particular interest, because they are good practice, significant changes, or areas we perceive as weaknesses or risks. Finally, we look to the future, including the future of our own oversight of the regulators.
- 1.6 We have been pleased during 2014/2015 to support the work of the Health Committee, indicating areas to which they might direct their attention, providing evidence for their periodic sessions with some of the regulators and responding to requests for information. The Health Committee has an important role in commenting on the effectiveness of the regulatory system.



Harry Cayton CBE
Chief Executive

2. Executive summary

Introduction

- 2.1 The purpose of professional regulators is to protect patients, service users and the public, to uphold the standards of the profession and to ensure public confidence in regulation. The Professional Standards Authority (the Authority) oversees the professional regulators and reports annually on their performance. We share the regulators' commitment to the public interest and effective regulation.
- 2.2 This report contains both an overview of our general findings (Section 7) from our performance review of the regulators against the *Standards of Good Regulation* (Section 9). The performance review took place between September 2014 and May 2015 and draws on evidence of performance during the 2014/2015 financial year.

How are the regulators performing against the *Standards of Good Regulation*?

- 2.3 In this performance review, we conclude that all of the regulators are performing well or adequately against most of the 24 *Standards of Good Regulation*.
- 2.4 However, as we commented in our 2013/2014 Performance Review Report, we have greater concerns than noted in previous reviews about the performance of some of the health and care regulators in relation to some of the Standards for registration and fitness to practise. We consider that the level of confidence that the public can have in the regulators differs between regulators.
- 2.5 In each of the individual regulator's Performance Review Reports, we have identified where the regulators have or have not met the *Standards of Good Regulation*. There are 24 *Standards of Good Regulation*, which cover the regulators' four core functions, and more information can be found in Annex 2.
- 2.6 In summary, in 2014/2015, we concluded that:
- Three regulators met all 24 of the Standards: the HCPC, the GMC and the GOSc
 - Two regulators met all but one of the Standards: the GPhC and the PSNI
 - Four regulators did not meet three or more of the Standards of Good Regulation. The GOC did not meet three of the Standards, the GCC and the NMC did not meet five of the Standards and the GDC did not meet seven of the Standards.
- 2.7 We have noted in the individual reports where the regulator's performance has improved in response to concerns we identified in the 2013/2014 performance review. In particular, we are pleased to report that:

- The GDC has met the first Standard for registration (which requires that only those who meet the regulator’s requirements are registered)
 - The NMC has now met the second Standard for registration (requiring the registration process to be fair, based on the regulator’s standards, efficient, transparent, secure and continuously improving). This is based on the progress and improvements it has made in several areas including customer service, the efficiency of the registration process, the management of registration appeals, and information security
 - The NMC has now met the fourth Standard for fitness to practise (which relates to the timely review of complaints and the prioritisation of serious cases, including applying for an interim order)
 - We have sufficient evidence to assess the GCC and the NMC as having met the sixth Standard for fitness to practise (which relates to the timely progression of cases through the fitness to practise process) this year
 - The GCC has now met the ninth Standard for fitness to practise (which relates to all fitness to practise decisions being published and communicated to all relevant stakeholders)
 - The PSNI has met the tenth Standard for fitness to practise (which relates to information about fitness to practise cases being securely retained) and the HCPC also improved its performance against this Standard in light of the work it has done to strengthen its information security procedures.
- 2.8 All of the regulators met all four Standards of Good Regulation for guidance and standards.
- 2.9 All of the regulators met all five *Standards of Good Regulation for education and training* except the NMC, who continued to not meet the second Standard for education and training (requiring regulators to have a system in place to assure themselves of the continuing fitness to practise of registrants), although it continued to make progress in developing a system of revalidation.
- 2.10 The regulators mostly met the *Standards of Good Regulation for registration*. This is with the exception of three of the regulators (the GDC, the GOC and the NMC) who failed to meet the third Standard for registration (which requires the regulators to maintain accurate registers).
- 2.11 In relation to those *Standards of Good Regulation for fitness to practise*, we identified the following:
- Two of the regulators (the GCC and the GDC) did not meet the Standard that requires them to have adequate processes in place for managing risk in fitness to practise cases. Three regulators (the HCPC, the GOsC and the GPhC) met this Standard, although we identified some concerns with their performance
 - Two of the regulators (the GCC and the PSNI) did not meet the Standard requiring them to ensure that their fitness to practise process is transparent, fair, proportionate and focused on public protection. One

regulator (the NMC) met this Standard, although we considered that their performance was inconsistent

- Three of the regulators (the GDC, the GOC and the GPhC) did not meet the Standard that requires them to ensure their fitness to practise cases are progressed without undue delay. We also expressed concerns about three regulators' performance (the HCPC, the GMC and the NMC) against the relevant standard and we considered that any ongoing decline in performance might mean that this Standard would not be met in the future
- Three of the regulators (the GCC, the GDC and the NMC) did not meet the Standard that requires them to ensure that they provide good customer care to all parties involved in their fitness to practise process, and we raised concerns that one of the regulators (the GOsC) might be at risk of not meeting this Standard in the future
- Three of the regulators (the GCC, the GDC and the NMC) did not meet the Standard that requires them to ensure that all fitness to practise decisions are well reasoned, protect the public and maintain confidence in regulated professions
- Four of the regulators (the GCC, the GDC, the GOC and the NMC) did not meet the Standard that requires them to ensure that fitness to practise information is securely retained. We also expressed concern about the performance of one regulator (the GOsC), where we considered that the Standard was met but that the regulator might be at risk of not meeting this Standard in the future.

Conclusions and recommendations

- 2.12 This year's performance review has shown that the regulators are generally fulfilling their statutory responsibilities and are focused on public protection.
- 2.13 As in previous years, we have identified continuing concerns about the performance of some regulators regarding the effectiveness and efficiency of the fitness to practise processes. Some regulators are working to achieve effective control of the core elements of an effective fitness to practise framework, including ensuring that cases are progressed as quickly as possible taking a risk-based approach, improving decision making and ensuring that information is securely retained.
- 2.14 There will be further changes in the sector, probably including legislative reform. There may also be further change in that we launched a public consultation on the revised performance review process on 7 May 2015. Subject to the outcome of the consultation, this will therefore be the last Performance Review Report in the current form.
- 2.15 We will continue to work with the regulators to ensure that amid these developments, the structures and processes of regulation of the regulators that we oversee continue to meet their statutory responsibilities and focus on public protection.

-
- 2.16 We recommend that the regulators should:
- Address the concerns highlighted in their individual reports
 - Review this document as a whole, taking account of our views and consider whether they can learn and improve from the practices of the other regulators
 - Ensure that their Councils review and discuss the Performance Review Report in a public Council meeting.
- 2.17 We will share this report with the Departments of Health in England and the devolved administrations and with the Health Committee in the UK Parliament and the devolved administrations.

3. The Professional Standards Authority

3.1 The Authority promotes the health, safety and well-being of patients, service users and other members of the public through our scrutiny of the nine professional regulators we oversee. We do this in six main ways:

- We annually review the performance of the regulatory bodies to identify areas where the regulators are doing well and where they can improve
- We audit the initial stages of the regulators' fitness to practise procedures. The audit has two aims: to assess whether the regulators' decision-making processes are effective; and to assess whether the decisions they make protect the public
- We examine final decisions made by the regulators' fitness to practise panels about whether health and care professionals in the UK and social workers in England are fit to practise. We may refer decisions to court where we believe they are unduly lenient and do not protect the public
- We conduct research, share learning with the regulators, and hold events to explore ways of understanding and managing new regulatory challenges
- We advise the Secretary of State for Health and health ministers in Northern Ireland, Scotland and Wales on matters relating to the regulation of health professionals in the UK and social workers in England
- We keep up to date with European and international policies to improve our policy decisions on the regulation of health professionals in the UK and social workers in England. We inform colleagues in other countries of the outcome of our policy projects that might be relevant to them.

4. The health and care professional regulators

4.1 The nine health and care professional regulators that we oversee are:

- The General Chiropractic Council (GCC)
- The General Dental Council (GDC)
- The General Medical Council (GMC)
- The General Optical Council (GOC)
- The General Osteopathic Council (GOsC)
- The General Pharmaceutical Council (GPhC)
- The Health and Care Professions Council (HCPC)
- The Nursing and Midwifery Council (NMC)
- The Pharmaceutical Society of Northern Ireland (PSNI).

4.2 Details of the professions regulated by each body can be found in Annex 1: Index of regulated health and care professions.

4.3 These regulatory bodies have four main functions. They:

- Set and promote standards that professionals must meet before and after they are admitted to the register
- Maintain a register of those professionals who meet the standards. Only those who are registered are allowed to work as health professionals in the UK or as social workers in England
- Take appropriate action when a registered professional's fitness to practise has been called into question
- Ensure high standards of education for those training to be a health professional in the UK or a social worker in England. In some cases, they set standards for those who continue to train and develop as health professionals in the UK or social workers in England.

5. The performance review

5.1 The performance review is our annual check on how effective the regulators have been in protecting the public and promoting confidence in health professionals in the UK, in social workers in England and in the regulators themselves. We are required to report our findings to Parliament and to the devolved administrations.

5.2 The performance review has two important outcomes:

- It enables improvements in the work of the regulators, as we identify strengths and areas of concern in their performance and recommend changes
- It informs everyone about how well the regulators are protecting the public and promoting confidence in health professionals in the UK and social workers in England, as well as the system of regulation in their work.

How do we carry out the performance review?

5.3 The regulators are asked to provide evidence of how they meet the 24 *Standards of Good Regulation*. The Standards describe what the public expects the regulators should do, but they do not set out how they should do it. The *Standards of Good Regulation* can be found in Annex 2: Our Standards of Good Regulation.

5.4 To help us judge the regulators' performance, we use the Standards to:

- Identify the strengths and areas for improvement in each regulator's performance
- Identify good practice.

5.5 The *Standards of Good Regulation* are grouped under the four regulatory functions:

- Guidance and standards
- Education and training
- Registration
- Fitness to practise.

5.6 We can consider whether a Standard is met, not met or if the regulator has demonstrated improvement in its performance against that Standard.

5.7 A regulator meets a Standard when it provides sufficient evidence of good performance against it which is in line with the evidence framework.

5.8 We consider that a regulator shows improvement against a Standard by achieving better performance in terms of quality and/or timeliness and/or transparency and/or accountability and/or engaging with stakeholders, compared with its performance in the previous performan

- 5.9 A single major failure or several minor failures might indicate that a Standard is not met if they reveal an underlying weakness in the regulators' systems or an absence of policy or process.
- 5.10 There are also a few instances where a regulator has demonstrated inconsistent performance against the Standards. We have reached this view because the regulator has either performed poorly against one aspect of the requirements of the Standards or because, while we have concerns about its overall performance against the Standards, we do not consider its performance to be poor enough to fail the Standards.
- 5.11 We report publicly in a regulator's individual Performance Review Report where a regulator has or has not met a Standard, or where it has demonstrated improvement against a Standard.

The performance review process

- 5.12 The performance review took place between September 2013 and May 2014. There were seven stages to the performance review:

Stage 1

The regulators provided written evidence of how they met the *Standards of Good Regulation*.

Stage 2

We examined and tested the regulators' evidence using information we had collated from other sources, including our scrutiny of the regulators' fitness to practise decisions, the complaints that we received from members of the public and others, and the third-party feedback we received.

Stage 3

We wrote to the regulators with our requests for additional information or clarification of their evidence.

Stage 4

We held face-to-face meetings with each of the regulators to discuss our outstanding queries, areas of concern and/or areas of good performance.

Stage 5

We considered any additional information provided by the regulators and reached a final view on their performance.

Stage 6

We drafted a report summarising our view on each regulator's performance. We shared the report with each regulator and asked for their comments on the factual accuracy of the report.

Stage 7

We considered the comments made by the regulators and finalised each regulator's Performance Review Report. We also produced an overarching

report that included our views on emerging themes and issues in health and care professional regulation.

- 5.13 We are grateful for the feedback received from third parties. We found this information very helpful in forming our views about the regulators' performance. A full list of third-party organisations that provided feedback can be found in Annex 3: Third-party feedback.

6. Our approach to regulation

- 6.1 In 2010, we published *Right-touch Regulation*.³ We developed this approach as a result of our experience working with the regulators and advising the government on areas of regulatory policy. Right-touch regulation builds on the principles of good regulation identified by the UK Better Regulation Executive. These are: proportionality, consistency, targeted, transparency and accountability. To these principles, we have added a sixth principle of agility. Agility in regulation means looking forward to anticipate change, rather than looking back to prevent the last crisis from happening again.
- 6.2 Right-touch regulation is the minimum regulatory force required to achieve the desired result. Too little regulation is ineffective, too much is a waste of effort and resources. We have identified the following eight elements to help us, and others who work in regulation, to focus on right-touch regulation in practice:
- Identify the problem before the solution
 - Quantify the risks
 - Get as close to the problem as possible
 - Focus on the outcome
 - Use regulation only when necessary
 - Keep it simple
 - Check for unintended consequences
 - Review and respond to change.
- 6.3 We consider that there are a number of benefits to using right-touch regulation in our work. These include:
- Describing outcomes in terms of the beneficiaries of regulation
 - Enabling organisations to react appropriately to issues as they arise
 - Enabling collaboration and co-operation across the regulatory and health and social care system
 - Enabling regulation to remain relevant to the needs of today's society
 - Considering whether the costs of regulation are really worth the benefits.
- 6.4 We have used right-touch regulation as a framework to guide our consideration of each regulator's performance and when discussing the current issues and concerns we have identified in health and care professional regulation.

³ CHRE, 2010. *Right-touch Regulation*. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation> [Accessed 11 May 2015].

- 6.5 We expect and want to be challenged if our own approach is not right-touch: that is, risk-based, proportionate, outcome-focused and agile.

7. How are the regulators performing against the *Standards of Good Regulation*?

Summary of the regulators' performance against the *Standards of Good Regulation*

- 7.1 This overview looks at three areas of health and care professional regulation arising from our oversight of the regulators. First, we summarise the performance of the regulators against the *Standards of Good Regulation*. The detailed reports on each regulator appear in Sections 10–18 below. Second, we consider some areas for learning and improvement drawing on our oversight of fitness to practise cases and our responses to many consultations. Lastly, we look at policy and legislative matters that set the context in which the regulators work.
- 7.2 In this Performance Review Report, we set out whether or not, on the evidence we have assessed, the regulators meet the 24 *Standards of Good Regulation*. This year, as before, all regulators meet the great majority of the Standards.
- 7.3 However, we have greater concerns than noted in previous reviews about the performance of some of the health and care regulators in relation to some of the Standards for registration and fitness to practise. We have also reported on where we consider their performance has improved in response to concerns we identified in the 2013/2014 performance review. We consider that the level of confidence the public can have in the regulators differs between regulators.
- 7.4 In each of the individual regulator's Performance Review Reports, we have identified where the regulators have or have not met the 24 *Standards of Good Regulation*. In summary, in 2014/2015, we concluded that:
- Three regulators met all 24 of the Standards: the HCPC, the GMC and the GOSc
 - Two regulators met all but one of the Standards: the GPhC and the PSNI
 - Four regulators did not meet three or more of the Standards of Good Regulation. The GOC did not meet three of the Standards, the GCC and the NMC did not meet five of the Standards and the GDC did not meet seven of the Standards.
- 7.5 We highlight below some of the activities and outcomes that the regulators have reported to us during the 2014/2015 performance review which led to our overall judgement about their performance against the *Standards of Good Regulation* across the four areas of performance we assess. We also identify some areas of good practice that we think are worthy of note.

Improvements in performance

- 7.6 We have noted in the individual reports where the regulators' performance has improved in response to concerns we identified in the 2013/2014 performance review. In particular, we are pleased to report that:
- The GDC has met the first Standard for registration (which requires that only those who meet the regulator's requirements are registered)
 - The NMC has now met the second Standard for registration (requiring the registration process to be fair, based on the regulator's standards, efficient, transparent, secure and continuously improving). This is based on the progress and improvements it has made in several areas including customer service, the efficiency of the registration process, the management of registration appeals, introducing online registration and a new registration process for overseas applicants
 - The NMC has now met the fourth Standard for fitness to practise (which relates to the timely review of complaints and the prioritisation of serious cases, including applying for an interim order)
 - We have sufficient evidence to assess the GCC and the NMC as having met the sixth Standard for fitness to practise (which relates to the timely progression of cases through the fitness to practise process) this year
 - The GCC has now met the ninth Standard for fitness to practise (which relates to all fitness to practise decisions being published and communicated to all relevant stakeholders)
 - The PSNI has met the tenth Standard for fitness to practise (which relates to information about fitness to practise cases being securely retained) and the HCPC also improved its performance against this Standard in light of the work it has done to strengthen its information security procedures.

Guidance and standards

- 7.7 There are four *Standards of Good Regulation for guidance and standards* (see Annex 2). These Standards require the regulators to ensure that their standards and guidance documents prioritise patient safety and patient-centred care and that their guidance helps registrants to apply the regulators' standards in relation to specific issues. We check that guidance and standards are publicly available and that the regulators take account of the views of stakeholders and external developments when developing new standards and guidance.
- 7.8 All regulators met all of the *Standards of Good Regulation for guidance and standards*. We identified two areas of good practice from the regulators' work in this area.
- 7.9 The GMC's and the NMC's work to produce common guidance on the duty of candour for the healthcare professionals they regulate is an area of good practice. This is the first time that two regulators (that we oversee) have worked together to produce joint guidance for the professionals they regulate. We encourage such joint working and joint guidance where it is appropriate.

- 7.10 The GMC also launched the *Better Care for Older People* section of its website and we considered this to be an area of good practice because it addressed a need without unnecessarily producing guidance. We consider this to be a right-touch approach. The website is an innovative method of sharing tools and resources and is focused on improved outcomes for patients in an area of care where there have been highly publicised failings.

Education and training

- 7.11 There are five *Standards of Good Regulation for education and training* (see Annex 2). The standards for education and training require the regulators to ensure that their standards for education are linked to their standards for registrants and that there is a proportionate process for the quality assurance of education programmes so that the public can be assured that education providers provide students, trainees and professionals with the skills and knowledge to practise safely and effectively. We also require regulators to have a system in place to assure themselves of the continuing fitness to practise of registrants.
- 7.12 We are pleased to report that all the regulators, with the exception of the NMC, have met all of the Standards for education and training in 2014/2015.
- 7.13 We note that although the NMC has not met the Standard that requires it to have in place a system of revalidation⁴ or continuing professional development (CPD), it has made progress in the relevant workstream to put such a system in place during 2014/15.
- 7.14 We identified two areas of good practice from the 2014/2015 performance review related to performance against the Standards for education and training. We are pleased that the GOC has continued to make good progress in implementing its Continuing Education and Training (CET) scheme. Independent research commissioned by the GOC shows that the 'peer review' aspect (where registrants discuss their practice with other registrants) of the CET scheme is proving effective at combating professional isolation. Seventy three per cent of practitioners have made changes to their practice after participating in case-based peer review discussions as part of the CET scheme. The GOC also reports that the majority of participants found that interacting with other practitioners within the CET scheme increased their self-confidence about their level of clinical knowledge. This research confirms our previous view that the GOC's CET scheme is an area of good practice. All of these outcomes are positive and should lead to better care for patients.
- 7.15 In October 2014, after being made aware of concerns about midwifery practice in Guernsey, the NMC carried out an extraordinary review of the local supervisory authority to assess whether sufficient measures were in place to protect patients. The NMC published the report of its findings on 30 October 2014.⁵ The report concluded that a number of standards relating to

⁴ Where revalidation is defined as a formal periodic assessment of fitness to practise.

⁵ *Extraordinary LSA review: Princess Elizabeth Hospital, Health and Social Services Department, Guernsey 01-03 October 2014*. Available at <http://www.nmc->

how the midwives' practice was being supervised had not been met. At the date of writing, the NMC was continuing to work with the Guernsey Health and Social Services Department and the local supervisory authority to review its action plans and next steps. Through its extraordinary review, the NMC has drawn attention to serious and wide-ranging concerns (which did not necessarily fall within its regulatory remit) in order to drive improvements in maternity care in Guernsey, in the interests of public protection and the safety of mothers and babies. Taking an active leadership role on such a high-profile matter is also likely to have a positive impact on public confidence in the NMC and the system of regulation. We therefore concluded that this work amounts to good practice.

- 7.16 In our 2013/2014 Performance Review Report, we noted that the GPhC's analysis of candidates' performance in the June 2013 registration assessment⁶ demonstrated that candidates who identified themselves as Black-African had performed significantly less well than other self-declared ethnic groups. The GPhC's analysis in 2014 replicated the 2013 finding. The GPhC's analysis of the data indicates that weaknesses in student performance are apparent throughout the registration assessment process – from the first stage at which students apply, through to registration assessment. The GPhC is engaging with the Equality Challenge Unit⁷ about how it can make progress. The GPhC plans to run a seminar for schools of pharmacy and pre-registration, training providers during the last quarter of 2015 to agree a well-co-ordinated response between the schools and the GPhC to the issues raised. We recognise that the GPhC is engaging with relevant stakeholders to ensure that the processes operated by education providers are fair. We consider the GPhC's work in this area to be noteworthy and we look forward to the outcomes from this work.

Registration

- 7.17 There are five *Standards of Good Regulation for registration* (see Annex 2). These Standards cover the need for regulators to ensure that only those who meet their standards are registered and that their registration processes are fair, efficient and effective. They also require the regulators to make accurate information about the current and past fitness to practise of registrants publicly available on their registers. In addition, the Standards cover the need for accessibility of registration information for employers and members of the public and require the regulators to operate proportionate processes to take action against individuals practising illegally.

[uk.org/Documents/MidwiferyExtraordinaryReviewReports/Extraordinary_Review%20LSA_South_West_Guernsey_01-03%20Oct_14.pdf](http://www.nmc.org.uk/Documents/MidwiferyExtraordinaryReviewReports/Extraordinary_Review%20LSA_South_West_Guernsey_01-03%20Oct_14.pdf)

⁶ Individuals wanting to become pharmacists must complete a four-year MPharm degree, complete a pre-registration training year and pass the GPhC's registration assessment before being eligible for registration as a pharmacist.

⁷ The Equality Challenge Unit is a charity that works to further and support equality and diversity for staff and students in higher education institutions across the UK and in colleges in Scotland.
www.ecu.ac.uk

7.18 The regulators mostly met the *Standards of Good Regulation for registration*. This is with the exception of three of the regulators (the GDC, the GOC and the NMC) who failed to meet the third Standard for registration (which requires the regulators to maintain accurate registers).

7.19 We identified one area of good practice related to the regulators' performance against the Standards for registration. In our 2013/2014 Performance Review Report, we concluded that the HCPC's use of social media (Twitter) to promote its registration renewal and CPD processes was innovative practice. During 2014/2015, the HCPC increased the information and resources available to its registrants to engage with them on the CPD audit processes and registration renewals as follows:

- It held four webinar events in October 2014, to coincide with the registration renewal period for two of its registrant groups: social workers (in England) and operating department practitioners
- It continued its 'tweet chats' specifically with physiotherapists in 2014 as well as its online discussions for the social work profession
- It produced a series of short films which achieved a combined estimated reach of more than 30,000 within six months of their launch
- It continued to work with the relevant professional bodies in order to produce CPD sample profiles (demonstrating how registrants can meet its CPD standards). The HCPC has published on its website at least one sample profile for each of the 16 professions it regulates.

7.20 We concluded that the HCPC's work in this area in 2014/2015 is an example of good practice. This is supported by the amount of 're-tweets', 'shares' and positive feedback the HCPC has received about it on social media; the number of views it has received on its YouTube channel and visits to its website; and anecdotal feedback it has received from individuals.

Fitness to practise

7.21 There are 10 *Standards of Good Regulation for fitness to practise* (see Annex 2). These Standards cover performance throughout the fitness to practise function. We are disappointed to report that during 2014/2015, six of the regulators did not meet one or more of these Standards. There was a degree of commonality in the Standards that were not met. Our general concerns about the regulators' performance in fitness to practise are summarised below.

7.22 In relation to those *Standards of Good Regulation for fitness to practise* that were not met by several regulators, we identified the following:

- Two of the regulators (the GCC and the GDC) did not meet the Standard that requires them to have adequate processes in place for managing risk in fitness to practise cases. Three regulators (the HCPC, the GOsC and the GPhC) met this Standard, although we identified some concerns with their performance

- Two of the regulators (the GCC and the PSNI) did not meet the Standard requiring them to ensure that their fitness to practise process is transparent, fair, proportionate and focused on public protection. One regulator (the NMC) met this Standard, although we considered that their performance was inconsistent
- Three of the regulators (the GDC, the GOC and the GPhC) did not meet the Standard that requires them to ensure that their fitness to practise cases are progressed without undue delay. We also expressed concerns about three regulators' performance (the HCPC, the GMC and the NMC) against the relevant Standard and we considered that any ongoing decline in performance might mean that this Standard would not be met in the future
- Three of the regulators (the GCC, the GDC and the NMC) did not meet the Standard that requires them to ensure they provide good customer care to all parties involved in their fitness to practise process and we raised concerns that one of the regulators (the GOsC) might be at risk of not meeting this Standard in the future
- Three of the regulators (the GCC, the GDC and the NMC) did not meet the Standard that requires them to ensure that all fitness to practise decisions are well reasoned, protect the public and maintain confidence in regulated professions
- Four of the regulators (the GCC, the GDC, the GOC and the NMC) did not meet the Standard that requires them to ensure that fitness to practise information is securely retained. We also expressed concern about the performance of one regulator (the GOsC), where we considered that the Standard was met but that the regulator might be at risk of not meeting this Standard in the future.

7.23 We identified two areas of good practice related to the regulators' performance against the Standards for fitness to practise.

7.24 We consider the research the GMC has carried out to assist it in understanding issues relating to registrants who are international medical graduates and/or from black and minority ethnic groups (BME) is an example of good practice. The GMC told us that employers are the main source of complaints about BME doctors and that these complaints tend to be about issues that are not easily remediated (and therefore, it is more likely than not that the doctor's fitness to practise will be found to be impaired and a sanction imposed). The GMC is working with employers through its Employer Liaison Service to understand and address the reasons for the higher numbers of referrals for BME doctors, but highlighted to us that it is unable to influence any bias by individuals who make complaints. The GMC also told us that the nature of the complaints made against doctors in these groups (and, in particular, complaints about international medical graduate doctors) appear more likely to relate to health and probity issues than complaints raised about other groups. The GMC told us that, as these attract more severe sanctions to protect patients and uphold the reputation of the

profession, any disparity in fitness to practise outcomes for these groups is likely to be linked to the nature of the complaint about them.

- 7.25 In May 2014, the HCPC commissioned an external peer review of its fitness to practise process from the perspective of service users and complainants. This identified areas of good practice, as well as areas for improvement (in relation to: tailoring the process to the individual needs of complainants; undertaking risk assessments more rigorously at key points in the investigation; and communicating clearly and concisely). At the date of writing, the HCPC's work to implement the report's recommendations was ongoing. The HCPC also completed an internal review of its handling of complaints received about the HCPC's investigation of fitness to practise cases and produced two new guidance documents: *Handling complaints received about Fitness to Practise* and *Managing Unacceptable and Unreasonable Behaviour*. We welcome the HCPC's work to evaluate and improve its complaints-handling process. The timely and effective handling of complaints encourages public confidence in the regulator and we consider that the HCPC's work in this area is good practice.

Areas for learning and improvement

- 7.26 In this section of the overview, we consider the learning that comes from other areas of our oversight of the regulators, in particular, our consideration of final fitness to practise decisions.

Learning from Section 29 appeals

- 7.27 We continue to find it necessary to appeal a small number of final fitness to practise decisions of the regulators that we consider to be unduly lenient and which fail adequately to protect the public.⁸ Several appeals that we have lodged against decisions of the regulators' fitness to practise panels have been decided by the High Court during 2014/2015. There have been a number of useful principles set out in the High Court's judgments on topics that will affect the way in which the regulators investigate and present cases before their fitness to practise panels, as well as the way in which the fitness to practise panels approach their decision making. We set out some examples below.
- 7.28 We succeeded in our appeal against a GPhC fitness to practise panel's decision to impose a 12-month suspension (with a review hearing) on a registrant who had criminal convictions for child cruelty.⁹ In concluding that the GPhC panel's decision was unduly lenient and should be replaced by an order for the registrant's name to be removed from the register, the High Court noted that:

⁸ Further details are given in Volume 1 of this annual report paragraphs 3.16–3.19.

⁹ Professional Standards Authority v (1) GPhC and (2) Onwughalu [2014] EWHC 2521 (Admin).

- The degree of deference that has to be accorded to a fitness to practise panel's professional judgement varies depending on the circumstances of the case¹⁰
- It was 'plainly wrong' of the GPhC panel to have allowed the registrant additional time to develop insight – in particular because the registrant had already had sufficient opportunity to do so in the period following the offences
- Regulators are under an obligation to bring panels' errors to the attention of the Authority and a regulator is not entitled to any discount in the share of the Authority's costs that it has to pay as a result of having drawn the error to the Authority's attention (as the GPhC did in this case),¹¹ because the regulator is accountable for the decisions made by its fitness to practise committees.

7.29 In another appeal, the High Court said that a failure to include a registrant's motivation for their actions amounted to undercharging by the NMC, which was sufficiently serious to mean that the case had to be remitted for a new hearing, on amended allegations.¹² The facts were that the registrant had failed, for several months, to raise concerns about an assault by a colleague on a vulnerable patient. The NMC had not included in the allegations that the fitness to practise panel was asked to consider any reference to the registrant's motivation, even though there was evidence that the reason the registrant had not raised concerns was due to their wish to protect their colleague. The High Court concluded that the failure to include reference to the registrant's motivation in the original allegations meant that the true seriousness of the case had not been properly assessed by the fitness to practise panel, and their decision on sanction could not be allowed to stand. This judgment may be of particular significance as the new regulatory approach to duty of candour comes into practice.

7.30 In a third appeal against an HCPC panel's decision about the fitness to practise of a registrant who had a criminal conviction as a result of his forging a degree certificate and subsequent dishonesty, which was aimed at securing a promotion,¹³ the High Court had to address whether or not the legislation allows the Authority to appeal if there is no current public protection risk arising directly from the registrant being able to continue practising. The High Court said that the reference in the legislation to 'public protection' should be interpreted to include questions of the wider public interest. When it came to consider the fitness to practise panel's approach to the registrant's behaviour, the High Court noted that the panel had made a fundamental error in concluding that the criminal conviction and sentence

¹⁰ A similar comment was made in another of our successful appeals in 2014/2015 – Professional Standards Authority v (1) HCPC and (2) Ghaffar [2014] EWHC 2723 (Admin).

¹¹ Courts will sometimes apportion the amount of the Authority's costs to be paid between the regulator and the registrant to reflect the particular circumstances of the case, including the timing of any concessions made.

¹² Professional Standards Authority v (1) NMC and (2) MacLeod [2014] EWHC 4354 (Admin).

¹³ See footnote 5.

that had previously been imposed upon the registrant were sufficient to meet the wider public interest of declaring standards and maintaining public confidence in the profession. The High Court said that the need to uphold proper professional standards and public confidence required a finding that the registrant's fitness to practise was impaired. The Court made such a finding and imposed a suspension on the registrant.

Consensual disposals

- 7.31 Several of the regulators already have – or hope in future to introduce – mechanisms that permit them to resolve fitness to practise cases without the need for a full fitness to practise hearing to take place.¹⁴ While reducing the need for fitness to practise hearings has clear benefits for the regulators and others involved (in terms of timeliness, cost, and minimising stress on registrants, complainants and other witnesses), disposing of cases outside of a public forum also carries with it the risk of damaging public confidence in the regulatory process, particularly in circumstances where the disposal mechanism used means that the allegations and evidence are not properly considered.
- 7.32 In our response to one regulator's consultation about the introduction of a consensual mechanism (the use of undertakings) in late 2014, we explained that we can only support the use of consensual disposal mechanisms if those mechanisms comply with certain key principles. One of those principles is that all cases that meet the threshold for referral for a fitness to practise panel hearing should be disposed of in a public forum by a panel that is independent of the investigation process, and that the outcomes should be subject to scrutiny by an independent body with a right to appeal them.
- 7.33 Three of the appeals we lodged in 2014/2015¹⁵ demonstrate how the risk of damaging public confidence in regulation can arise from the inappropriate use of a consensual mechanism. All three of the appeals related to consensual panel determination decisions made by the NMC. When the NMC's consensual panel determination process is used, the fitness to practise panel considers an agreed statement about both the facts of the case and the rationale for the sanction which the NMC and the registrant have agreed on in advance (it remains open to the panel to reject the agreed sanction and/or decide that it needs to look at the evidence itself). In all three cases, our appeals were based on concerns that: use of the consensual panel determination process was inappropriate, due to the seriousness of the allegations involved (dishonesty); using the consensual panel determination process meant that the discrepancies in various witnesses' evidence were not considered by the fitness to practise panels; and the panels were made

¹⁴ Current consensual mechanisms include: undertakings, voluntary erasure/removal, and consensual disposal processes.

¹⁵ We have a statutory right to appeal 'unduly lenient' final fitness to practise outcomes to Court, where we consider it desirable for public protection.

aware of all the relevant information/allegations, which may have led them to impose a less severe sanction than was appropriate.¹⁶

- 7.34 We will continue to monitor the regulators' plans for the development/expansion of consensual disposal mechanisms for fitness to practise and to raise any concerns we identify regarding any potential negative impact they may have on public protection and/or on public confidence in the regulatory process.

Information governance

- 7.35 The regulators, by nature of their work, need to process large amounts of personal and sensitive information about registrants, patients and witnesses. It is therefore essential that they have robust information governance and data security processes.
- 7.36 We welcome the approach that the GMC and the HCPC are taking in adopting the ISO 27001:2013 standard.
- 7.37 We recognise that individual human errors may happen but when we assess the regulators against the relevant standard, we look to see that the risk is minimised by strict information governance procedures, regular staff training and an appropriate response if an incident happens including self-referral to the Information Commissioner's Office (ICO).
- 7.38 We recognise that it is important that in highlighting concerns about data breaches, we do not discourage the reporting of them. It is in this context that we consider that the framework in which information governance and data security is managed is of the greatest importance, so that if breaches do occur, they are properly identified, classified, reported and remedied. We think all regulators should strive to reduce data breaches to zero.

Other issues affecting health professional regulation

- 7.39 In the final part of this overview, we consider some other aspects to our findings of our oversight of the regulators and areas for possible learning and improvement.

Inadequate consultation practices

- 7.40 Despite concluding that all the regulators have met all of the *Standards of Good Regulation for guidance and standards*, we noted that the quality of some of the recent consultation exercises carried out by some of the regulators has fallen short of our expectations. Our main concerns relate to the quality of the consultation documents. For example, there were several consultations where the information or detail provided was not sufficient to elicit fully informed responses. Our response to the GMC's consultation on its proposed changes to its indicative sanctions guidance (for use by fitness to practise panels) commented that it was difficult to understand the full implications of the proposed changes because the GMC had not published a

¹⁶ Two of the three appeals were settled by agreement without the need for a Court hearing, which means that those cases will be reconsidered by new fitness to practise panels at full hearings.

draft of the guidance as part of the consultation.¹⁷ In our responses to the two NMC consultations on its revised Code of Conduct and revalidation, we expressed concerns about the lack of detail provided about the NMC's proposals.¹⁸

- 7.41 In other consultation documents, either the proposals were unclear (for example, the GOsC's consultation on threshold criteria for unprofessional conduct) or no clear rationale was given for the proposals (as was the case for some of the proposals in the GDC's consultation on its fitness to practise rules).
- 7.42 We also criticised various consultation documents (the NMC consultations on revalidation, and the GDC's consultation on its fitness to practise rules) for not including an assessment of the impacts of the proposals.
- 7.43 The GDC was the subject of judicial criticism (as a result of judicial review proceedings initiated by the British Dental Association) for not providing sufficient information in its consultation about the proposed increase to dentists' annual retention fee. In our view, the following excerpts from the judgment of Mr Justice Cranston constitute a benchmark for public bodies considering what information to include in a consultation:

'A transparent consultation means that consultees had to be put in a position to test the validity of the assumptions purporting to underlie the suggested fee increase, and why alternatives had been rejected, and to enable consultees to make an informed and intelligent response and, if minded to do so, propose alternatives. [...] there was a need if the consultation was to be fair to provide enough information to the consultees to enable them to test the robustness or reliability of the model behind what was being presented.'¹⁹

Changes in legislation

- 7.44 The Health and Social Care (Safety and Quality) Act 2015 and the Section 60 Order, affecting both the GMC and the Authority, contain provisions to harmonise the objectives of most of the functions of the Authority and the regulators, except for the PSNI²⁰ (see paragraph 7.48 below). We understand that the Department of Health intends to agree on a

¹⁷ November 2014. *Professional Standards Authority response to GMC's sanctions guidance consultation*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/141117-psa-response-to-gmc-sanctions-guidance-consultation-final.pdf?sfvrsn=0> [Accessed 14 May 2015]

¹⁸ August 2014. *The Authority's response to the NMC consultation on the draft Standards of conduct, performance and ethics for nurses and midwives and second round of proposals on revalidation*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/140812-nmc-code-and-reval-consultation-final.pdf?sfvrsn=4> [Accessed 14 May 2015]. March 2014. *The Authority's response to the Nursing and Midwifery Council's proposals on revalidation for nurses and midwives*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/140331-psa-nmc-revalidation-consult-final.pdf?sfvrsn=0> [Accessed 14 May 2015].

¹⁹ *British Dental Association v General Dental Council* [2014] EWHC 4311 (Admin). Available at <http://www.bailii.org/ew/cases/EWHC/Admin/2014/4311.html>.

²⁰ *The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015*.

commencement date for these provisions with the Authority and the professional regulators concerned.

- 7.45 The new objective for the Authority and the regulators will be an overarching objective of public protection involving:
- Protecting, promoting and maintaining the health, safety and well-being of the public
 - Promoting and maintaining public confidence in the professions that the regulators regulate
 - Promoting and maintaining proper professional standards and conduct for members of those professions.
- 7.46 For the GOC and the GPhC, which also have functions in relation to business regulation, the overarching objective will also involve promoting and maintaining proper standards and conduct for business registrants (GOC), and proper standards for the safe and effective practice of pharmacy at registered pharmacies (GPhC).
- 7.47 For some, this new objective will be a welcome improvement (the GCC, the GOsC and the GDC). However, for others, including ourselves, it is not clear what impact the change of wording will have, if any. In particular, in the case of the Authority, the implications of a new objective of ‘promoting and maintaining public confidence in professions’ are unclear. The meaning of this new objective will probably fall to the courts to interpret when the need arises.
- 7.48 Two new Section 60 Orders have been made in respect of the NMC and GMC, and have the potential to add complexity to the Authority’s oversight of these regulators. The Nursing and Midwifery (Amendment) Order 2014 has granted the NMC powers to introduce case examiners into the fitness to practise process, as well as powers to review ‘no case to answer’ decisions. NMC fitness to practise panels also now have the power to strike off registrants in certain circumstances when they have been suspended previously.
- 7.49 The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015²¹ (the Order) changed the GMC’s overarching objective and granted the GMC a right of appeal against decisions made by its adjudication arm (the Medical Practitioners Tribunals Service) (MPTS). It also gave the MPTS the status of a statutory committee of the GMC, and introduced changes to the way cases are prepared and managed prior to hearings, introducing the facility to use legally qualified panel Chairs in some cases, and allowing costs to be awarded in certain circumstances. The right of appeal for the GMC against MPTS decisions introduced by the GMC Order is of particular significance to the Authority.

²¹ <http://www.legislation.gov.uk/ukdsi/2015/9780111128091>

The GMC's right of appeal against MPTS decisions

- 7.50 The Authority's ability to refer (effectively, to appeal) unduly lenient decisions to the courts is an option of last resort; however, our statistics show the increase in the Authority's use of this option is increasing at a greater rate than is proportionate to the increase in the total number of fitness to practise decisions made by the regulators' fitness to practise panels.
- 7.51 The making of the GMC Section 60 Order on 19 March 2015 has fundamentally changed the Authority's ability to appeal decisions made by the MPTS – something which had largely been unchanged since the 2002 Act.²²
- 7.52 The Order, which has not yet come into force, will give the GMC the first option to appeal decisions made by the MPTS, before the Authority may do so. It also redefines the threshold for an appeal (whether the appeal is made by the GMC or by the Authority) – 'unduly lenient' decisions become, by virtue of the Order, decisions which are insufficient to protect the public, maintain public confidence in the profession and maintain proper professional standards. The Authority will still be able to appeal MPTS decisions in circumstances where the GMC has not already lodged an appeal, and will also be able to add grounds of appeal to any GMC appeals, and to take over any appeals which the GMC lodges but does not then pursue. Similarly, the GMC will have the same option in respect of the Authority's appeals of MPTS decisions.
- 7.53 The Authority has questioned the need for such a change, particularly the appropriateness of a regulator appealing a decision made by the MPTS (which is a statutory committee of the GMC) without the independence provided by the Authority and its ability to scrutinise a GMC investigation and the charges and evidence placed by the regulator before the fitness to practise panel. A further issue is that one of the nine regulators we oversee will have a markedly different jurisdiction from the others.
- 7.54 Apart from these conceptual issues, the changes in the Order will also have implications for the way in which the Authority reviews MPTS decisions and considers intervening in GMC appeals. MPTS decisions that the GMC elects not to appeal will still be the subject of the Authority's current scrutiny process; however, the procedure for reviewing any MPTS decision where the GMC has lodged an appeal will be more complex and involve more external legal input. In order for the Authority to effectively exercise its ability to add grounds of appeal or take over GMC appeals, the Authority will have to become a party to every GMC appeal. Such a 'watching brief' will result in additional costs.
- 7.55 The Authority and the GMC are committed to making this new appeals process work where MPTS decisions do not sufficiently protect the public,

²² The National Health Service Reform and Health Care Professions Act 2002 as amended by the Health and Social Care Act 2008 and the Health and Social Care Act 2012. Available at <http://www.legislation.gov.uk/ukpga/2002/17/contents>.

maintain public confidence in the profession and maintain proper professional standards.

Language testing and the 'European Professional Card'

- 7.56 In an improvement to the regulators' ability to ensure European Union registrants are competent in English, a Section 60 Order²³ has given the GDC, the NMC, the GPhC and the PSNI similar language controls as those given to the GMC during 2013/2014. This is a welcome change. However, significant new risks are presented by the proposal from the European Commission for a 'European Professional Card', aimed at facilitating the movement of professionals within the EU.
- 7.57 The Recognition of Profession Qualifications Directive is legally binding on the UK, with a direct impact on legislation, rules, procedures and costs. It stipulates recognition deadlines, sets out documentation requirements, and defines language requirements for health and care professionals seeking registration in another country within Europe. The regulators have engaged in the revision of the Directive and associated legislation through the Alliance of UK Health Regulators on Europe (AURE), a group whose purpose it is to protect and promote patient safety through effective engagement with, and influence of, EU policy and legislation. AURE's engagement during the negotiations has helped to bring about a number of welcome features, including a proactive fitness to practise alert mechanism and the fact that the professional 'card' is, in fact, an online certificate, underpinned by improved information exchange. However, some areas of risk are emerging, which the Authority will be monitoring in the year ahead. These include the restricted role of the host regulator in 'temporary and occasional' applications, which are thought likely to increase under the new arrangements.

Possible new legislation

- 7.58 The previous government commissioned the Law Commissions' review of healthcare professional regulation but did not introduce comprehensive new legislation. However, the government did state that it would introduce legislation when parliamentary time allowed and we anticipate that the recently elected government will wish to do so.
- 7.59 New legislation, we believe, should increase public protection, aim for greater coherence across both system and professional regulation, simplify procedures, promote cost effectiveness and create a continuum of assurance based on a proper evaluation of risk to support the professionalism of a flexible health and care workforce for the future.

Revision of the performance review process

- 7.60 We recognise that the performance review process, which we have been operating since 2010, requires refreshing. The way the regulators manage their roles has continued to develop, as has their relationship with the Authority. Over the last 18 months, we have been considering how we can

²³ The Health Care and Associated Professions (Knowledge of English) Order 2015.

move to a more risk-based and proportionate performance review process while still keeping the assessment rigorous and fulfilling our own statutory responsibility to Parliament and the public.

7.61 On 7 May 2015, we launched a public consultation on the revised performance review process, which has been developed after considerable engagement with the regulators. The proposed new process brings together management information from the regulators, our periodic audits, third-party information, information from our scrutiny of the regulators' fitness to practise panel decisions, information about changes potentially affecting the regulator, and the previous year's conclusions into a single process. We will report annually on each regulator separately in a rolling programme of reviews. Subject to the outcome of the consultation, this will therefore be the last Performance Review Report in the current form.

Conclusions and recommendations

7.62 This year's performance review has shown that the regulators are generally fulfilling their statutory responsibilities and are focused on public protection.

7.63 As in previous years, we have identified continuing concerns about the performance of some regulators regarding the effectiveness and efficiency of the fitness to practise processes. Some regulators are working to achieve effective control of the core elements of an effective fitness to practise framework, including ensuring that cases are progressed as quickly as possible, taking a risk-based approach, improving decision making and ensuring that information is securely retained.

7.64 There will be further changes in the sector, probably including legislative reform. There may also be further change in that we launched a public consultation on the revised performance review process on 7 May 2015. Subject to the outcome of the consultation, this will therefore be the last Performance Review Report in the current form.

7.65 We will continue to work with the regulators to ensure that, amid these developments, the structures and processes of regulation of the regulators that we oversee continue to meet their statutory responsibilities and focus on public protection.

7.66 We recommend that the regulators should:

- Address the concerns highlighted in their individual reports
- Review this document as a whole, taking account of our views and consider whether they can learn and improve from the practices of the other regulators
- Ensure that their Councils review and discuss the Performance Review Report in a public Council meeting.

7.67 We will share this report with the Departments of Health in England and the devolved administrations and with the Health Committee in the UK Parliament and the devolved administrations.

8. The regulators in numbers

- 8.1 In this section, we provide some basic numerical data on the regulators' performance. The regulators themselves have provided this information and it has not been audited by us.
- 8.2 The data provides some context about the size of the regulators in terms of the number of professions and professionals that they regulate and the size of their workloads.
- 8.3 When reading this data for each of the regulators, care should be taken to ensure that misleading comparisons are not made. There are differences in the size of the regulators, both in terms of staff numbers and registrants: they all work to differing legislation, rules and processes, they have a varying caseload in terms of registration applications and fitness to practise referrals, and are dependent to a greater or lesser extent on information from third parties, which can impact the timeliness of their work.

Data relates to April 2014 to March 2015		GCC	GDC	GMC	GOC	GOSC	GPhC	HCPc	NMC	PSNI
REGISTRATION ACTIVITY										
Number of registrants	3,034	66,314 dental care professional (DCP) 39,385 dentists	2,66,959	20,762 (individuals) 2,475 (bodies corporate)	4,970	72,985 (50,292 pharmacists and 22,693 pharmacy technicians (PT)) 14,369 (premisses)	3,30,887	6,86,782	2,237 (individuals) 171 (bodies corporate) 551 (premisses)	
Number of new initial registration applications received	198	12,381	14,481	1,079 (individuals) 173 (bodies corporate)	311	5,197 (3,650 pharmacists and 1,547 PT) 357 (premisses)	21,775	28,517	216 (individuals) 7 (bodies corporate) 2 (premisses)	
Number of registration appeals received and concluded and the outcomes of the appeals	0	10 received and 9 concluded	39 received and 49 concluded 113 revalidation appeals received and 83 concluded 2 English language appeals received and 1 concluded	2 received and concluded	1 received and 2 concluded	1 received and 1 concluded	78 received and 52 concluded	64 received and 53 concluded	0	
Outcomes of registration appeals concluded	N/A	1 upheld 2 rejected 6 withdrawn	Registration: 6 upheld, 25 rejected, 18 withdrawn Revalidation: 4 rejected, 79 withdrawn English language: 1 withdrawn	2 rejected	1 rejected 1 withdrawn	1 rejected	22 upheld 29 rejected 1 withdrawn	20 upheld 13 rejected 20 withdrawn	N/A	
Median time taken to process initial registration applications for:										
• UK graduates	1 day	13 days	1 day	2 days	2 days	16 days (pharmacists) and 1 day (PT)	5 days	2 days ²⁴	1 day	
• International non-EU graduates	1 day	71 days	21 days	2 days	0	0	24 days	1 day ²⁵	0	
• EU graduates	1 day	13 days	33 days	2 days	41 days	0	26 days	9 days ²⁶	1 day	
Annual retention fee	£800 practising and £100 non-practising	£890 dentist ²⁷ £1116 DCP	£390 licensed, £140 unlicensed	£290 qualified registrant £25 student registrant ²⁸	£320 (1 st year) £430 (2 nd year) £570 (3 rd year onwards)	Pharmacists £240 PT £108 Premises £221	£80	£120 ²⁹	£372	

²⁴ The NMC notes that this figure is calculated from completion of the application to entry on the register.

²⁵ The NMC notes that this figure is not directly comparable with the figure in the 2013/2014 report due to a difference in the way this figure has been calculated.

²⁶ The NMC notes that this figure is calculated from completion of the application to entry on the register. This figure relates to calendar days, not working days.

²⁷ The GDC's annual retention fee rose from £576 to £890 for dentists on 30 October 2014. At the same time, the annual retention fee for DCPs reduced from £120 to £116.

²⁸ The GOC's annual retention fee rose from £290 to £310 for registrants on 1 April 2015.

²⁹ The NMC's annual retention fee rose from £100 to £120 on 1 February 2015.

Number of data breaches reported internally and to the ICO	0	1 internally	15 internally	1 internally	1 internally	1 internally	1 internally	4 internally	1 internally	0
Data relates to April 2014 to March 2015	GCC	GDC	GMC	GOC	GOsC	GPhC	HCPC³⁰	NMC	PSNI	
EDUCATION ACTIVITY										
Number of educational institutions the regulator is responsible for quality assuring	3	49	52	16	11 ³¹	87	142	77	2	
FITNESS TO PRACTISE ACTIVITY										
Number of cases considered by an investigating committee	69	1,281	2,819	163 (including case examiners) ³²	50	207	849	2,260 (including case examiners) ³³	13	
Number of cases concluded by an investigating committee	67	1,229	2,528	176 (including case examiners)	49	131	810	2,208 (including case examiners)	12	
Number of cases considered by a final fitness to practise committee	31	201	232	28	24	89	420	1,711	4	
Number of cases concluded by a final fitness to practise committee	28	192	232	27	22	80	351	1,592	3	
The time taken from receipt of initial complaint to the final investigating committee decision:										
• Median time taken to conclude	18 weeks	48 weeks	35 weeks ³⁴	35.5 weeks ³⁵	11 weeks	63 weeks	33 weeks	45.5 weeks	26 weeks	
• Longest case to conclude	59 weeks	237.7 weeks	356.3 weeks	145 weeks	37 weeks	302 weeks	196 weeks	295.9 weeks ³⁶	89 weeks	
• Shortest case to conclude	4 weeks	2.1 weeks	2 weeks	9 weeks	6 weeks	11 weeks	8 weeks	8.8 weeks	13 weeks	
The time taken from receipt of initial complaint to final fitness to practise hearing determination:										
• Median time taken to conclude	72 weeks	93.3 weeks	92.6 weeks	104 weeks ³⁷	51 weeks	85 weeks	73 weeks ³⁸	81.2 weeks	91 weeks	
• Longest case to conclude	250 weeks	840.7 weeks	259.9 weeks	214 weeks	133 weeks	252 weeks	265 weeks	387 weeks ³⁹	192 weeks	

³⁰ These figures do not include data related to the cases that the HCPC inherited from the General Social Care Council (GSCC). See Paragraph 16.44.

³¹ The GOsC notes that its governing legislation requires it to quality assure qualifications rather than institutions. It quality assures 23 qualifications offered by 11 institutions.

³² The GOC's case examiners began considering and concluding cases from 1 April 2014.

³³ The NMC's case examiners began considering and concluding cases from 7 March 2015.

³⁴ The GMC notes that this figure does not include cases that are closed without referral to the case examiner/investigating committee. See Paragraph 12.42, last bullet.

³⁵ The GOC notes that this figure is not directly comparable with the figure in the 2013/2014 report due to a difference in the way this figure has been calculated.

³⁶ The NMC notes that this case has been delayed by a third-party investigation.

³⁷ The GOC notes that this figure is not directly comparable with the figure in the 2013/2014 report due to a difference in the way this figure has been calculated.

³⁸ The HCPC notes that this figure does not include cases that did not meet its Standard of Acceptance and were closed by staff.

³⁹ The NMC notes that this case was received in 2007 and is a complex health case. The NMC advised us that this case was overlooked and was therefore not reported to us in 2013/2014.

	32 weeks	14.9 weeks	12.6 weeks	30 weeks	26 weeks	25 weeks	26 weeks	19.7 weeks	78 weeks
Data relates to April 2014 to March 2015	GCC	GDC	GMC	GOC	GOsC	GPbC	HCPC	NMC	PSNI
FITNESS TO PRACTISE (continued)									
The median time taken from the final investigating committee decision to the final fitness to practise hearing decision	43 weeks	39.1 weeks	30.3 weeks	51 weeks	35 weeks	47 weeks	39 weeks	34.5 weeks	N/A
The median time taken from initial receipt of complaint to interim order decision, and from receipt of information indicating the need for an interim order to an interim order decision:									
• Receipt of complaint	6 weeks	39.3 weeks	9.9 weeks	16 weeks ⁴⁰	3 weeks	18 weeks	20.4 weeks	3.9 weeks	4 weeks
• Receipt of information	6 weeks	3.4 weeks	2.7 weeks	3 weeks	4 weeks	3 weeks	2.4 weeks	N/A ⁴¹	3 weeks
Number of open cases that are older than:									
• 52 weeks	5	335	598	42	4	128	472	917 ⁴²	3
• 104 weeks	1	95	223	18	0	39	94	133	0
• 156 weeks	1	43	125	4	0	9	14	54	0
Number of registrant/Authority appeals against final fitness to practise decisions:									
• Registrant appeals	0	3	29	2	1	2	2	27	0
• Authority appeals	0	0	1	0	0	1	5	14	0
Number of IOs that have lapsed	0	0	5	0	0	0	0	1	0
Number of High Court extensions	0	10 – all granted	415 – 4 refused	5 – all granted	0	19 – all granted	15 – all granted	459 – 2 refused	2 – both granted
Number of data breaches reported internally and to the ICO	3 internally	24 internally 2 ICO (outcome unknown)	125 internally 1 ICO (no further action)	4 internally 2 ICO (no further action)	3 internally	3 internally 1 ICO (no further action)	31 internally 1 ICO (outcome unknown)	53 internally 3 ICO (2 no further action, 1 outcome unknown)	1 internally

⁴⁰ The GOC notes that this figure is not directly comparable with the figure in the 2013/2014 report due to a difference in the way this figure has been calculated.

⁴¹ The NMC notes that it does not collect this data; it measures from the receipt of complaint to interim order decision only.

⁴² The NMC notes that this figure is not directly comparable with the figure in the 2013/2014 report due to a difference in the way this figure has been calculated.

9. The individual regulators' Performance Review Reports

9.1 Our individual Performance Review Reports for the regulators set out:

- Whether the regulators have met or not met the 24 Standards of Good Regulation which cover the four regulatory functions
- How the regulators have demonstrated that they have met or not met the 24 Standards of Good Regulation and the reasons for our view
- The areas for improvement we have identified.

10. The General Chiropractic Council (GCC)

Overall assessment

- 10.1 In the 2014/2015 performance review, we found that the GCC:
- Met all of the Standards of Good Regulation for guidance and standards
 - Met all of the Standards of Good Regulation for education and training
 - Met all of the Standards of Good Regulation for registration
 - Met five of the 10 Standards of Good Regulation for fitness to practise. These were the first, second, third, sixth and ninth Standards. We concluded that the GCC did not meet five Standards (the fourth,⁴³ fifth,⁴⁴ seventh,⁴⁵ eighth,⁴⁶ and tenth⁴⁷ Standards).
- 10.2 In the 2013/2014 Performance Review Report, we recorded that the GCC did not meet the fourth, sixth, eighth and ninth *Standards of Good Regulation for fitness to practise* and that it had inconsistently performed against the tenth Standard for fitness to practise.
- 10.3 While we recognise the good performance of the GCC in guidance and standards, education and training and registration, we are concerned about the standard of its performance in fitness to practise. We consider that its performance has not improved to the extent that we would have expected since our performance review in 2013/2014 with regards to the fourth, eighth and tenth *Standards of Good Regulation for fitness to practise* and that it has deteriorated against the fifth and seventh *Standards of Good Regulation for fitness to practise*, despite it taking the following steps to address the concerns we identified:
- Improving its timescales for considering the need for, and obtaining, interim order decisions
 - Introducing an electronic case management system in order to streamline its case handling
 - Introducing a process to regularly review cases in order to ensure timely case progression

⁴³ The fourth *Standard of Good Regulation for fitness to practise*: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.

⁴⁴ The fifth *Standard of Good Regulation for fitness to practise*: The fitness to practise process is transparent, fair, proportionate and focused on public protection.

⁴⁵ The seventh *Standard of Good Regulation for fitness to practise*: All parties to a fitness to practise complaint are kept updated on the progress of their case and supported to participate effectively in the process.

⁴⁶ The eighth *Standard of Good Regulation for fitness to practise*: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession.

⁴⁷ The tenth *Standard of Good Regulation for fitness to practise*: Information about fitness to practise cases is securely retained.

- Introducing measures to support witnesses (particularly vulnerable witnesses) in cases involving sexually inappropriate behaviour
- Updating internal procedures and procedural documents (such as case closure checklists) in order to ensure that relevant stakeholders and other bodies (such as other healthcare regulators) are informed of the outcomes of final fitness to practise decisions.

10.4 Our 2014/2015 performance review identified that the concerns we had in 2013/2014 were not fully addressed, as well as highlighting additional concerns. The concerns identified are:

- Continuing failures to record that risk assessments have been carried out; providing reasons to explain why an interim order was not necessary; and appropriately reviewing risk assessments (including after further information is received)
- Widespread non-compliance by the GCC with its internal fitness to practise processes and procedures, leading to deficiencies across its case handling
- A failure to provide regular updates to parties, to provide clear explanations to parties regarding the regulatory process and to inform parties of the Investigating Committee's decision and reasons within its internal time frames
- Ongoing concerns about the quality of some of the decisions of the Investigating Committee and about the adequacy of the reasons provided by the Professional Conduct Committee (the GCC's final fitness to practise hearing panel) to explain its decisions
- Mishandling of requests for sensitive patient data, disclosure of irrelevant and sensitive data to third parties, and continuing failures to store and share fitness to practise case data securely.

10.5 The GCC has met only half of the *Standards of Good Regulation for fitness to practise* in 2014/2015. We consider that this indicates the need for the GCC's Council and its Audit Committee to give an elevated level of scrutiny to the performance of the fitness to practise function, in order to ensure that a demonstrable improvement in its performance is achieved within a reasonable time frame. We acknowledge that the GCC has already taken some steps towards achieving this, as set out in paragraphs 10.58–10.59 below.

10.6 Further information about the GCC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.

Guidance and standards

10.7 The GCC continued to meet all of the *Standards of Good Regulation for guidance and standards* during 2014/2015. Examples of how it demonstrated this are:

- It signed up to a joint statement on the duty of candour⁴⁸ with seven of the other health and care professional regulators. The statement promotes the message that regulated health and care professionals must be open and honest when something goes wrong both to patients, their colleagues, their employer and the regulator
- It continued its review of its Code of Practice and Standard of Proficiency. It has used this opportunity to harmonise the Code of Practice and Standard of Proficiency into one document and to ensure that the language used is clear in terms of explaining what is expected of GCC's registrants. The revised Code (for the first time) expressly discusses 'patient expectations' for each high level Standard. The Code: standards of conduct, performance and ethics for chiropractors is due to be published in June 2015
- It engaged with its stakeholders in the review of the Code of Practice and Standard of Proficiency. For example, more than 70 attendees (including registrants, education providers and representative bodies) participated in the four focus groups the GCC held during September and October 2014. The GCC also held a meeting with representatives of patient groups in December 2014 to discuss and review the patient expectations included in the Code. The GCC took account of the views expressed by its stakeholders in its revision of the Code of Practice and Standard of Proficiency
- The GCC has emphasised to its registrants the importance of maintaining sexual boundaries with patients. It has done this through its newsletters and by working with key stakeholders such as the Royal College of Chiropractors to draw registrants' attention to existing guidance about the importance of behaving appropriately
- Its development of an internal policy for staff on the management of complaints about the advertising of chiropractic services (the GCC's management of advertising-related complaints was a matter of concern highlighted in our 2013/2014 performance review).

10.8 In our 2013/2014 Performance Review Report, we said we would follow up in this year's review on the GCC's work to identify areas which would benefit from additional guidance to support its existing *Code of Practice and Standard of Proficiency*. During 2014/2015, the GCC has identified a small number of areas where it considers that additional guidance is required, including: maintaining sexual boundaries; obtaining informed consent; use of social media; and ethical advertising. It told us that it has already begun work to develop guidance on these topics and this will be completed during 2015/2016.

⁴⁸ Joint statement from the Chief Executives of statutory regulators of healthcare professionals. Available at <http://www.gcc-uk.org/UserFiles/Docs/Joint%20statement%20on%20the%20professional%20duty%20of%20candour%20FINAL.pdf> [Accessed 11 May 2015].

Education and training

- 10.9 The GCC continued to meet all of the *Standards of Good Regulation for education and training* during 2014/2015. It has demonstrated this by maintaining its process of quality assuring educational programmes and publishing the outcomes of its quality assurance visits, as well as by continuing its audit of the continuing professional development (CPD) activities undertaken by its registrants.⁴⁹
- 10.10 We note that the GCC has not yet begun its planned review of the *Degree Recognition Criteria*. This has been delayed until the completion of the review of the *Code of Practice* and *Standard of Proficiency*.⁵⁰ The GCC has assured us that it is confident that the *Degree Recognition Criteria* remain effective and that there are no patient protection risks arising from delaying the review.

The second Standard of Good Regulation for education and training: Through the regulator's CPD/revalidation systems, registrants maintain the standards required to stay fit to practise

- 10.11 In the 2013/2014 Performance Review Report, we noted that the GCC's Council had decided to discontinue the GCC's work on its proposed continuing fitness to practise (CFtP) scheme. Instead, it had approved proposals to build upon its existing CPD scheme and to introduce enhancements (including the use of mechanisms such as peer reviews and patient feedback) so that the scheme can be used to assure registrants' continuing fitness to practise. We noted the GCC expected to complete its work on developing an enhanced CPD scheme by January 2016.
- 10.12 In March 2014, the GCC's Education Committee agreed the next steps and a timetable for the development of the enhanced CPD scheme. The GCC issued a CPD discussion document and met with its key stakeholders (including the Royal College of Chiropractors) in autumn 2014. As a result of that discussion process, the GCC believes that the profession's (and the professional associations') initial reservations about the peer review aspect of the proposed scheme have been addressed and that registrants are engaged in the development of the enhanced CPD scheme.
- 10.13 The GCC presented a paper to its Council in March 2015 that set out the high level principles behind, and the proposals for, an enhanced CPD scheme. The GCC plans to implement the new CPD scheme in 2017/2018. We encourage the GCC to minimise the risks that may arise during the interim period and from any delay to the current timetable for implementation.

Continuing professional development (CPD)

- 10.14 The GCC undertook an audit of 100 per cent of its registrants' CPD record summaries in the autumn of 2014, which highlighted that there was a lack of clarity around what constitutes a learning need and a learning activity, and that some registrants had not evaluated how the CPD they completed improved their practice. In order to address this, in February 2015, the GCC

⁴⁹ We note that no visits were due to be carried out in 2014/2015.

⁵⁰ This is due to be completed in June 2015.

issued *CPD Learning Points* to registrants to help them identify appropriate learning needs and activities to address those needs, and to provide assistance in how to complete a CPD record summary. We encourage the GCC to ensure that it continues to capture and share with registrants the learning from its CPD audits, particularly as the enhanced CPD system will be the means used by the GCC to provide assurance that its registrants remain fit to practise.

Registration

- 10.15 The GCC continued to meet all of the *Standards of Good Regulation for registration* during 2014/2015. The GCC continued to register applicants in an efficient and effective manner; it maintained an accurate register, which is easily accessible to members of the public and which records any restrictions imposed on registrants' practice, and it took appropriate action in relation to cases of illegal practice.

The first Standard of Good Regulation for registration: Only those who meet the regulator's requirements are registered

- 10.16 In our audit of the GCC's handling of cases closed at the initial stages of the fitness to practise process conducted in 2014,⁵¹ we identified one case where there was no evidence to show that the Registrations Team had been made aware by the Fitness To Practise Team of allegations that an individual had been practising while unregistered. The Registrations Team therefore re-registered that individual, without considering the allegation that they had been practising illegally. We are concerned by this failure to share important information between the Registration and Fitness to Practise teams at the GCC, particularly given the small size of the organisation. While this one case is not sufficient on its own to render this Standard not met, the GCC would be at risk of not meeting this Standard in the future if further examples of incorrect registration of individuals was to emerge.

The second Standard of Good Regulation for registration: The registration process, including the management of appeals, is fair, based on the regulators' standards, efficient, transparent, secure and continuously improving

- 10.17 The GCC has acted on recommendations made following an external audit of its registration function in 2013/2014 by introducing (in July 2014) an operational manual setting out the procedures and processes to be followed by staff processing registration applications. The development of this manual should reduce any risks that might otherwise arise as a result of the absence of the one member of staff who deals with registration matters on a daily basis.
- 10.18 In January 2015, a review of the process to register new applicants was undertaken by an independent member of the GCC's Audit Committee. This

⁵¹ Professional Standards Authority, 2014. Audit of the General Chiropractic Council's initial stages fitness to practise process. Available at <http://www.professionalstandards.org.uk/docs/default-source/audit-reports/gcc-ftp-audit-report-2014.pdf?sfvrsn=0> [Accessed 11 May 2015].

review considered a sample of 20 applications that had been considered in 2014. The review demonstrated that in two of these 20 cases, while the required documentation was requested before the applications were processed, receipt of all the documentation was not accurately checked – the records on the file for those two applications were inaccurate, in that they showed that all the required information had been received when that was not the case. We recommend that the GCC continues to monitor compliance with its internal processes in this area, in line with the review’s recommendations.

Indemnity insurance

- 10.19 In our 2013/2014 Performance Review Report, we noted that the GCC planned to implement measures to check that registrants had renewed their professional indemnity insurance by contacting the insurer or the registrant directly. The GCC has now implemented such measures. It requires all registrants who have practising registration status to notify the GCC of their indemnity insurance arrangements either at the point their indemnity insurance is due for renewal or annually if they hold alternative arrangements (i.e. they do not have insurance provided by the professional association) and this includes providing a copy of their indemnity insurance arrangements to the GCC. We consider that the implementation of these measures, alongside the changes noted in last year’s report, should enable the GCC to provide assurance that any practising registrants have appropriate indemnity insurance.

Test of Competence

- 10.20 In our 2013/2014 Performance Review Report, we noted that the GCC was in the process of reviewing its Test of Competence⁵² and that it was working on developing mutual recognition systems with other chiropractic regulators across the world. While we have no information on the work the GCC has done to develop mutual recognition systems with other chiropractic regulators, it has completed its review of its Test of Competence.
- 10.21 In 2014/2015, the GCC has developed guidance and information for applicants who hold qualifications from outside the UK to explain the UK context and the differences they might find if they wished to practise in the UK. It has also replaced the Test of Competence with a simpler assessment that involves a review of the applicant’s paper-based information (including qualifications, CPD and fitness to practise records, where relevant) as well as an interview that is focused on the differences in UK practice as compared to their country of origin.
- 10.22 The first revised Test of Competence was held on 15 January 2015 for four applicants. The GCC sought feedback about the application and interview process from both candidates and assessors, in order to identify any areas for improvement. As a result of that feedback, the GCC has made changes to its process, such as introducing a planning session for the assessors ahead

⁵² This is the test that chiropractors from outside the UK, who do not hold a qualification that is recognised by the GCC, must pass to show that they meet the GCC’s requirements.

of each assessment day to allow the panel to benefit from a longer, more detailed discussion prior to the assessment. As the GCC has only just begun to use to the revised Test of Competence, it has not carried out a formal evaluation of this new method of assessment. We encourage it to do so once the GCC considers it has been in use for a sufficient period of time.

Fitness to practise

- 10.23 During 2014/2015, the GCC has only met five out of the 10 *Standards of Good Regulation for fitness to practise* (the first, second, third, sixth and ninth Standards). It did not meet five Standards (the fourth, fifth, seventh, eighth and tenth Standards).
- 10.24 While we consider that the GCC met the first *Standard of Good Regulation for fitness to practise* (that anybody can raise a concern, including the regulator, about the fitness to practise of a registrant), we have concluded that it may be at risk of not meeting this Standard in the future and our concerns are set out in paragraphs 1
- 10.25 In reaching our assessment of the GCC's performance in 2014/2015, we have taken into account the findings from our 2014 audit⁵³ and the extent to which the GCC has subsequently demonstrated consistent remediation of the deficiencies we identified during the audit, as well as other evidence about the GCC's fitness to practise function. We note that while the 2014 audit report concluded that the extent of the weaknesses in the GCC's case handling meant that its operation of the initial stages of its fitness to practise process did not maintain public confidence in the regulatory process, we also concluded that it had not created any risks to public safety.
- 10.26 We consider that the GCC's overall performance in this area indicates the need for the GCC's Council and its Audit Committee to give an elevated level of scrutiny to the fitness to practise function. We recognise that the GCC has already taken some steps towards achieving this, as referred to in paragraphs 10.58–10.59 below.
- 10.27 We set out below examples of how the GCC met five of the 10 *Standards of Good Regulation for fitness to practise* in 2014/2015:
- The GCC has shared concerns about the fitness to practise of registrants with other relevant bodies, and it has also begun working with the World Federation of Chiropractors to develop an international database to facilitate the timely and lawful sharing of information about fitness to practise concerns across various international regulators
 - It has introduced a case closure system that it says ensures relevant stakeholders, including international regulators, are notified within applicable time frames. This process includes notifying the local press of

⁵³ Our 2014 audit was conducted in July 2014 and we audited 75 cases closed between 1 June 2013 and 30 May 2014. Our report was published in February 2015 and is available at <http://www.professionalstandards.org.uk/docs/default-source/audit-reports/gcc-ftp-audit-report-2014.pdf?sfvrsn=0>.

any removals or suspensions from the register and also ensuring chiropractic bodies around the world are notified.

- 10.28 The GCC did not meet the sixth and ninth Standards for fitness to practise in 2013/2014 and we are pleased that the GCC now meets both these Standards. Our comments about the GCC's performance in relation to the sixth Standard are set out in paragraphs 10.32–10.38.

The first Standard of Good Regulation for fitness to practise: Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant

- 10.29 During our 2014 audit, we identified several cases which had gone through the fitness to practise process and been considered by the Investigating Committee, although they concerned requests for information from members of the public rather than complaints about fitness to practise matters. We also saw 10 cases which concerned business disputes of a type and level of seriousness that we considered would not generally be treated by other regulators as raising fitness to practise issues, whether or not 'complaints' about them had been made. In response to our audit feedback about the initial screening of complaints, the GCC informed us that its Council has recently approved a change to its current approach which means that, in future, complaints about business disputes will be considered on a case-by-case basis and progressed to the Investigating Committee only where there is a public protection issue. During the course of 2014/2015, the GCC also changed how it screens complaints, with a view to focusing its resources on progressing only those complaints that amount to genuine fitness to practise concerns. In addition, from early 2015, the GCC no longer accepts complaints that are business disputes and it has developed a policy setting out the circumstances in which website and advertising-related complaints should be referred to the Advertising Standards Authority rather than being dealt with as fitness to practise complaints by the GCC.
- 10.30 Additionally, we identified three cases where the GCC failed to ensure there were no unnecessary tasks or hurdles for complainants when initially making their complaint. In one case, it was clear from the complainant's initial emails that they had difficulty understanding written English. The GCC made no attempt to speak to the complainant by telephone for over three weeks after the complaint was received. In two other cases, emails from the complainant were routed to the GCC caseworker's 'junk' email inbox and so were not read or actioned promptly. In response to our audit feedback, the GCC informed us that this issue is rare and any instances would be considered and resolved by its outsourced IT team.
- 10.31 While the above findings were disappointing, given the action taken by the GCC to address the failings, we consider that this Standard is met. However, any further instances of such failings may put the GCC at risk of not meeting this Standard in future performance reviews.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides.

Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders

- 10.32 The GCC did not meet the sixth Standard in either the 2012/2013 or 2013/2014 performance reviews. In our 2012/2013 and 2013/2014 Performance Review Reports, we noted the steps taken by the GCC in handling its unprocessed complaints from 2012⁵⁴ and the steps it was taking generally to improve the timeliness of its case handling. In our 2013/2014 Performance Review Report, we highlighted our concerns about the increase in the median time taken from the receipt of the initial complaint to the final outcome of the final fitness to practise panel hearing – from 68 weeks in 2012/2013 to 97 weeks in 2013/2014 – as well as the increase in the median time taken from the final Investigating Committee decision to the outcome of the final fitness to practise panel hearing – from 35 weeks to 56 weeks.
- 10.33 In our 2014 audit, we saw a number of cases where the GCC had not taken action in a timely manner, including 23 cases where actions that were required in order to comply with the procedure manual had not been taken or documented promptly. This led us to be concerned that case progression was not being actively monitored by the GCC so that any delays could be identified and rectified promptly.
- 10.34 The GCC has introduced changes during 2014/2015 to improve the timeliness of case progression and its prioritisation of cases, such as:
- A designated fitness to practise lawyer now reviews cases regularly for the purpose of identifying required actions (such as the need to obtain further evidence) and in order to decide which cases should be prioritised, on the basis of the seriousness of the allegations. Previously, the GCC used to refer the case to external Counsel and await their advice
 - The introduction of detailed case investigation plans and checklists to ensure that all relevant information and documentation is obtained and delays avoided at the latter stages of the fitness to practise process
 - The introduction of an electronic case management system (in November 2014).
- 10.35 We are pleased to see that there has been some reduction in the median time taken to progress cases through the GCC's fitness to practise process, which may be a result of some/all of the changes highlighted above. There has been a decrease in:
- The median time taken from receipt of the initial complaint to the outcome of the final fitness to practise panel hearing – from 97 weeks to 72 weeks
 - The median time taken from the final Investigating Committee decision to the outcome of the final fitness to practise panel hearing – from 56 weeks to 43 weeks.

⁵⁴ In early 2012, the GCC discovered 128 fitness to practise complaints and enquiries that had not been properly recorded or processed.

- 10.36 While we did not raise any concerns in 2013/2014 about the time it took the GCC to progress a case from receipt of a complaint to the final Investigating Committee decision being made, we also note that, in 2014/2015, there has been a decrease in the median time taken for this part of the process. In 2013/2014, it took 23 weeks and in 2014/2015, it took 18 weeks.
- 10.37 We also note that only one of the 128 unprocessed cases that were discovered in 2012 still remains to be concluded. The hearing of this case was adjourned (due to complexities in the case) and is expected to conclude in May 2015.
- 10.38 We are pleased to report that the GCC's efforts to reduce the time taken to progress fitness to practise cases through the process are starting to be successful and we have seen a reduction in the median time taken to progress cases across each stage of the process. We consider that the time currently taken to progress cases through the process means that this Standard is met in 2014/2015. However, we encourage the GCC to continually monitor the timeliness of its case progression, to ensure that the improvement it has achieved is maintained.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

- 10.39 In the 2013/2014 Performance Review Report, we concluded that this Standard was not met due to concerns about the GCC's practice in carrying out and recording risk assessments; in particular, we noted that there was a widespread practice of failing to record decisions about whether an interim order application was necessary. The GCC informed us that it intended to create a new checklist to record the initial risk assessment, that risk assessments would be carried out by the fitness to practise lawyer, and that a third tier of management would be introduced to enhance the general supervision of cases.
- 10.40 In our audit (carried out in July 2014),⁵⁵ we found:
- Three cases where we were not satisfied that the decisions not to apply for interim orders were appropriate
 - Six cases where there was no record that the GCC had ever undertaken a risk assessment, either on receipt of the complaint or later in the lifetime of the case. We did not conclude that the GCC should have taken any urgent interim action in any of these cases, but we were concerned by the absence of any evidence of risk assessment by the GCC
 - 48 cases where there were no records of the GCC's reasons for concluding that it was not necessary to apply for interim orders. We recognise that the GCC's procedures did not require reasons for those decisions to be recorded at the time; however, the casework framework

⁵⁵ See footnote 53

(which we developed in consultation with all the regulators in 2009 and which we audit against) has always included such a requirement

- 54 cases where the initial risk assessment was not reviewed by the GCC during the lifetime of the case. This included one case where the GCC failed to review the risk assessment despite receiving new allegations that were serious, of a sexual nature, and had been reported to the police.

10.41 The GCC said that it had strengthened its process for reviewing risk assessments. The GCC said that its fitness to practise lawyers now review caseworkers' initial case plans and risk assessment decisions, and that this has improved performance and case management. However, we can draw only limited assurance from this change of process, in light of the concerns our 2014 audit identified that there has been frequent non-compliance with internal processes (including processes in relation to risk assessments) and in light of the current absence of evidence to demonstrate improved outcomes.

10.42 Due to the concerns noted above regarding the carrying out, reviewing and recording of risk assessments and our concerns about three interim order decisions that we audited in 2014, we have concluded that the GCC has continued not to meet the fourth Standard in 2014/2015. We will want to see evidence of effective monitoring of compliance with these new processes and improved outcomes resulting from them before we can conclude that this Standard is met in the future.

The fifth Standard of Good Regulation for fitness to practise: The fitness to practise process is transparent, fair, proportionate and focused on public protection

10.43 We have concluded that this Standard was not met in 2014/2015, based on the findings of our 2014 audit. In our audit, we identified widespread non-compliance with the GCC's internal fitness to practise processes, which resulted in an array of issues including inadequate investigation of cases through failures to gather or review relevant evidence promptly, information not being shared promptly with the registrations team by the fitness to practise team about registrants' fitness to practise, and a failure to follow its own code of practice for criminal investigations and prosecutions. We concluded in the audit report that the extent of the deficiencies we had found (which related to failures across every aspect of the casework framework, as well as widespread failures to comply with the GCC's own procedures) raised a concern about the extent to which the public can have confidence in the GCC's handling of the initial stages of its fitness to practise process. While we acknowledge that the GCC has taken various measures since our audit was conducted (including amending various processes) which are aimed at improving the quality and consistency of its investigations, we have not as yet seen evidence to demonstrate either consistent compliance with the new processes or the impact of the new processes (and compliance with them) on outcomes.

10.44 Alongside this, we were concerned to see that the GCC's own final fitness to practise panel (the Professional Conduct Committee) commented adversely about the fairness of the GCC's handling of the investigation stage of one

case.⁵⁶ The panel commented: 'It should be said at the outset that the Committee considered some of the action taken by, and on behalf of, the GCC/Investigating Committee to have been woeful. Every chiropractor accused of an allegation should have the opportunity to consider it and respond appropriately'. The GCC has informed us of the circumstances that led to these comments being made, and has said that it implemented new processes (namely ensuring that caseworkers have access to legal advice when preparing the information to be provided to the Investigating Committee) in order to ensure that a similar error does not occur again.

The seventh Standard of Good Regulation for fitness to practise: All parties to a fitness to practise complaint are kept updated on the progress of their case and supported to participate effectively in the process

- 10.45 The GCC met the seventh Standard in 2013/2014 due to the introduction of various measures such as: the implementation of a new case management system which alerts staff members to provide updates to the parties on a two-weekly basis; the introduction of a system to gather feedback from witnesses, registrants and other parties; and improvements it had introduced in the handling of witnesses, particularly in providing support for vulnerable witnesses.
- 10.46 In 2014/2015, the GCC introduced various improvements to its arrangements for supporting complainants and with
- It has introduced a system so that specific consideration is given to whether special measures are required to support witnesses, which includes ensuring that there is now a caseworker who liaises closely with witnesses prior to the hearing to allay any concerns they may have and is present at hearings to assist them where appropriate
 - Witnesses are provided with an information leaflet prior to the hearing containing relevant information regarding the process
 - The GCC has also told us that its fitness to practise lawyer ensures that any inappropriate cross-examination of witnesses is avoided
 - The GCC has produced new guidance aimed at protecting complainants in cases of a sexual nature from being inappropriately cross-examined by a registrant
 - The GCC has also informed us that it has moved its fitness to practise hearings to a new venue, which has improved facilities for witnesses. For example, it allows the use of screens in the hearing room, and the use of audiovisual facilities so that a witness can give their evidence and answer questions from a separate room.
- 10.47 The GCC has also implemented a feedback system from participants in the fitness to practise process, including witnesses. The GCC states that the

⁵⁶ These comments were made in the context of an application by the registrant for a stay of the fitness to practise proceedings due to an 'abuse of process' – that application was refused.

initial response rate was low; however, the feedback it received in 2014/2015 was generally positive.

- 10.48 In our 2014 audit report, we noted concerns about the GCC's failure to acknowledge or respond/respond appropriately to correspondence from those involved in fitness to practise cases, including:
- In 10 cases, the GCC failed to provide clear information about the fitness to practise process to the complainant at the outset of the case. In six of these cases, the GCC failed to tailor its standard letters appropriately to ensure that clear information was provided
 - In 13 cases, the GCC had not acknowledged receipt of information or correspondence from the parties
 - In 14 cases, the GCC failed to provide a response to queries and requests from the parties. In one of those cases, there was a seven-month gap between the registrant's query and the GCC's next contact with them and no apology or explanation was offered for the delayed response.
- 10.49 Also in our 2014 audit report, we raised concerns about the effectiveness of the GCC's new system to ensure that regular updates are provided to the parties to a case. We identified a range of weaknesses, including:
- In 30 cases, the parties were not informed of the Investigating Committee's decision within the GCC's target time frame of 24 hours. In five of those 30 cases (and in 27 other cases), the parties were also not provided with the full reasons for the decision within the GCC's target time frame
 - In eight cases, either the registrant or the complainant or both of them were not informed of the date of the Investigating Committee meeting at which their case would be considered
 - In another eight cases, the registrant was never informed that they were under investigation at all
 - In six cases, we found that the GCC had failed to provide regular updates to the parties. In one of these cases, the complainant was not updated for a period of over two months at three different stages during the lifetime of the case
 - In eight cases, we noted that the GCC failed to explain to the complainant why an Investigating Committee meeting had been adjourned or why the Investigating Committee still needed to consider the case even though the complainant had withdrawn their complaint.
- 10.50 In terms of the data provided by the GCC for the purposes of this performance review, we note that there has been a slight reduction in the median time taken to share the full reasons for the Investigating Committee's decision with the parties – six working days over the period from 1 April 2014 to 30 September 2014, as compared to a median of seven days in 2013/2014. In the same period, the GCC has also informed us that notification of all of the Investigating Committee outcomes were sent out

within two working days, which, while it did not meet the GCC's internal target (24 hours),⁵⁷ nevertheless represents an improvement on its past performance. We are pleased that the GCC has told us that it plans to introduce a process for monitoring compliance with its targets for sharing decisions and the reasons for decisions with the registrant and the complainant. It will do this through the use of a new case closure checklist. This checklist will be checked by the Personal Assistant to the Deputy Chief Executive.

- 10.51 The audit findings and the GCC's own data also raised concern about the effectiveness of the GCC's own internal monitoring/quality assurance. The GCC told us – as part of the performance review process – that, alongside the new case closure checklist, it is also addressing the concerns in this area by instituting regular discussions between caseworkers and their managers. The GCC also told us it is arranging for an audit of Investigating Committee cases by an external lawyer, which we consider in more detail in paragraph 10.36, the last bullet.
- 10.52 We encourage the GCC to keep the standard of its customer service under review to ensure that the measures it has implemented are effective at making the desired improvements.
- 10.53 While we are pleased to see the work the GCC has done on its witness handling and support and, to some extent, on sharing the Investigating Committee's decision and reasons in a more timely fashion, due to our concerns about the weaknesses in its performance in keeping parties updated and in responding to correspondence received (as identified in our 2014 audit report), we have concluded that the GCC has not met this Standard.

The eighth Standard of Good Regulation for fitness to practise: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession

- 10.54 The GCC did not meet the eighth Standard in 2013/2014 due to concerns we identified about the quality of decisions of the Investigating Committee in 2013.
- 10.55 We have concluded that the GCC has continued to not meet this Standard in 2014/2015. We identified concerns in the 2014 audit about the evaluation of information and the quality of decision making by the Investigating Committee, despite the introduction by the GCC – following our 2013/2014 audit – of measures (such as induction and refresher training for Investigating Committee members) aimed at improving the quality and consistency of the Investigating Committee's decisions (we acknowledge that in our 2014 audit report, we concluded that the vast majority of decisions made by the

⁵⁷ We note that we do not have similar concerns in relation to the notification of final fitness to practise decisions. All Professional Conduct Committee decisions are given to legal parties and the respondent, if present, at the hearing. All other parties are sent the decision notice within two working days.

Investigating Committee to close cases were appropriate). We also identified concerns about the lack of detailed reasons in some final fitness to practise panel (Professional Conduct Committee) hearing decisions.

- 10.56 During our 2014 audit, we identified the following concerns about decisions made by the Investigating Committee:
- In six cases, we were concerned that the Investigating Committee's closure decisions might fail to maintain public confidence in the profession and/or in the regulatory process
 - In 10 cases, we considered that inadequate reasons for the Investigating Committee's decisions were provided
 - In three cases, we found that the Investigating Committee had failed to address all the relevant identified allegations and issues
 - In two cases, we were concerned that the Investigating Committee's decision to close the case without further action was unsound
 - In six cases, it was not clear if the Investigating Committee had enough evidence on which to base a sound decision to close the case. In two of these six cases, we considered that the Investigating Committee should have adjourned its meeting so that the GCC could try to obtain medical records.⁵⁸
- 10.57 In the period from 1 January 2014 to 30 October 2014, we reviewed 23 final fitness to practise panel (Professional Conduct Committee) decisions and identified learning points to be fed back in eight cases. Five of the learning points we identified concerned a lack of detailed reasons or information in the fitness to practise panel's decision.
- 10.58 The GCC has told us of a number of measures it has taken or is taking which are aimed at improving the quality of its Investigating Committee and fitness to practise panel decisions, and its communication of them:
- The GCC plans to review the wording of the standard letters communicating the Investigating Committee's decisions, in light of the recommendations made following an external review it commissioned of its closed fitness to practise cases in June 2014. The review made recommendations about simplifying the language and terms used in those letters
 - The GCC plans to increase the number of training sessions for all Investigating and Professional Conduct Committee members to two per year – these sessions will cover areas such as making and drafting decisions
 - In May 2015, the GCC introduced an appraisal system for its Investigating Committee members and Chairs

⁵⁸ In this paragraph, we are referring to 25 of the 75 decisions considered by the Investigating Committee that we considered in our 2014 audit.

- The GCC is implementing a system so that all cases considered by the Investigating Committee in any two-month period will be audited by an external regulatory lawyer. That lawyer's reports will be provided to the Audit Committee and to the Council.

10.59 We welcome these changes (in particular, the change to increase the level of scrutiny by the Audit Committee and the Council) and we also acknowledge the steps the Investigating Committee has taken to reflect on its performance and identify its training needs.

10.60 We recommend that the GCC takes into account the findings from our 2014 audit and the learning points we have raised as a result of final fitness to practise panel decisions as well as the recommendations resulting from the external review when considering how it can improve the quality of its decision making and the reasons for its decisions. We expect the GCC to keep this area of its work under review to ensure that the changes it implements have the desired effect. We will look for improvement in the GCC's decision making when we next review its performance.

***The tenth Standard of Good Regulation for fitness to practise:
Information about fitness to practise cases is securely retained***

10.61 In the 2013/2014 performance review, we found the GCC demonstrated inconsistent performance against this Standard.

10.62 We have also concluded that the GCC has not met this Standard in 2014/2015. During our 2014 audit (in which we audited all 75 of the cases the GCC closed at the initial stages of its fitness to practise process over a 12-month period), we found 13 cases where there had either been a data protection breach or where there was potential for a data protection breach to occur. We set out examples of some of these cases below:

- In one case, a caseworker sent a letter to an address that was not the registered address for the registrant. The address the letter was sent to was the registered address of another registrant, who had a completely different name. There was no evidence on the file that the GCC had retrieved the letter or ensured its destruction
- In one case, the complainant only gave consent for medical records to be obtained from a specific time period and relating to their musculoskeletal health. The GCC assured the complainant that the request for records would be limited to the particular time period, but in fact the records that the GCC obtained and disclosed to the registrants spanned a wider time period and also disclosed information about other elements of the complainant's health. The GCC took steps to retrieve the records, and also considered obtaining legal advice. There was a second data breach in the same case, when the GCC disclosed two registrants' names when writing to a third registrant. The GCC identified the need to ensure that its letter had been securely disposed of and that an apology be provided to both registrants, but those actions were not in fact completed. The only action recorded was an apology provided to one of the registrants. We note that the GCC reported this case to the Information Commissioner's

Office (ICO) and the ICO took no action. The GCC has not confirmed whether both data breaches in the case were reported to the ICO

- In nine of the 13 cases referred to above, we were concerned that there was no evidence that the GCC staff had escalated data breaches to a relevant line manager internally, or that any consideration was given to whether the matter should be reported to the ICO.

10.63 We note that the GCC also told us of three further data breaches as part of its performance review evidence submissions. We note that these breaches were minor and were not referred to the ICO. Given the size of the organisation and its caseload, we consider that it has had a significant number of data breaches.

10.64 In order to improve its performance in this area, the GCC informed us that it has:

- Provided re-training (in September 2014) to staff members on data protection and freedom of information in relation to fitness to practise matters
- Reviewed the case files where we identified breaches/potential breaches, in order to consider how they occurred and how future repetition can be avoided
- Introduced a new filing system and updated its fitness to practise procedural manual (for use by staff) to contain more detailed guidance on handling sensitive data.

10.65 It has also told us that it plans to carry out reviews of case files for data protection compliance in its internal audits.

10.66 While we acknowledge that the GCC has taken measures to reduce the risk of future data breaches (including retraining staff) we note that the updated fitness to practise manual does not provide instructions on what to do in the event of a possible data breach. The GCC has informed us that it plans to update its fitness to practise manual to include staff guidance on data protection, which is currently contained in its staff manual

10.67 We recommend that the GCC monitors compliance with its revised internal procedures in this area rigorously in order to assure itself that the improvement measures it has introduced in 2014/2015 are effective in ensuring that confidential, sensitive information is protected. We hope to see evidence of improvement in this area in our next review of the GCC's performance.

11. The General Dental Council (GDC)

Overall assessment⁵⁹

11.1 In the 2014/2015 performance review, we found that the GDC has:

- Met all of the *Standards of Good Regulation for guidance and standards*
- Met all of the *Standards of Good Regulation for education and training*
- Met four of the five *Standards of Good Regulation for registration*. It did not meet the third Standard, which requires regulators to ensure that information about registrants can be easily accessed through the regulators' registers. In comparison, in 2013/2014, the GDC did not meet the first and third Standards
- Fully met only one of the 10 *Standards of Good Regulation for fitness to practise* (the first Standard). It met the second⁶⁰ Standard but its performance was inconsistent. It did not meet the fourth,⁶¹ sixth,⁶² seventh,⁶³ eighth,⁶⁴ ninth⁶⁵ and tenth⁶⁶ Standards. In comparison, in 2013/2014, the GDC met the first, second and fifth Standards, and did not meet the fourth, sixth, seventh, eighth, ninth and tenth Standards. We are unable to confirm the GDC's performance against the third and fifth Standards at the time of writing this report. Further details can be found in paragraph 11.8.

11.2 The GDC has faced a challenging year in 2014/2015 and we explore some of these challenges in this report. The most public challenge it faced was opposition from dentists and their representative bodies to the increase of the

⁵⁹ The GDC has asked for a statement to be published of their assessment of the GDC's 'current performance'. The statement is published on our website alongside this report:

<http://www.professionalstandards.org.uk/regulators/overseeing-regulators/performance-reviews>

⁶⁰ The second *Standard of Good Regulation for fitness to practise*: Information about fitness to practise concerns is shared by the regulator with employers/local arbitrators, system and other professional regulators within the relevant legal frameworks.

⁶¹ The fourth *Standard of Good Regulation for fitness to practise*: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.

⁶² The sixth *Standard of Good Regulation for fitness to practise*: Fitness to practise cases are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary, the regulator protects the public by means of interim orders.

⁶³ The seventh *Standard of Good Regulation for fitness to practise*: All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process.

⁶⁴ The eighth *Standard of Good Regulation for fitness to practise*: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession.

⁶⁵ The ninth *Standard of Good Regulation for fitness to practise*: All fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders.

⁶⁶ The tenth *Standard of Good Regulation for fitness to practise*: Information about fitness to practise cases is securely retained.

Annual Retention Fee⁶⁷ (ARF), which resulted in the British Dental Association⁶⁸ bringing judicial review proceedings against the GDC.

- 11.3 As part of the 2014/2015 performance review, we have discussed with the GDC how it intends to re-engage with those dentists who have become disaffected as a result of the ARF increase. The GDC has told us that it welcomes the opening of a dialogue with the dental profession about the ARF increase (although that dialogue started in difficult circumstances) and that it will work to maintain and improve that dialogue, alongside improving its engagement with those registrants with whom the GDC currently has minimal contact. The GDC has begun sending monthly updates to registrants (including information about its performance) in an attempt to encourage that dialogue. Alongside that engagement activity, we encourage the GDC to ensure that the rationale for the decisions made by Council relating to both the GDC's performance and policy is clear within the published Council papers and minutes and that its reporting about financial and operational performance contained within published Council papers is clear and transparent to a member of the public.
- 11.4 The GDC has also faced challenges in relation to its fitness to practise function in terms of both the perception of its purpose and the effectiveness and efficiency of it. The view expressed to us by the GDC was that there is a profound misunderstanding by some parts of the profession regarding its approach to fitness to practise. We encourage it to work to address this misunderstanding.
- 11.5 We have previously expressed that the GDC has been slow to respond to the increase in the number of fitness to practise complaints it has received year-on-year. The GDC has told us that it is improving its forecasting model, so that it will be in a better position to manage the financial expectations around this area of work as well as its efficiency. We hope that this change to its process will enable the GDC to ensure it is appropriately resourced to prevent a situation arising in the future whereby it is required to make a dramatic increase in the ARF in order to mitigate the impact of a risk that should have been foreseen and planned for appropriately.
- 11.6 The GDC has embarked upon a programme of organisational change that will extend to the end of 2015, with the aims of dealing conclusively with historic problems, achieving stability and becoming a high performing organisation. It will take time for the impact of these measures to result in tangible improvements to the GDC's performance, but we are encouraged that the GDC is working hard in a number of areas to ach

⁶⁷ The ARF was increased from £576 to £890 for dentists: it was reduced from £120 to £116 for DCPs. As at March 2015, there are approximately 39,000 dentists and 66,000 DCPs on the register. Source: GDC website www.gdc.org.uk

⁶⁸ The British Dental Association is a trade union and professional association for dentists in the UK. As at 31 May 2014, its membership was 17,857 dentists and 2,306 students. Source: British Dental Association website www.bda.org

Corporate complaints

- 11.7 Both our 2014 audit report⁶⁹ and concerns highlighted to us by individuals who have made complaints to the GDC about its service suggest that the GDC's approach to corporate complaints is inconsistent, and that complaints are not always recognised and responded to appropriately. The GDC has told us that the volume of corporate complaints it received in 2014 (many of which concerned the proposed increase in the ARF) put pressure on its complaints-handling process, and that it is working to make improvements in the recording of complaints and the tone of its correspondence. We will expect to see evidence of improvements in this area when we next review the GDC's performance – it is important that regulators have accessible, transparent, effective and timely complaints-handling processes as well as systems in place to learn from complaints.

Our investigation

- 11.8 In the 2013/2014 Performance Review Report, we reported that in April 2014, we commenced an investigation into the GDC's management and support for its Investigating Committee and the adequacy and operation of its whistle-blowing policy, following a member of the Investigating Committee having raised concerns with the GDC under its whistle-blowing process. The GDC commissioned an independent review of the support for its Investigating Committee as a result of the whistle-blower's disclosure – that review identified a number of serious concerns about the process and practices that were in operation during 2013. The whistle-blower also raised concerns with us about the GDC's management of their disclosure. The findings of our investigation may impact our view of the GDC's performance against the third and fifth *Standards of Good Regulation for fitness to practise*, and we are accordingly unable to reach a decision on these Standards until our final conclusions have been determined and our report has been published.
- 11.9 Further information about the GDC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of this report.

Guidance and standards

- 11.10 The GDC has met all of the *Standards of Good Regulation for guidance and standards* during 2014/2015. Examples of how it has demonstrated that it met these Standards are as follows:
- The GDC sought to further embed the *Standards for the Dental Team* (introduced in August 2013), for example by:
 - Carrying out an online survey of 843 registrants to assess their awareness of the standards, which found that 93 per cent of those

⁶⁹ Professional Standards Authority, 2014. *Audit of the General Dental Council's initial stages fitness to practise process*. Available at <http://www.professionalstandards.org.uk/docs/default-source/audit-reports/gdc-ftp-audit-report-2014329B495275E112FFAA30B182.pdf?sfvrsn=0> [Accessed 11 May 2015]. At Paragraph 2.65–2.67 of this report, we set out concerns about the handling of two organisational complaints by the GDC.

surveyed were aware of them and 90 per cent believed that the standards helped them understand what was expected of them

- Developing a version of its *Focus on Standards* microsite to make it easier and more convenient for registrants to access the standards and supporting material from their mobile phones/tablets
 - Engaging with the Association of Dental Groups (a trade association of corporate dentistry providers) to encourage its members to promote the GDC's standards
 - In response to concerns about the provision of dental implants, the GDC set up a cross-regulatory group to explore the risks of implantology. The group is currently gathering data in order to assess the risks. We consider that this demonstrates a right-touch approach – identifying the problem and quantifying the risks before taking any regulatory action.
- The GDC carried out an initial evaluation of 'direct access'⁷⁰ ahead of a full post-implementation review which will take place in 2015. As a result of its initial evaluation, the GDC revised and updated the information for registrants on its website, including the introduction of a 'frequently asked questions' section which sets out what direct access is and how it can affect different registrants, as well as highlighting some of the practicalities to be taken into account when considering direct access
 - In October 2014, the GDC, together with seven other regulators we oversee, signed up to a joint statement on the professional duty of candour⁷¹ which promoted to registrants the message that they must be open and honest with patients when something goes wrong and, similarly, that they must be open and honest with colleagues, employers and their regulator
 - As part of its action plan in response to the Francis Report,⁷² the GDC has established an online panel of the public and patients as a mechanism by which it can listen to, and obtain feedback from, patients. The panel has over 5,000 members. The first survey of the panellists revealed that around a third of them had concerns about the quality of dental care, and that around a quarter of them had concerns about the behaviour of dental professionals. (We note these survey results indicate concerns about the quality of dentistry and this may be reflected in the increasing number of complaints made to the GDC.) Panellists are kept updated with email newsletters outlining how the GDC is making use of the information it has obtained from the panel.

⁷⁰ Direct access enables patients to receive certain treatments from DCPs without the need to see a dentist or have a prescription from a dentist. Direct access was implemented in 2013.

⁷¹ Available at <http://www.gdc-uk.org/Newsandpublications/Pressreleases/Documents/Joint%20statement%20on%20candour%2013%20Oct%202014%20%282%29.pdf> [Accessed 11 May 2015].

⁷² Francis, R, 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry> [Accessed 11 May 2015].

Education and training

11.11 The GDC has met all of the *Standards of Good Regulation for education and training* during 2014/2015. Examples of how the GDC has demonstrated that it met these Standards are below:

- Following a post-implementation review⁷³ of the *Standards for Education* (introduced in 2012), the GDC consulted on minor changes that it proposed to make to the standards as a result of the review (and following discussions with education providers and its panel of quality assurance inspectors). The proposed changes to the standards were approved by the GDC's Council in October 2014 and were due to be published and disseminated by the end of that year; however, we note that they were not yet published by the end of April 2015.
- In the 2013/2014 Performance Review Report, we reported that the GDC had begun a review of its specialist lists⁷⁴ (which included research with patients and the public), looking at fundamental questions on whether the lists are a proportionate means of regulating specialities and whether they contribute to public protection. The first phase of this review concluded in September 2014 and concluded that there is no clear evidence that the regulation of specialities results in improved outcomes for patients, as patients are generally unaware of the lists and so do not consult them in order to make informed choices about their care. However, patients do expect those who perform complex and risky procedures to be required to meet specialist criteria, and expect there to be specialist lists. The GDC therefore decided to make no changes to the existing system, in the absence of any risks arising from the current system or the identification of any potential benefits to changing it
- Linked to the above, we also reported in the 2013/2014 Performance Review Report that the GDC was continuing the development of standards for specialty education. A consultation on the draft standards was carried out in May 2014. This identified the need for further work with stakeholders about how the standards would apply to different education providers, which is underway. The GDC has told us that it expects these standards to be finalised and published during 2015
- Within this performance review year, the GDC has published its first *Annual Review of Education*, which provided an overview of education and quality assurance informed by its inspection activity in the 2012/2013 academic year (this was the first year that programmes were assessed against the GDC's new *Standards for Education*). The report identified common areas of good performance across education providers, as well as areas which providers were finding more challenging and two areas

⁷³ The review took account of changes in the regulatory landscape since the standards were introduced – namely, the subsequent introduction of revised core standards for registrants and scope of practice guidance, the implementation of direct access, and the recommendations made in the Francis Report that greater emphasis should be placed on the importance of raising concerns.

⁷⁴ Dentists may only use the title 'specialist' if they have met certain minimum standards of training in a particular area of dentistry (for example, orthodontics) and are included on the relevant specialist list held by the GDC.

where improvements to several education providers' performance were needed in order for the requirements in the *Standards for Education* to be met. The report recommended that education providers might usefully work together to find effective ways to share good practice and tackle common challenges. We commend the GDC's approach of using its data to identify themes and trends, as well as publishing it, in order to encourage collaborative working among education providers

- The GDC continued its quality assurance of dental educational programmes. It updated its annual monitoring process in order to enable it to obtain more quantitative information than previously, so that it can use that data to help identify and monitor trends in education provision.

11.12 In April 2015, the GDC published details of an issue relating to the Bachelor of Dental Surgery qualification awarded by Cardiff University between 2010 and 2014. The impact of this was that dentists who had qualified at Cardiff during this period were – technically – erroneously registered with the GDC. The GDC worked with the University, the Department of Health and the Welsh Government to identify a solution that had minimum impact on the dentists concerned and no impact on patients. While this was unfortunate, the issue was not an error on the part of the GDC and we consider that it responded in a proportionate and timely way.

The second Standard of Good Regulation for education and training: Through the regulator's continuing professional development/ revalidation systems, registrants maintain the standards required to stay fit to practise

11.13 In the 2013/2014 Performance Review Report, we reported on the progress made by the GDC in developing an enhanced continuing professional development (CPD) scheme which it will, in future, use to provide assurance about its registrants' continuing fitness to practise. At that time, the GDC was due to implement the enhanced CPD scheme in 2015. In 2014/2015, the GDC informed us that the new scheme would not be implemented until 2017. This delay in the time frame for implementation resulted from a decision by the GDC Council, which came into office in October 2013, that it should examine the underlying policy and operational readiness of the GDC and the dental sector prior to implementation. The GDC has assured us that its Council is now satisfied with the proposed enhanced CPD scheme, and that it has agreed that a pilot exercise should take place in 2016 (at the time of writing, the GDC's Council has formally agreed the policy and proposed scheme, but has yet to consider implementation). While we consider that it was appropriate for the GDC to assure itself that the proposed enhanced CPD scheme is fit for purpose and that the GDC is operationally ready for its implementation, we are disappointed that any concerns about the proposed scheme were not addressed at an earlier stage (thereby minimising any delay to implementation of the scheme), given that the Council agreed the proposed draft rules in December 2013.

Registration

11.14 The GDC has met four of the *Standards of Good Regulation for registration* during 2014/2015. It did not meet the third Standard, which relates to its register.

The second Standard of Good Regulation for registration: The registration process, including the management of appeals, is fair, based on the regulator's standards, efficient, transparent, secure and continuously improving

11.15 In the 2013/2014 Performance Review Report, we reported that this Standard was met, but that we had three concerns about the GDC's performance and we said that we would seek evidence of improvement in the 2014/2015 performance review.

11.16 While we have noted that the GDC has fully addressed those concerns during 2014/2015, we note that it has made progress and we have concluded that the Standard remains met. These areas of concern and the GDC's response to them are as follows:

- First, the median time taken to process all types of initial registration applications had increased in 2013/2014 compared to 2012/2013. The median times taken in each of the last three years is set out in this table:

	<i>2012/2013</i>	<i>2013/2014</i>	<i>2014/2015</i>
<i>UK applicants</i>	11	19	13
<i>EEA (non-UK) applicants</i>	12	46	13
<i>International (non-EEA) applicants</i>	11	82	71

We are pleased to note that the time taken to process UK and EEA applications has significantly improved during 2014/2015, following a number of improvement measures taken by the GDC including: producing country-specific guidance for applicants from within the EEA; applying stricter threshold criteria for accepting incomplete or incorrect applications; improving its case management system; and enhancing the internal reporting of processing times.

The GDC has told us that the figure reported in 2012/2013 for the time taken to process international (non-EEA) applicants (11 days) was wrong and that the correct figure was 51 days. We are disappointed that this error was made, but note that the GDC subsequently introduced criteria for reporting this information, which should prevent any further errors. The GDC has told us that the median time is affected by the inclusion of the

'adaptation period'⁷⁵ allowed to certain DCP applicants, and has said that it is developing a means of isolating the adaptation period to enable processing times to be more accurately recorded

- Second, we had two concerns relating to indemnity insurance in 2013/2014:
 - The GDC's guidance for its registrants did not explain the (very limited) circumstances in which it would be acceptable for a registrant not to have indemnity insurance in place. The GDC told us during the 2013/2014 performance review process that it would consider including a non-exhaustive list of examples of such exceptional circumstances within the guidance. In 2014/2015, it has become clear that this action will not be taken until later in 2015 (when the GDC reviews the guidance, prior to the introduction of mandatory indemnity insurance requirements). We are disappointed that the GDC did not amend its existing guidance and the consequent delay in clarifying the position for registrants
 - In our 2013 audit,⁷⁶ we found that the GDC had taken an inconsistent approach to checking whether registrants who were the subject of fitness to practise investigations had indemnity insurance in place. We are pleased to report that we found a more consistent approach being applied when we audited in 2014. We are also pleased to note that registrants are now required by the GDC to provide evidence of both current insurance cover, and evidence that cover was in place at the time of the treatment, giving rise to the fitness to practise complaint. Third, we noted in the 2013/2014 Performance Review Report that the GDC's guidance on reporting criminal proceedings had not been promptly updated to reflect changes in the legislation relating to the requirement on registrants and applicants for registration to disclose convictions and cautions to the GDC. We note that in May 2014, the GDC issued guidance for its decision makers in assessing the impact of declared cautions and convictions that refers to the up-to-date legislation (that guidance is published on the GDC's website). We consider that it would have been helpful for the GDC also to produce guidance aimed at applicants and registrants about their disclosure obligations – we note that while the GDC's registration application forms signpost applicants to the legislation, they do not explain what a 'protected' conviction or caution is.⁷⁷

⁷⁵ Applicants for registration whose application has been assessed by a GDC panel as not meeting the requirements for registration but who may meet requirements if they undertake supervised study or training.

⁷⁶ Professional Standards Authority, 2013. *Audit of the General Dental Council's initial stages fitness to practise process*. Available at <http://www.professionalstandards.org.uk/docs/default-source/audit-reports/gdc-ftp-audit-report-2013.pdf?sfvrsn=0> [Accessed 12 May 2015].

⁷⁷ Protected cautions and convictions is a category created by the Rehabilitation of Offenders Act (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, with the result that certain convictions and cautions do not have to be disclosed to the GDC by registrants or applicants.

The first Standard of Good Regulation for registration: Only those who meet the regulator's requirements are registered; and

The third Standard of Good Regulation for registration: Through the regulator's registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice

- 11.17 These two Standards were not met last year due to a technical issue with the search function of the GDC's online register (that technical issue was subsequently resolved) as well as a number of issues the GDC had identified about the accuracy of the register (which were investigated under the GDC's incident review process).
- 11.18 In relation to the first Standard, in its evidence submission for the 2014/2015 performance review, the GDC informed us that two registrants had been erroneously added to a specialist list as a result of an education provider providing incorrect information to the GDC. This matter was investigated under the GDC's incident review process. As it related to the specialist list only (the error did not invalidate the individuals' entries on the dentists register), we have not concluded that this results in the Standard not being met.
- 11.19 In relation to the third Standard, in the 2014/2015 performance review, we have identified the following inaccuracies in the data on the online register:
- In performing our random check of the online register, we identified two entries where the registrants' fitness to practise history was not accurately reflected on the register
 - In our 2014 audit, we noted two cases where warnings were not shown on the online register. The GDC's investigation into this identified seven cases where issued warnings were not visible on the online register
 - The GDC informed us of two cases where registrants erroneously remained on the register after their registration had lapsed (the correct 'registered to' date was displayed). This issue was identified by an external review of the online register.
- 11.20 In relation to both the first and third Standards, a review of the online register – which was conducted by the GDC with its external auditors during September 2014 – identified a number of weaknesses in processes and controls that could lead to errors on the online register. An action plan is being implemented to address those weaknesses and the GDC has told us it will carry out a further review of the online register later in 2015.
- 11.21 The GDC has informed us of a number of steps it has taken during 2014/2015 to ensure the accuracy of its registers, including:
- Additional checking of applications before registration is granted and additional checks of pass lists provided by education providers
 - Improving the functionality of its case management system to ensure that registration is not granted to individuals who are under investigation for practising illegally

- Improving its processes to ensure registrants cannot be removed from the register while they are subject to a fitness to practise investigation or sanction. This has resulted in no further instances of the incidents which we reported in the 2012/2013 performance review
- The introduction of a daily report listing both newly added and newly removed registrants which is checked for anomalies, and enhanced exception reporting to identify and minimise the number of exceptions occurring
- The introduction, in November 2014, of an identity document authentication process that has resulted in possibly fraudulent documentation being identified and investigated.

11.22 The GDC has told us that its internal audits of the registration function have shown compliance as at between 97 per cent and 100 per cent for application checks, control checks, and data entry accuracy.

11.23 While we concluded the first Standard is met, we note that the matter referred to in paragraph 11.18 above was similar to an incident reported by the GDC in 2013/2014, in which a registrant was added to the register on the basis that they had passed their exams when, in fact, they were resitting them. The GDC has told us that it considers these to be isolated incidents and that it has strengthened its registration processes.

11.24 Due to the number and seriousness of errors identified on the online register, we conclude that the third Standard for registration was not met in 2014/2015. We note that there are a number of actions the GDC is taking to address any risks to the integrity and accuracy of the online register; however, until we see evidence that this has been effective, we are unable to conclude that this Standard is met.

Fitness to practise

11.25 In 2014/2015, the GDC's performance against the 10 *Standards of Good Regulation for fitness to practise* is as follows:

- It met the first Standard
- It met the second Standard but its performance was inconsistent
- We could not reach a view on whether it met the third and fifth Standards as our investigation, which has a bearing on these Standards, is yet to conclude (see paragraph 11.8)
- It did not meet the fourth, sixth, seventh, eighth, ninth and tenth Standards.

11.26 In 2013/2014, the GDC did not meet the fourth, sixth, seventh, eighth, ninth and tenth Standards, which represented a significant decline in its performance as compared to 2012/2013.

- 11.27 In response to the issues raised in the 2013/2014 Performance Review Report and in our 2014 audit,⁷⁸ in April 2014, the GDC set up a Fitness to Practise Oversight Group in order to oversee and implement changes to its fitness to practise performance, which ran until November 2014. The GDC also set up a Fitness to Practise Steering Group comprising the Chairs of its Council, Finance and Performance Committee, Audit and Risk Committee and Remuneration Committee.
- 11.28 Given the number of fitness to practise Standards that the GDC has not met in this performance review, and the quantity of improvement measures it has initiated, we consider that the GDC and its Council need to ensure that it has continued strategic oversight of the delivery of these improvements.
- The second Standard of Good Regulation for fitness to practise: Information about fitness to practise concerns is shared by the regulator with employers/local arbitrators, system and other regulators within the relevant legal framework***
- 11.29 This Standard was met in 2013/2014 – we noted in the 2013/2014 Performance Review Report that the GDC had agreed an information sharing protocol with the Care Quality Commission (CQC).
- 11.30 In our 2014 audit, we identified two cases where there had been a failure by the GDC to notify overseas regulators of relevant fitness to practise concerns. In one of these cases, the Registrar’s direct instruction had not been followed. (We identified similar concerns in the 2013 audit.) We are disappointed that the GDC has not, during 2014/2015, put in place a process to ensure consistent dissemination of fitness to practise information to overseas regulators, together with a checking mechanism to ensure such notifications are made. It has told us that it is piloting a system to do so. We will follow up on its progress in our next review of its performance. We note that the concerns raised in the audits were in the context of registrants who were ‘voluntarily removed’⁷⁹ from the register and that the GDC is currently developing its guidance for decision makers about voluntary removal – which will include guidance about notifying overseas regulators, where relevant.
- 11.31 In addition, in the 2014 audit, we had concerns about a failure to notify the CQC of a case where, in our view, such notification was appropriate. We recommended that the GDC put in place criteria and a process for notifying overseas regulators, and that it reviewed our concern about failing to share information with the CQC.
- 11.32 The outcome of the information sharing protocol that the GDC developed with the CQC in 2013/2014 is that relevant information is only shared on a

⁷⁸ We conducted our 2014 audit between May and June 2014 and we considered 100 cases closed between 1 November 2013 and 30 April 2014. Our report was published in December 2014.

⁷⁹ Registrants are required to renew their registration annually by paying an annual retention fee. They may be administratively removed from the register at this time by indicating their wish to be removed from the register or by non-payment of the fee. At all other times of the year, they must make an application for voluntary removal from the register. Applications from registrants who have an outstanding fitness to practise investigation are not automatically accepted and the Registrar will decide whether to grant or refuse removal (so that the investigation may continue).

case-by-case basis (at the CQC's request). The case we identified in the 2014 audit suggests to us that the GDC does not have a sufficiently robust process in place to ensure that information is shared on a case-by-case basis where it should be – and there is no longer the 'safety net' of the Investigating Committee's information being routinely shared with the CQC as it was previously. We encourage the GDC to continue to engage with the CQC to ensure that information that may be relevant to the CQC's functions is shared.

- 11.33 During 2014/2015, the GDC has taken the following actions to improve its sharing of information with employers and other regulators:
- Registrants subject to a fitness to practise investigation are required to provide the GDC with information about their employers and contracting bodies (so that the GDC can notify them about the fitness to practise investigation, and ask them if they have any fitness to practise concerns about the registrant). An additional step has been added to this process whereby caseworkers check the NHS England Performers' List and contact any additional Local Area Teams where the registrant is listed
 - It has worked with other regulators and organisations to finalise information sharing agreements, including NHS England and the Healthcare Inspectorate of Wales. However, we note that a number of other planned agreements are yet to be completed and we encourage the GDC to finalise this work.

- 11.34 We have concluded that the GDC's performance against this Standard has been inconsistent in 2014/2015.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

- 11.35 In 2013/2014, this Standard was not met, and we reported the following concerns:
- A failure to carry out and record risk assessments on receipt of a complaint (the 'triage stage') and to refer cases to an interim orders panel without delay (as identified in our 2013 audit)
 - An increase in the time taken for interim order decisions to be made
 - Incidents investigated under the GDC's incident reviews process, including one case where the GDC lost jurisdiction to investigate or to continue its investigation.
- 11.36 We said in the 2013/2014 Performance Review Report that we hoped to see an improvement in these areas in 2014/2015. We set out below the steps taken by the GDC to address these three areas of concern and the outcomes of this.

Risk assessments

- 11.37 In the 2014 audit, we reported an improvement in the GDC's completion (and recording) of risk assessments compared to our previous audit findings. However, we remained concerned about failures to record the reasoning for risk assessment decisions (including the reasoning behind decisions not to apply for interim orders). We were not satisfied with the GDC's response to this audit finding – we concluded that the guidance it had produced for its decision makers did not expressly require them to record their reasons.
- 11.38 The GDC told us in its evidence submission for the 2014/2015 performance review that it has made changes to its case management system to ensure the mandatory recording of risk assessments, and that caseworkers have received training on undertaking risk assessments.

Time taken to apply for/impose interim orders

- 11.39 In the 2013/2014 Performance Review Report, we reported that the median time taken from the receipt of a fitness to practise complaint to the point when an interim order decision was made had increased to 45 weeks (from 23 weeks in 2012/2013).
- 11.40 We note there has been some improvement in the time taken, with the median time for 2014/2015 at 39.3 weeks. We note the number of cases considered by an interim orders panel continues to increase but we do not consider that this justifies the failure to reduce more significantly the time taken for interim order decisions to be made, given that the inherent nature of these cases means that the public are potentially at risk while an interim order decision is pending.
- 11.41 The GDC has told us that it has taken various steps which should improve its handling of applications for interim orders. It is restructuring its triage team with the aim of ensuring that potential interim order cases are identified and expedited, caseworkers have received training on identifying potential interim order cases, and the preparation of interim order applications has been taken on by the internal legal team in order to ensure consistency and quality of documentation when an interim order application is made (previously individual caseworkers were responsible for this). This has resulted in the level of satisfaction with the case papers – expressed by Chairs of the Interim Orders Committee – increasing from 80 per cent considering the quality of papers to be good in June 2014 to 92 per cent in February 2015. The GDC also commissioned an external review of its interim order process: one of the outcomes from that review is the piloting of a risk assessment tool to determine whether a case is suitable for a referral to an interim orders panel – this tool was rolled out in April 2015, together with a requirement for caseworkers to carry out a monthly case review to include considering the need for an interim order application.

Incident reviews

- 11.42 We are pleased that the GDC has not reported to us any incidents relating to this Standard.

11.43 Overall, the Standard remains not met because there is insufficient evidence of the impact of the measures put in place to reduce the time taken to identify, refer and consider cases where an interim order may be required to protect patients and the public pending a final hearing. In light of the improvements the GDC has undertaken, we hope to see an improvement in its performance against this Standard in the next performance review.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders

11.44 In 2013/2014, this Standard was not met and we reported the following concerns:

- An increase in the median times taken between the receipt of the initial complaint and the Investigating Committee's decision about whether or not to refer the case for a final hearing, and between the receipt of a complaint and the final fitness to practise hearing decision
- Delays in progressing 30 cases identified in the 2013 audit.

11.45 We commented that the GDC had been slow to respond to the challenges posed by its increased volume of complaints and to increase the resources within its fitness to practise function appropriately. The GDC told us that it had taken a number of steps that should improve its throughput of fitness to practise cases at all stages of the process.

11.46 In our 2014 audit,⁶⁹ we were disappointed to find a decline in the GDC's performance in terms of timeliness – we found delays in progressing 69 of the 100 cases which we audited. Further, we found that in 44 of the 51 cases considered by the Investigating Committee, the GDC's own six-month target was not met.

11.47 The GDC has reported to us that in 2014/2015, the median time taken from receipt of a complaint to the conclusion of the final fitness to practise hearing was 93.3 weeks. This is more than the majority of the regulators we oversee. The median time taken from receipt of an initial complaint to the decision being made by the Investigating Committee increased from 46 weeks in 2013/2014 to 48 weeks in 2014/2015. The GDC also told us it had applied in 10 cases for a High Court extension of an interim order, which suggests difficulties with prioritisation and progression of some of those cases – we recognise that some of these cases were not within the GDC's control, namely two cases where there were ongoing criminal proceedings and three cases where the final hearing was adjourned in circumstances outside the control of the GDC.

11.48 During 2014, the GDC recruited two additional casework teams on a fixed-term basis to deal with a 'backlog' of 750 cases. This allowed the permanent teams' caseloads to be reduced to more manageable levels. The GDC considers this exercise to have been a success, and has told us that by the end of September 2014, the volume of cases being handled by its permanent

teams had significantly reduced. The backlog teams dealt with an extra 75 cases in addition to the 750 planned cases. The GDC told us that it has drawn learning from utilising this team in a different way to its permanent caseworkers, and that it has retained over 50 per cent of the team as permanent staff.

11.49 The GDC has also told us that:

- Its performance against its target for completing the investigation stage within six months was at 87 per cent in the final quarter of 2014/2015
- It has begun a project to improve timeliness, as part of which workshops have been held with caseworkers to share best practice and explore what barriers they may face in progressing cases
- The number of Investigating Committee meetings increased throughout 2014, with 36 meetings being held in the final three months of the year compared to 16 in the first three months. The pool of Investigating Committee panellists was increased from 20 to 32 in October 2014 and the GDC has told us that an increased number of meetings are being held in the first part of 2015
- A number of steps have been taken to improve its performance in terms of the time taken for cases to reach a final fitness to practise panel hearing, such as:
 - The introduction of ‘standard directions’ to be voluntarily used by the parties
 - Mechanisms have been put in place to monitor timeliness of the work of internal and external legal teams
 - An increase in capacity in terms of the number of final fitness to practise panel hearings that can take place simultaneously.
- It has applied learning from the cases in 2014/2015, where it was required to seek High Court extensions of interim orders, by taking steps to ensure these are not required as a result of final fitness to practise hearings being adjourned.

11.50 It is important to note that the backlog has only been cleared at the assessment stage, and that any of the backlog cases not closed at the assessment stage are, at the time of writing, progressing through the Investigating Committee stage of the process. It is likely that a proportion of these cases will be referred to a final fitness to practise panel hearing. The backlog cases will therefore put pressure on those later parts of the fitness to practise process at different points during 2015 and potentially 2016. We note that the GDC has taken steps, such as increasing capacity for final hearings and recruiting additional staff to its internal legal team, designed to address this. We would expect the GDC and its Council to effectively monitor the progress of these cases through the fitness to practise process to ensure that the steps taken are adequate, and to ensure that there is no consequential negative impact on more recent cases.

11.51 We conclude this Standard is not met due to the time taken to progress and conclude cases.

The seventh Standard of Good Regulation for fitness to practise: All parties to a fitness to practise complaint are kept updated on the progress of their case and supported to participate effectively in the process

11.52 In the 2013/2014 Performance Review Report, we reported that the GDC had undertaken a number of activities in relation to supporting witnesses. However, the Standard was not met, as in our 2013 audit, we found examples of poor customer service in 54 of the 100 cases we audited. We noted that the GDC's internal audits had also identified issues with keeping parties updated.

11.53 In the 2014 audit, we similarly identified examples of poor customer service in 58 of the 100 cases we audited, including failures in 46 cases to update the parties in accordance with the GDC's target (which is to update parties every six weeks), as well as failures to acknowledge incoming correspondence, errors in correspondence, and failures to provide clear explanations about the fitness to practise process. We also had significant concerns about the handling of two corporate complaints that arose in cases we audited (we have also referred to these in paragraph 11.7 above).⁶⁹ These findings indicated a decline in performance since the 2013 audit.

11.54 The GDC has taken a number of steps to address the concerns around poor customer service identified in the 2013 and 2014 audits, including:

- The introduction of management reports identifying cases where no action has taken place for four weeks, so that appropriate action can then be taken
- Updating its guidance for caseworkers, to include specific guidance on providing good customer service
- Reviewing all standard letters, to ensure their content is both accurate and customer service focused
- Providing indicative time frames in information leaflets to registrants and complainants. We note that these indicative time frames are the GDC's target time frames, rather than a reflection of current case handling time frames, which means that they may lead to unrealistic expectations unless registrants and complainants are also informed about the anticipated time frames in their cases
- Revising customer feedback forms and making these available online, reviewing feedback to identify trends, and giving individual responses where required
- Publishing guidance for registrants who are unrepresented in the fitness to practise process
- The introduction of a rolling programme of audits of some 'live' cases, enabling issues to be identified and rectified as soon as they are discovered.

11.55 The GDC's internal audits of cases for 2014 demonstrate an improvement in compliance against its customer service criteria, from less than 50 per cent in April 2014 to an average pass rate of 81 per cent in the second half of the year. We note that the GDC's internal audit criteria for casework customer care reflect the criteria we audit against.⁸⁰ We have concluded that this demonstrates improvement in the GDC's performance against this Standard, but it remains not met. We expect to see evidence of consistently better performance against this Standard before we can say it is met.

The eighth Standard of Good Regulation for fitness to practise: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession

11.56 The GDC did not meet this Standard in 2011/2012 or 2013/2014 and it remains not met this year.

11.57 In our 2013 audit, we identified concerns about the GDC's decisions to close 36 of the 100 cases we audited, which were primarily about the lack of adequate reasons for the closure decisions. We also noted in the 2013/2014 Performance Review Report that the GDC's internal audits had highlighted concerns about the decisions made at the triage stage. In addition, in 2013/2014, we lodged appeals against two GDC final fitness to practise panel decisions and fed back learning points about other final decisions relating to inadequate reasoning.

11.58 The findings of the 2014 audit demonstrate a decline in the quality of the decisions made at the initial stages of the GDC's fitness to practise process. In 33 of the 100 cases audited, we identified concerns about one or more aspects of the decision. Thirty-one of these cases were closed by the Investigating Committee; in five of these cases, we considered that the decisions to close were unsatisfactory and risked undermining confidence in the profession or in the GDC.

11.59 During 2014/2015, we considered four GDC final fitness to practise panel decisions at case meetings (including one decision from a 'remitted' hearing, following a previous successful Authority appeal against the panel's original decision). While we did not lodge appeals against any GDC final fitness to practise panel decisions, we continued to feedback learning points to the GDC (as we do with other regulators) about inadequate reasoning.

11.60 The GDC introduced decision makers' guidance in May 2014, updated its guidance for the Investigating Committee, and updated its indicative sanctions guidance for its final fitness to practise committees (which is due to be published at the time of writing). The GDC has also told us that in April 2015, it introduced a Quality Assurance Group that reviews, on a monthly basis, a sample of decisions made at each stage of the fitness to practise

⁸⁰ We apply a standard framework when reviewing the quality of regulators' casework. This can be found at: www.professionalstandards.org.uk/docs/scrutiny-quality/ftp-casework-framework-audit-tool.pdf?sfvrsn=0 [Accessed 12 May 2015]

process. The intention is that this group will produce quarterly reports containing learning to be fed back to staff and panellists.

- 11.61 The GDC's internal audits demonstrate some signs of improvement in relation to triage and assessment decisions. While we note the value of these internal audits, on the basis of the evidence from our 2014 audit of a decline in the standard of decision making at the initial stages of the fitness to practise process at the Investigating Committee stage, we are unable to conclude that the Standard is met in 2014/2015. We are encouraged by the steps being taken by the GDC and the indications that consistency of decision making is improving, and we will look for evidence of improvement in our next audit and performance review.

The ninth Standard of Good Regulation for fitness to practise: All fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders

- 11.62 This Standard was not met in 2013/2014 because the GDC had accidentally published on its online register details of the health conditions of 11 registrants' health (those details remained on the register for approximately one month). In addition, in our 2013 audit, we identified two instances where fitness to practise decisions were published which should not have been.
- 11.63 In the 2014 audit, we identified two cases in which the registrants had been issued with a warning by the Investigating Committee; these should have been published but were not. We alerted the GDC to this issue at the time, the warnings (which were current) were promptly published, and the GDC subsequently provided us with the report of its investigation into these incidents – which established that seven warnings issued by the Investigating Committee in April and May 2014 had not been published on the online register, despite the Investigating Committee's order (see also paragraph 11.19). The investigation identified that there had been inadequate staff training and that there was no checking mechanism in place (a checking mechanism was subsequently implemented).
- 11.64 As part of our register check (see also paragraph 11.19), we identified an entry where the final fitness to practise panel's decision about a registrant who had been reprimanded was not available, due to a broken web link. Any search of the website would therefore not have revealed the document setting out the background and reasons for the reprimand.
- 11.65 While we acknowledge that there may not have been any direct risk to patient safety as a result of some of the above information not being publicly available, these incidents demonstrate systemic weaknesses which could have a public protection impact in other cases.
- 11.66 We acknowledge that the GDC has not identified any further cases of erroneous or failed publication of fitness to practise outcomes. However, due to the incidents above, the Standard is not met.

***The tenth Standard of Good Regulation for fitness to practise:
Information about fitness to practise cases is securely retained***

- 11.67 This Standard was not met in 2013/2014 due to:
- Data security breaches relating to the erroneous publication of fitness to practise information outlined in paragraph 11.64 above. These incidents were reported to the Information Commissioner's Office (ICO) (which decided to take no action)
 - A complaint made to the ICO by a registrant whose confidentiality had been breached when details of a complaint was sent to another registrant (the GDC having misidentified that registrant as being the subject of the complaint). Again, the ICO took no action other than to issue learning points to the GDC
 - 12 breaches of confidentiality and/or data security that we identified in the 2013 audit.
- 11.68 At that time of the 2013/2014 performance review, the GDC informed us of a number of initiatives which were in progress aimed at improving its performance in this area.
- 11.69 We saw evidence of an improvement in the 2014 audit, in so far as we identified only two data breaches in the sample of 100 cases that we audited. Unfortunately, in one of these cases, no corrective action had been taken by the caseworker, and they had not reported the breach. Consequently, no action was taken until the GDC became aware of our audit findings.
- 11.70 The GDC has reported to us that it identified 24 data breaches that occurred in its fitness to practise work this year, and two were reported to the ICO. Due to the number of breaches, and the fact that two reports were made to the ICO, this Standard is not met.

12. The General Medical Council (GMC)

Overall assessment

- 12.1 In the 2014/2015 Performance Review Report, we found that the GMC has continued to meet all of the *Standards of Good Regulation*.
- 12.2 We consider that the GMC is performing effectively and that, in a number of areas, it is able to demonstrate that it applies a right-touch approach to regulation. As we reported in the 2013/2014 Performance Review Report, the GMC has in place an effective Regional Liaison Service and Employer Liaison Service which enhances its ability to engage with registrants, employers and educators. The GMC continues to gather and analyse data and information to enable it to further develop its understanding of its registrants and issues relevant to their effective regulation. For example, the GMC published data on complaints it received about doctors in individual NHS trusts/health boards listed by secondary care organisation. This was in response to a demand from trusts. While we note that the data by itself may have limited public use, we commend the GMC for making it available. We will monitor how the GMC uses and publishes its data going forward.
- 12.3 We have also found that the GMC, as an organisation, is quick to respond to current challenges and, in doing so, seeks to ensure solutions to challenges are future-proofed. As an example, we noted that the GMC was able to quickly remediate significant underperformance against its Contact Centre target in relation to the time taken to answer telephone calls in the period between April and June 2014. When the underperformance was identified, the GMC carried out a significant event review in order to understand the problem and engaged external consultants to assist it in identifying solutions, taking account of what it expects the role of the team to be in five years' time. As a result, the underperformance was significantly improved by July 2014. We noted with interest that this identified that, since the target was introduced, the nature of calls taken by the team had changed in terms of complexity and hence the time required to deal with them. We consider that other regulators we oversee may be able to draw learning from the GMC's approach in responding effectively to this performance challenge.
- 12.4 One of the broader challenges the GMC faces is to improve registrants', patients' and the public's understanding of its role and remit in relation to fitness to practise complaints. The GMC refers to this in its various workstreams (including its standards review, its pilot of meetings with complainants, and various research projects) – for example, the need to close the 'expectation gap' between public expectations about the types of issues the GMC will treat as fitness to practise complaints and the GMC's actual remit. The GMC has told us that it has begun work to improve public understanding of what it does and how it can assist when concerns are raised about doctors. For example, it made changes to its online complaints process to include a page setting out 'what we can and what we can't do' – its analysis shows that 55 per cent of enquirers do not proceed further than this page. We look forward to seeing further outcomes of this work.

12.5 Further information about the GMC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.

Guidance and standards

12.6 The GMC has met all of the *Standards of Good Regulation for guidance and standards* during 2014/2015. Examples of how the GMC has demonstrated that it met the Standards are set out below:

- It carried out a review of how its guidance on professional standards was developed and disseminated. This explored a number of areas, including: the intended purpose and impacts of guidance and its intended audiences; how guidance relates to other areas of the GMC's work; and how changes in the healthcare environment may affect approaches to developing and promoting guidance (for example, encouragement to regulators to produce joint guidance). The review found that the GMC's guidance was held in high regard but that doctors needed more encouragement to refer to it, and that guidance is only one of a number of tools that could be used to raise professional standards. It also found that there is an expectation on the part of the public that the GMC will always take action if there is any breach of the GMC's standards (whereas, in fact, the GMC does not take action in respect of all breaches but only if they impact on a doctor's fitness to practise). The report made suggestions for closing this 'expectation gap'. As a result of the review, the GMC is taking a number of actions that; for example, it has changed the presentation of guidance on its website to help readers navigate it more easily. The GMC engaged with patients, registrants and other key stakeholders in carrying out this review
- Eight of the health and care regulators we oversee, including the GMC, signed up to a joint statement on the professional 'duty of candour'⁸¹ in response to the recommendations in the Francis Report.⁸² Following this, the GMC worked with the Nursing and Midwifery Council (NMC) to develop joint guidance to be used by doctors, nurses and midwives on how to apply the duty of candour in practice. *Good Medical Practice* (the core guidance for doctors) requires doctors to be candid with patients when something goes wrong, to report adverse incidents, and to encourage a culture which allows all staff to raise concerns. The joint guidance that the GMC developed with the NMC provides supplementary explanatory guidance for doctors on applying the principles in *Good*

⁸¹ We define the duty of candour as: 'Any patient or service user harmed by the provision of a health or care service is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it'. Professional Standards Authority, October 2013. *Can professional regulation do more to encourage professionals to be candid when healthcare or social work goes wrong? Advice to the Secretary of State for Health*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/candour-advice-to-secretary-of-state---final.pdf?sfvrsn=0> [Accessed 11 May 2015].

⁸² Francis, R, 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry> [Accessed 11 May 2015].

Medical Practice and other guidance issued by the GMC that is relevant to openness and candour. This is due to be published in summer 2015

In our advice to the Secretary of State for Health,⁸³ we encouraged the healthcare regulators to sign up to a joint statement declaring their support for, and expectation that, their registrants comply with a common professional duty of candour as described in the Francis Report. However, the GMC has gone further by collaborating with the NMC to produce common guidance on the duty of candour for the healthcare professionals they regulate. This is the first time that two regulators (that we oversee) have worked together to produce joint guidance for the professionals they regulate. We consider this to be good practice and encourage such joint working and joint guidance where it is appropriate

- The GMC also collaborated with other organisations in the development of specific guidance by those organisations; for example, it worked with the Academy of Medical Royal Colleges on guidance for responsible consultants and clinicians⁸⁴ which was published in June 2014, and with the Department of Health on guidance for doctors about complying with the Abortion Act 1967,⁸⁵ which was published in May 2014
- The GMC launched the *Better Care for Older People* section of its website in July 2014. We noted in the 2013/2014 Performance Review Report that the GMC had decided that new guidance in this area was not necessary but that it planned to contribute to a campaign to highlight the role of doctors in caring for older people. The GMC worked with partners, including the British Geriatrics Society and Age UK, to create the *Better Care for Older People* section of the GMC website. This includes examples of good practice, videos of older people describing their needs and experiences, decision tools, articles, blogs, signposting and a reflective practice form. In developing this resource, the GMC took account of its 2012 research findings about the barriers and enablers to doctors engaging with guidance

We consider the GMC's approach to be an example of good practice. *Better Care for Older People* addressed a need without unnecessarily producing guidance – we consider this to be a right-touch approach. The website is an innovative method of sharing tools and resources and is focused on improved outcomes for patients in an area of care where there have been highly publicised failings.

⁸³ Professional Standards Authority, October 2013. *Can professional regulation do more to encourage professionals to be candid when healthcare or social work goes wrong?* Advice to the Secretary of State for Health: <http://www.professionalstandards.org.uk/docs/default-source/psa-library/candour-advice-to-secretary-of-state---final.pdf?sfvrsn=0> [Accessed 9 June 2015]

⁸⁴ The responsible consultant/clinician is the named clinician assigned to every NHS patient admitted to hospital and is responsible for the patient's overall care, known to them and their family, and accessible when questions or concerns arise.

⁸⁵ The guidance was introduced in the wake of public concern about reports of doctors pre-signing abortion certificates and making other decisions that might not comply with the requirements of the Act.

Education and training

12.7 The GMC has met all of the *Standards of Good Regulation for education and training* during 2014/2015. Examples of how the GMC has demonstrated that it met the Standards are set out below:

- The GMC completed the review that it commenced in 2013 of the impact of its standards on undergraduate training (*Tomorrow's Doctors*), which were introduced in 2009, and the preparedness of recent graduates to enter practice and further training.⁸⁶ The resulting report, *Be prepared: are new doctors safe to practise?*, concluded that very few graduates were poorly prepared, but highlighted some areas of concern, including variations in the level of preparedness of graduates depending on which medical school they graduated from. The report suggested the GMC improve its collection, analysis and sharing of data, which the GMC is addressing through its existing data strategy.⁸⁷ The report also suggested the GMC needed to ensure that assessment and evaluation of students is robust, which it considers might be addressed by the development of a national licensing examination.⁸⁸ In response to the report, the GMC has also commissioned further research on the emotional aspects of preparedness for practice, as well as research on the role of the foundation doctor⁸⁶ in the clinical environment
- Alongside this, the GMC reviewed both *Tomorrow's Doctors* and *The Trainee Doctor* (its standards for postgraduate training) and, as a result, consulted on a proposed combined set of standards for both undergraduate and postgraduate training. At the time of writing, the GMC is analysing the consultation responses. It expects to implement the combined standards in 2016
- The GMC continued its quality assurance of education and training providers by region, reviewed new medical schools and programmes, and concluded a thematic review of clinical academic training. It also carried out checks to investigate specific medical specialities or to look at themes which it had identified as being of interest. For example, as a result of concerns around the undermining and bullying of doctors in training that it identified from its national training survey, the GMC carried out checks of 12 training hospital departments and published a report summarising the key themes arising from the checks. The report identified a number of ways in which training providers could address undermining and bullying behaviours (by consultants, whether intentional or not), and the GMC set requirements and recommendations for individual hospital departments to ensure they were meeting the GMC's standards for postgraduate training. We also note that the GMC shared data from the national training survey

⁸⁶ Medical graduates enter practice at 'foundation' level. Once they have completed foundation year one (F1) and foundation year two (F2), they move into GP or speciality training.

⁸⁷ The GMC has an organisation-wide data strategy looking at how it can enhance use of the data it holds to better understand the doctor's journey through education, training and career, and to better understand the environments in which doctors work.

⁸⁸ The GMC has agreed in principle to develop a single national licensing examination for all UK and overseas medical graduates. Its Council will consider this proposal in June 2015.

with the Care Quality Commission in order to inform its risk monitoring and inspection programme. We consider this demonstrates the GMC making good use of the data obtained through the survey

- In September 2014, the GMC published the results of its audit of the assessment systems used in medical schools in the UK. Undergraduate assessment is a risk area identified by the GMC – it is the area where the GMC most frequently finds that medical schools do not meet the GMC’s standards. This audit enabled the GMC to form an overview of how robust assessment is across the medical schools. It identified variation in medical schools’ approaches to assessment, and enabled the GMC to set requirements for individual providers, where necessary, and also to share good practice. The audit findings will also be used to inform the development of the national licensing examination
- In the 2013/2014 Performance Review Report, we said we would follow up on the GMC’s planned review of its quality assurance processes. That review made a series of recommendations about enhancing the GMC’s approach to quality assurance of education providers, and highlighted the need for effective engagement with, and co-operation from, other agencies. A number of the recommendations are currently being piloted, such as the recommendation to involve representatives from the Medical Royal Colleges in inspections. The GMC will evaluate the outcome of the pilots before deciding whether to permanently embed these recommendations within its inspection regime
- The GMC developed the ‘reporting tool’ element of the national training survey to enable the analysis of changes over time. As a result, for the first time, three years of results are now available for each education provider, highlighting where improvements have been made or where there has been deterioration in a provider’s performance against the GMC’s standards. This enables the GMC to require a provider to make improvements, and also enables providers to identify for themselves areas where improvement is required so that they can target their resources appropriately. The GMC told us that the feedback from providers has been that the reporting tool is proving to be highly useful in the quality management of training
- In the 2013/2014 Performance Review Report, we said that we would follow up in 2014/2015 on the GMC’s work on developing credentialing.⁸⁹ The GMC has carried out further development work and will consult on its proposed approach to credentialing in 2015.

⁸⁹ Credentialing is the formal accreditation of attainment of competencies in a defined area of practice – for example, cosmetic surgery. The GMC’s model for credentialing would be able to accommodate the recommendations made in the Shape of Training Review (which looked at the potential reform of postgraduate medical education and training in the UK and reported in October 2013), were those recommendations to be adopted.

Revalidation⁹⁰

- 12.8 As at 31 December 2014, nearly 80,000 doctors had been revalidated. All the revalidation recommendations scheduled for 2014 were received. We are pleased to report that the GMC is on course to have revalidated the majority of licensed doctors by April 2016.
- 12.9 As at 31 December 2014, the GMC had withdrawn licences to practise from 570 doctors who had failed to respond to its requests for revalidation information. It has also begun to withdraw licences from doctors who have failed to engage with the revalidation requirements at a local level (such as appraisals). Other registrants have relinquished their licences to practise because they are not practising in the UK. The GMC has told us that the numbers of doctors failing to engage with the revalidation requirements or relinquishing their licences to practise are in line with its expectations.
- 12.10 The GMC told us that it considers that the administration of the revalidation process has worked well, and that there are early indications that revalidation is galvanising both doctors and employers to ensure that appraisal systems are in place, which should enable any performance issues to be identified and addressed at an early stage. The GMC is using the data it obtains from the revalidation process to identify trends and risk areas, but considers it is too early in the revalidation cycle to draw any conclusions from the data. The GMC publishes data about the numbers of approvals, deferrals and failures to engage at each designated body.⁹⁰ It also analyses those figures to ascertain, for example, what types of organisations make the most deferral recommendations.
- 12.11 It has commissioned an independent evaluation of the impact of revalidation, which, it is hoped, will produce interim results in 2016. The view the GMC expressed to us is that it is too early to make a judgement about the success or otherwise of revalidation but, at this stage, it appears to be working well and having a positive impact. We look forward to following progress and outcomes.

Differences in educational attainment

- 12.12 In the 2013/2014 Performance Review Report, we reported that the GMC had commissioned an independent review of the clinical skills assessment

⁹⁰ Revalidation is the process by which all doctors with a licence to practise are required to demonstrate they remain fit to practise and able to provide a good level of care to patients. Doctors are required to revalidate every five years. In order to do so, they must have a regular appraisal based on the principles in *Good Medical Practice*, for which they must provide supporting information such as patient feedback. The appraisal is carried out by their 'designated body', which is generally the organisation the doctor works for (e.g. for GPs, the designated body is the NHS England). Each designated body has a 'responsible officer' (usually the medical director) who makes a recommendation to the GMC that a doctor should be revalidated. The GMC will then carry out further checks before approving – and revalidating – the doctor. If the responsible officer is unable to make a positive recommendation because the doctor needs to provide more evidence or is subject to an ongoing local investigation, they may ask the GMC for a 'deferral' to allow more time for the recommendation decision to be reached. Doctors who do not or are unable to meet the requirements for revalidation may remain on the register but will not be issued with a licence to practise, which means they cannot practise medicine in the UK. Revalidation was introduced in December 2012.

component of the Membership of the Royal College of General Practitioners (MRCGP) examination. This independent review identified significant differences in the results of black and minority ethnic (BME) UK and international medical graduates (IMG) compared to the results of white UK graduates.

- 12.13 The GMC told us that it is beginning to understand more about the differential outcomes for BME and IMG students and doctors (both compared to white UK graduates, but also compared to each other) in both education and fitness to practise (see paragraph 12.27–12.28). IMG registrants (and EEA registrants) tend to perform less well in postgraduate examinations (that is, at the GP and specialist level) than their UK-trained counterparts (see also paragraph 12.23) and early indications are that IMG and EEA registrants who qualified outside of the UK are more likely to have revalidation deferred.
- 12.14 The GMC is taking a number of steps to gain a better understanding of these issues so that it can identify ways of addressing them:
- It is working with postgraduate education providers to collect data to understand how doctors who may need extra support (to include BME and IMG doctors) are identified, in order to encourage best practice
 - It has commissioned further research to investigate whether there is a link between doctors' scores on entry into GP training and subsequent examination failure
 - The GMC began collecting examination data from all colleges by GMC candidate number in 2012, to enable the GMC to follow progress through training of doctors with different protected characteristics across different locations. In March 2015, the GMC published its findings, which concluded that: women doctors are more likely to pass examinations and be offered training posts than men; and BME graduates performed less well in recruitment and examinations than white UK graduates, but better than white IMG students and doctors. The outcomes of this project will be used as a basis to commission further qualitative research to explore why differences exist and what can be done to address them
 - It is analysing the data from the revalidation process to identify and explore issues that affect IMG and EEA registrants who qualified outside of the UK. We note that it is too early to draw any conclusions from this data.
- 12.15 We acknowledge that the evidence gathered so far is indicative that this issue of the differences in attainment between different groups at all levels of training is complex and is not confined to education and training in medicine alone but also affects other professions. We are of the view that the GMC is responding in an appropriate and proportionate way – by taking steps to analyse the various factors and their contribution to the overall issue before considering what action can be taken to resolve it.

Registration

- 12.16 The GMC has met all of the *Standards of Good Regulation for registration* during 2014/2015. It has maintained an effective and efficient registration

process, and an accurate and accessible register. We did not identify any errors on the online register when we carried out a random check for the purposes of this performance review.

- 12.17 We provide an update below about the GMC's review of its online register, as well as two areas of work it has completed to ensure that only doctors with appropriate clinical and language skills are registered.

The online register

- 12.18 The GMC commissioned an independent research study to look at how the online register is used and how it can be enhanced. It has received the initial findings from this research study, which suggest that there could be benefits to users of the online register (patients, the public, doctors, employers) from enhancing the functionality (such as searching) and the look and feel of the register. The GMC plans to discuss with its stakeholder groups during 2015 how to make improvements while maintaining the integrity of the register, with implementation of any changes planned for 2016.

- 12.19 In the 2013/2014 Performance Review Report, we said we would follow up on the GMC's planned review of its policy about the publication and disclosure of fitness to practise information about individual registrants, including information shown on the online register. This review was postponed until 2015, pending the outcome of a review of the GMC's indicative sanctions guidance (because the review of the indicative sanctions guidance included consideration of the length of time for which warnings should be published).

Provisional registration

- 12.20 In the 2012/2013 and 2013/2014 Performance Review Reports, we reported that the GMC was considering limiting the length of time for which doctors should be able to remain provisionally registered. Provisional registration⁹¹ allows doctors *only* to undertake foundation year one (F1) posts. As (until 2015) there was no limit on the length of time provisional registration could last, some doctors who did not complete their F1 training due to lack of competence could nevertheless remain in provisional registration indefinitely (even if they were not working). The GMC also identified that there were a small number of provisionally registered doctors who were working outside of F1 posts. Following the GMC's work on this issue, as of 1 April 2015, provisional registration is now limited to a maximum of three years and 30 days (transitional arrangements apply to those doctors who were provisionally registered before that date). This should ensure that any F1 doctor who is not able to progress beyond that level can no longer remain provisionally registered indefinitely.⁹² Closer monitoring of provisionally

⁹¹ Provisional registration is granted to medical graduates to enable them to undertake foundation training. Once they have completed foundation year one (F1), they will be granted full registration and move to foundation year two (F2).

⁹² We note that there are safeguards in place so that the time limit does not discriminate against doctors who are unable to complete their training as a result of, for example, ill health.

registered doctors, which results from the time restriction, should also help prevent doctors working outside of the scope of provisional registration.

Knowledge of the English language

12.21 In the 2013/2014 Performance Review Report, we reported that the GMC had pursued reforms to its legislative framework to strengthen its ability to ensure that doctors on its register had sufficient knowledge of the English language to practise medicine safely in the UK. The legislative reforms were enacted in 2014. There are three elements to these changes:

- As of April 2014, a new ground of fitness to practise impairment was established, relating to a registrant 'not having the necessary knowledge of English' (an addition to the previous statutory grounds on which a registrant's fitness to practise could be found to be impaired). *Good Medical Practice* was updated in line with this change and now requires registrants to have 'the necessary knowledge of English language to provide a good standard of practice and care in the UK'
- In June 2014, the GMC became empowered to direct any registrant working in the UK to undertake a language assessment should a serious concern be raised about their ability to communicate effectively in English
- Also in June 2014, the GMC gained the powers to check the English language skills of doctors coming to the UK from other countries in the EEA.

12.22 These changes have enabled the GMC to:

- Ask an EEA doctor to provide the GMC with evidence of their English skills before the GMC issues them with a licence to practise, if concerns about their ability to communicate safely with patients in English are identified during the registration process. Where an applicant is unable (or refuses) to satisfy the GMC of their ability to communicate effectively in English, they will be registered by the GMC but they will not be issued with a licence to practise in the UK. The GMC has told us that it has registered a number of EEA doctors on this basis
- Require a registrant to undergo an English language assessment if concerns are raised (for example, by an employer or as a result of a pattern of patient complaints) about their knowledge of English. We note that the GMC's guidance about triggers for a language assessment makes it clear that there must be a link between the alleged lack of knowledge of the English language and risk to patients. We welcome this clarity, together with the amendment to *Good Medical Practice* (noted above), which we hope will mitigate any risk of unfair discrimination against doctors for whom English is not their first language. The GMC has told us that it has made use of this power to require registrants to undergo English language assessments in 38 cases, and that four registrants have been removed from the register as a result – through voluntary or administrative erasure.

12.23 The majority⁹³ of IMG applicants for registration with the GMC are required to pass the Professional and Linguistic Assessments Board (PLAB) test and the International English Language Testing System (IELTS) test before they can register with the GMC. The PLAB test assesses whether they have the knowledge and skills to perform at the level of an F1 doctor and the IELTS test assesses their language skills. In June 2014, the GMC increased the score which IMG applicants are required to achieve in the IELTS test. In September 2014, the GMC completed a review of the PLAB test, as a result of which it is taking forward a number of recommendations to make the test more robust, including a recommendation to examine a wider range of ethical values and to limit the number of re-takes that are permitted as well as the length of time for which a pass remains valid. The review also recommended investigating the reasons for the disparity in outcomes achieved by PLAB candidates in subsequent postgraduate examinations compared to other groups.

The second Standard of Good Regulation for registration: The registration process, including the management of appeals, is fair, based on the regulators' standards, efficient, transparent, secure and continuously improving

12.24 Under this Standard, we take into account any data breaches arising from the registration process. The GMC reported 15 breaches, none of which were so serious as to require a referral to the Information Commissioner's Office (ICO) under the GMC's internal criteria. We note the GMC has achieved certification to ISO 27001:2013 (see paragraph 12.50).

Fitness to practise

12.25 The GMC has met the 10 *Standards of Good Regulation for fitness to practise* during 2014/2015. We have concerns about its performance against the sixth Standard, which are set out in paragraphs 12.39–12.48 below.

12.26 Examples of how the GMC demonstrated that it met the Standards are set out below:

- Guidance was developed for its fitness to practise staff, setting out how to make reasonable adjustments for disabled people
- Research was conducted into the trend in rising volumes of fitness to practise complaints received from patients and the public, which highlighted that societal factors (such as – in a healthcare context – patients being less deferential to doctors and being more willing to complain) have led to a rise in complaints across all complaints-handling organisations. The research also identified that complainants were likely to gravitate towards the GMC, even where it was not appropriate, as a result of the relatively high profile of the GMC and the confusing healthcare complaint structure. The research concluded that there is a

⁹³ IMG applicants may not have to undertake the PLAB test in certain circumstances, such as if they have an international postgraduate qualification approved by the GMC, or are being sponsored to undertake a postgraduate qualification in the UK.

mismatch between the expectations of the public about the role of the GMC and the GMC's actual remit (see also paragraph 12.4). We consider this was a valuable exercise to assist the GMC in understanding the issues which relate to it as an organisation specifically

- In September 2014, a new procedure was implemented for complaints that do not raise a concern about the fitness to practise of a doctor. The complaint is shared with the doctor it concerns, who is required to put the complaint into local (employer) complaint procedures and to reflect on it as part of their appraisal (which in turn feeds into the revalidation process). The complaint is also shared with the doctor's responsible officer⁹⁰ so that they are aware of it for revalidation purposes. The GMC informs the complainant that unless the doctor's responsible officer notifies the GMC about a pattern of concerns about that doctor's fitness to practise, the GMC will not investigate it. This procedure is different from the GMC's previous procedure – in the past, complaints which did not raise a concern about the fitness to practise of a doctor were simply closed following a check with the doctor's employer that it had no concerns about the doctor, without being fed into local complaint procedures or revalidation. The GMC engaged with patient groups before revising the procedures and obtained their input to standard letters and leaflets. We consider that this revised procedure has the potential to assist complainants with achieving a resolution to their complaint at local level (in instances where the complaint has not previously been dealt with locally) and will also ensure that complaints are part of the evidence which is considered at revalidation
- The GMC carried out a survey of doctors and complainants who had been through the fitness to practise process. It has published an action plan addressing concerns raised in the survey. We noted in particular that the GMC now intends to share expert reports that are obtained as part of the investigation with the relevant patients (or their families as appropriate, after seeking consent from the doctor). We consider that this could be particularly useful in helping patients understand why the level of care received was (or was not) of the required standard, but does not remove the need for the GMC to fully explain its decisions to patients/complainants
- An internal review was carried out by an independent consultant of cases where doctors had committed suicide while subject to a fitness to practise investigation. The review made a number of recommendations about improvements that could be made to the fitness to practise process to support doctors. As a result, the GMC has committed to carrying out a fundamental review of its procedures for dealing with concerns about doctors who have health issues (relating to mental health, addiction or stress), and to appoint a medically trained case examiner with special responsibility for overseeing health cases. The GMC has also carried out an analysis of the available data about doctors who committed suicide (28 between 2005 and 2013) in order to identify their ethnicity and the country in which they undertook their primary medical qualification. While no conclusions could be drawn from this data, this is another example of the

GMC making use of the data it has available to it to inform its understanding of how its processes may impact on different groups of registrants (see paragraph 12.2).

Over-representation of BME and IMG registrants in fitness to practise proceedings

- 12.27 The GMC commissioned an independent review of its investigation stage decision making (including reviewing its guidance for decision makers and its approach to presenting allegations) to establish whether this contributes to the over-representation of certain ethnic groups within its fitness to practise proceedings. The review concluded that there is no evidence of implicit or explicit bias in the GMC's decision making or its approach to investigation. The review therefore did not lead to the GMC identifying any action that it can take to reduce the over-representation of minority ethnic groups within its fitness to practise caseload.
- 12.28 The GMC told us that employers are the main source of complaints about BME doctors and that these complaints tend to be about issues that are not easily remediated (and therefore, it is more likely than not that the doctor's fitness to practise will be found to be impaired and a sanction imposed). The GMC is working with employers through its Employer Liaison Service to understand and address the reasons for the higher numbers of referrals for BME doctors, but highlighted to us that it is unable to influence any bias by individuals who make complaints. The GMC also told us that the nature of the complaints made against doctors in these groups (and, in particular, complaints about IMG doctors) appear more likely to relate to health and probity issues than complaints raised about other groups. The GMC told us that, as these attract more severe sanctions (suspension or erasure)⁹⁴ in order to protect patients and uphold the reputation of the profession, any disparity in fitness to practise outcomes for these groups is likely to be linked to the nature of the complaint about them. We consider that the research the GMC has carried out to assist it in understanding issues relating to BME and IMG registrants (see also paragraphs 12.12–12.15) is an example of good practice.

The Medical Practitioners Tribunal Service (MPTS)

- 12.29 In the 2013/2014 Performance Review Report, we reported that we had appealed to the higher courts four decisions of the MPTS (the adjudication arm of the GMC). We noted that this represented a significant increase on the number of GMC decisions we had appealed in previous years. This year, we have appealed only one decision of the MPTS, a significant decrease, but we have also carried out detailed reviews of a number of cases before deciding not to lodge appeals in respect of them. Our detailed reviews of these cases were triggered by insufficient reasoning within the panels' decisions and we have fed back learning points to the GMC (as we do with other regulators).

⁹⁴ Doctors whose fitness to practise is impaired due to ill health cannot be erased but may be indefinitely suspended.

Pilots of meetings with doctors and meetings with complainants

- 12.30 In the 2013/2014 Performance Review Report, we said we would follow up on the independent evaluation that the GMC commissioned of the pilots of meetings with doctors and (separate) meetings with complainants during the fitness to practise process.
- 12.31 The GMC has told us that, following receipt of overall positive feedback and the conclusions of the independent evaluation, it is now implementing meetings with complainants across the UK. The GMC's view is that these meetings assist it with helping complainants to understand what will happen after they make a complaint, to improve their overall experience of the fitness to practise process by building their understanding of it, and to reduce any feelings of isolation, while giving complainants the opportunity to fully explain their concerns. The GMC's view is supported by the conclusions of the independent evaluation. However, we note that the benefits the GMC highlighted all relate to the meetings held with complainants at the start of the investigation process to provide information about the fitness to practise process, and that the independent evaluation also highlighted dissatisfaction on the part of complainants about the meetings held at the end of its investigations to explain the outcomes. Complainants commented that they understood the GMC's processes but did not understand how the particular decision had been arrived at on the basis of the evidence. The GMC has told us that it is looking at ways to address this dissatisfaction with the meetings at the end of the investigation, including the relevant decision maker (a senior staff member called a case examiner) attending the meeting to explain their decision. We note that currently the GMC staff members who are likely to have the most detailed knowledge of the case (the investigating officer and the case examiner) have no involvement in the meetings with complainants.
- 12.32 The GMC told us that the independent evaluation that it commissioned of the success of the pilot of meetings with doctors during the fitness to practise process also reflected very positive feedback from doctors and their legal representatives, and the meetings appear to have encouraged doctors to engage more fully and at an earlier stage of the fitness to practise process. The GMC told us that it is extending this pilot.
- 12.33 We acknowledge that these meetings with doctors encourage and facilitate doctors to engage more fully and at an earlier stage in fitness to practise investigations, and may therefore contribute positively to both the timeliness of investigations and the quality of the decision that is ultimately made. However, we remain concerned that the differences between the format and the purpose of the meetings with complainants and the meetings with doctors may undermine public confidence in the transparency of the fitness to practise process and in the impartiality of the GMC, as doctors are allowed access to the decision maker in the case before the decision is made. This opportunity is not given to complainants and nor are they able to respond to

what a doctor says to the decision maker at this point.⁹⁵ We note that the independent evaluation considered only the question of whether the pilots met the GMC's objectives.

Support for unrepresented doctors

12.34 In May 2012, the GMC commenced a pilot to provide confidential emotional support for doctors who are subject to a fitness to practise investigation from their peers.⁹⁶ In 2014, an independent evaluation of that pilot concluded the support service was important to doctors who are unable to access support elsewhere. The pilot has therefore been implemented.

12.35 In December 2014, the MPTS commenced a pilot to support doctors whose cases have been referred for a final fitness to practise hearing (that is, a hearing by an MPTS panel) who are not legally represented. The support being provided consists of a telephone advice line which is manned by law students who provide solely procedural advice to help doctors prepare for their final fitness to practise hearing, together with a number of published guides to hearing processes, as well as supporting information.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

12.36 We note that there has been a decline in the time taken between a complaint being received and an interim order decision being made. The median time taken has increased to 9.9 weeks in 2014/2015 from to 8.4 weeks in 2013/2014. However, this decline is not so significant to make the Standard not met.

12.37 In 2014/2015, the GMC reported to us that five interim orders lapsed without being reviewed by an interim orders panel. In each of these five cases, an application to the High Court was required to extend the order. In each case, the GMC considered that the criteria for an interim order being required were no longer met, and took the decision to allow the orders to lapse at expiry rather than seek an extension. Therefore, we note that a considered decision was made in these cases and the orders did not lapse as a result of an error.

⁹⁵ The meetings with doctors have a different aim to the meetings with complainants – the doctor meets with the case examiner and is given the opportunity to respond to the complaint in order to help inform the case examiner's decision as to whether to close the case or refer it to a hearing.

⁹⁶ The service is provided by the British Medical Association on behalf of the GMC.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary, the regulator protects the public by means of interim orders

12.38 While we have concluded that this Standard is met in 2014/2015, we identified a number of concerns about the GMC's performance in relation to it, which we have set out below.

High Court extensions of interim orders

12.39 In 2014/2015, the GMC made 415 applications to the High Court to extend interim orders. This means that the GMC did not conclude these cases within the lifetime of the interim orders, which can be up to 18 months in length (we recognise that they may be imposed for shorter periods, and therefore a need to extend an interim order may arise sooner than 18 months after the original order was imposed). The High Court refused to extend four of these orders – in two of these four cases, the High Court criticised the GMC for delays.

12.40 We recognise that a proportion of the 415 cases in which the GMC applied to the High Court to extend interim orders are likely to be ones which were delayed as a result of factors outside of the GMC's control, such as lengthy police (or other enforcement authority) investigations/prosecutions, or other complexities. The GMC has been able to confirm that 82 of the 415 High Court extension cases were 'older' cases (156 weeks or more as at 31 March 2015); and in 61 of the 82 cases the delays in concluding the cases were due to third-party investigations. A further 12 of the High Court extensions were sought because the final fitness to practise hearings could not be completed on the scheduled hearing dates. However, having taken these factors into account, we remain concerned that the proportion of cases where the GMC has had to apply for High Court extensions to interim orders (and where factors outside of the GMC's control do not appear to have been the primary cause of the delay) is high relative to its caseload.

Time taken to complete investigations

12.41 The GMC reported that:

- The median time taken to conclude a case that is referred for a final fitness to practise hearing (from the receipt of the complaint) is 92.6 weeks. We acknowledge that this is an improvement on the 97 weeks reported in 2013/2014
- There has been an increase in the median time taken between a complaint being received and the decision about referral for a hearing (or case closure) being made by the GMC's case examiners (or the Investigation Committee). In 2013/2014, that median time was 29.2 weeks and in 2014/2015, it has increased to 35 weeks. However, we note that the GMC has been able to demonstrate to us that the way in which it has calculated this median time frame (excluding various categories of cases that take the least time to reach a final decision) means that, in

fact, there has only been a very slight increase in the time frame since 2013/2014 (in fact, if the GMC included in its calculation of the median time frame the less serious concerns referred to it, that would have the effect of reducing the overall median time frame to 4.14 weeks).

- 12.42 The GMC has also told us that the improvements it has made to its investigation process – which are designed to reduce the amount of time between a case examiner’s decision being made and a case being ready for a final fitness to practise hearing – have resulted in the pre-case examiner/Investigation Committee decision stage taking longer. We note that the median time for the next stage of the process (between the case examiner/Investigation Committee’s decision and the final fitness to practise hearing) has in fact improved: in 2013/2014, it was 34.3 weeks and in 2014/2015, it was 30.3 weeks. This demonstrates that the changes the GMC has made to its investigation process have resulted in the outcome the GMC hoped to achieve – that is, they have resulted in a reduction of the median time between a decision that a case should be considered at a fitness to practise panel hearing and that hearing taking place.
- 12.43 We have therefore concluded that the apparent lengthening of the median time taken between receipt of a complaint and the case examiner/Investigation Committee’s decision is not a concern that means the GMC has not met the overall Standard.
- 12.44 However, we remain concerned about the apparent significant discrepancy between the reported overall median time frame between the receipt of a complaint and conclusion of the final fitness to practise panel hearing (92.6 weeks), and the median times for each of the two stages of an investigation preceding the final fitness to practise panel hearing (namely, 35 weeks between receipt of the complaint and the case examiner/Investigation Committee’s decision, followed by 30.3 weeks between that case examiner/Investigation Committee’s decision and the final fitness to practise panel hearing decision). We consider that a median time frame between receipt of a complaint and conclusion of the final fitness to practise panel hearing of 92.6 weeks is excessive.

Age of caseload

- 12.45 The number of cases that the GMC reported as having been open for more than 156 weeks (as at 31 March 2015) increased in 2014/2015 to 125 from 76 in 2013/2014. We note that the percentage of cases which have been open for longer than three years has remained at around one per cent since 2012, and therefore the number of older cases in 2014/2015 compared to 2013/2014 is a reflection of the increased volume of complaints.
- 12.46 The GMC provided us with details of the reasons for the delays in the 125 individual cases, which demonstrated that, in the vast majority of cases, the delays were genuinely due to matters outside of the GMC’s control (for example, due to ongoing police investigations or the ill health of the registrant under investigation). The GMC has told us that all cases that have been open for more than 156 weeks have been reviewed by independent lawyers to ensure that appropriate steps are being taken to progress them. We consider

it is good practice to have this level of external, independent scrutiny (in addition to the GMC's internal review process); however, we note that the information the GMC has provided to us does not confirm whether or not the review identified that there had been any unreasonable delays in these cases on the part of the GMC.

- 12.47 The GMC has told us that it recruited a number of additional staff in April 2014 and is now seeing the impact of this additional resource on timeliness. We hope that this will result in improved performance against this Standard in the future.

***The tenth Standard of Good Regulation for fitness to practise:
Information about fitness to practise cases is securely retained***

- 12.48 The GMC has reported that there were 125 data breaches in its fitness to practise directorate in 2014/2015, including one that the GMC concluded should be reported to the ICO. This last breach was an isolated incident which related to the inadvertent disclosure of confidential information by a GMC lawyer over the telephone to a family member of a witness as a result of confusion having arisen because there were two people with the same name in the household (the incident was also compounded by language difficulties). The ICO decided not to take any action in response to notification of this breach.

- 12.49 We regard it as highly significant that in November 2014 the GMC achieved certification against ISO 27001:2013 (the international standard for information security management). That certification provides us with a significant level of assurance about the robustness of the GMC's systems for identifying, classifying, reporting and remediating data breaches. We also acknowledge that one of the impacts of having robust breach identification systems in place may be that the number of data breaches identified is elevated, compared to the number of breaches identified by other similar organisations and/or compared to the number identified prior to implementation of robust breach identification systems. As only one of the data breaches identified in 2014/2015 was of a level to merit reporting to the ICO, and taking into account the context of that incident (as described above), as well as the fact that the ICO decided to take no further action, we have concluded that the GMC has met the Standard.

13. The General Optical Council (GOC)

Overall assessment

- 13.1 In the 2014/2015 performance review, we found that the GOC:
- Met all of the *Standards of Good Regulation for guidance and standards*
 - Met all of the *Standards of Good Regulation for education and training*
 - Met four of the five *Standards of Good Regulation for registration*. It did not meet the third Standard.⁹⁷ This is due to errors we found when conducting an accuracy check of the GOC's register
 - Met eight of the 10 *Standards of Good Regulation for fitness to practise*. It did not meet the sixth⁹⁸ and tenth⁹⁹ Standard due to the time taken to progress fitness to practise cases and concerns about a number of data breaches.
- 13.2 By comparison, in the 2013/2014 performance review, we concluded that the GOC had met all of the *Standards of Good Regulation*. However, we noted that the GOC's performance had declined against the fourth *Standard of Good Regulation for fitness to practise*.¹⁰⁰
- 13.3 We are pleased that during 2014/2015, the GOC has continued to make good progress in implementing its Continuing and Education Training (CET) scheme. The GOC plans to conduct a full evaluation of the CET scheme at the end of the three-year cycle (December 2015). Independent research commissioned by the GOC in the meantime shows that the 'peer review'¹⁰¹ aspect of the CET scheme is proving effective in combating professional isolation and has encouraged improvements in registrants' practice and in their confidence about their practice. All of these outcomes are positive and should lead to better care for patients.
- 13.4 Further detail about the GOC's performance in each of the above areas (including information about any areas of performance which raise concerns) can be found in the relevant sections of the report.
- 13.5 Further information about the GOC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.

⁹⁷ The third *Standard of Good Regulation for registration*: Through the regulators' registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice.

⁹⁸ The sixth *Standard of Good Regulation for fitness to practise*: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders.

⁹⁹ The tenth *Standard of Good Regulation for fitness to practise*: Information about fitness to practise cases is securely retained.

¹⁰⁰ The fourth *Standard of Good Regulation for fitness to practise*: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.

¹⁰¹ Activities that enable registrants to discuss their practice with other registrants.

Guidance and standards

- 13.6 The GOC has continued to meet all of the *Standards of Good Regulation for guidance and standards* during 2014/2015. It demonstrated this by maintaining and keeping under review both its standards of competence and conduct and its additional guidance, and by engaging effectively with its stakeholders in this work. Examples of how the GOC demonstrated it met these Standards are set out below.

Standards review project

- 13.7 During 2014/2015, the GOC continued with its review of its standards. In May 2014, the Council approved its plans for the review and publication of revised standards of ethics and performance for individuals, businesses and students and standards of competence. Throughout 2014/2015, the GOC established an 'evidence base' which it then used to inform the development of the *Standards of Practice*. The evidence base was developed by: reviewing fitness to practise data; reviewing the recommendations of various reviews in the healthcare sector (including the Francis,¹⁰² Berwick,¹⁰³ and Keogh¹⁰⁴ reports); mapping the GOC's standards against the ethical standards of other healthcare regulators; conducting a gap analysis of the GOC's existing standards; undertaking a literature review concerning patient expectations of healthcare practitioners; analysing the results of surveys of both GOC registrants and the public about the accessibility of the GOC's standards; and analysing the responses to the GOC's call for evidence which took place between July and October 2014. At the time of writing this report, the GOC was in the process of consulting on the format and content of the *Standards of Practice* for registrants and students, prior to their being finalised and approved by its Council in July 2015.
- 13.8 As part of the GOC's work in developing the revised *Standards of Practice* during 2014/2015, the GOC met with its stakeholders to discuss the purpose of the review and the role that the various stakeholders can play in providing additional guidance to registrants that will assist them in meeting the standards in any given situation. The GOC also produced a *Standards Framework* and is consulting on this alongside the *Standards of Practice*. The aim of the *Standards Framework* is to provide a clear statement about the GOC's role and the roles of its various stakeholders in relation to the *Standards of Practice* and any guidance produced to assist GOC registrants to meet those standards.

¹⁰² Francis, R., 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <http://www.midstaffpublicinquiry.com/report> [Accessed 11 May 2015].

¹⁰³ National Advisory Group on the Safety of Patients in England. 2013. *A promise to learn – a commitment to act*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf [Accessed 11 May 2015].

¹⁰⁴ Keogh, B, 2013. *Review into the quality of care and treatment provided by 14 hospital trusts in England: overview report*. Available at www.nhs.uk/NHSEngland/bruce-keogh-review/Documents/outcomes/keogh-review-final-report.pdf [Accessed 11 May 2015].

13.9 We are pleased to note that the GOC expects to complete its review of its standards and to publish the *Standards of Practice* in accordance with its published timescale. We also note that as a part of this work, the GOC reports it has engaged successfully with its stakeholders.

Supporting registrants by providing additional guidance

13.10 During 2014/2015, the GOC produced a toolkit for registrants which contains supplementary guidance and regulatory statements clarifying specific legislative requirements and which signposts registrants to material produced by third parties (including optical professional bodies, the National Institute for Health and Care Excellence (NICE) and the Medicines and Healthcare products Regulatory Agency (MHRA)). The toolkit also includes case studies for use in peer review, the CET scheme and undergraduate training aimed at supporting registrants to apply the GOC's core standards in practice. These case studies are available on its website.

13.11 The GOC has signed up to a joint statement promoting the duty of candour alongside seven of the other health and care professional regulators¹⁰⁵ following the recommendations made in the Francis Report.¹⁰⁶ The statement highlights the importance of being open and honest with patients or service users when harm or distress has been caused (or when there has been the potential for such harm or distress) because something has gone wrong with their treatment or care.

Education and training

13.12 The GOC has continued to meet all of the *Standards of Good Regulation for education and training* during 2014/2015. Examples of how the GOC has demonstrated this are set out below:

- The GOC has introduced a new self-assessment tool for use by optical education providers so that they can self-assess how patient perspectives are informing their development and delivery of education and training. The GOC will assess the effectiveness of this tool during its quality assurance visits to the education providers – it will test the provider's self-assessment by comparing it to the comments made by patients during the GOC's quality assurance visits
- The GOC has worked with the College of Optometrists on a 'professionalism' project to look at ways to improve the development of professionalism through education and training. As a result, it is now encouraging higher education institutions to use peer reviews as a learning tool. The GOC expects that using peer reviews as a learning tool

¹⁰⁵ Joint statement from the Chief Executives of statutory regulators of healthcare professionals. Available at http://www.pharmacyregulation.org/sites/default/files/joint_statement_on_the_professional_duty_of_candour.pdf [Accessed 11 May 2015].

¹⁰⁶ Francis, R., 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <http://www.midstaffspublicinquiry.com/report> [Accessed 11 May 2015].

will help to embed professionalism by enabling students to understand the standards of practice and how to apply them

- The GOC visited one university where it talked to students who were close to entering the workforce about its role, including its standards, how students can maintain appropriate professional standards when they are registrants and the CET scheme they will have to do in the future. The GOC reported that speaking with students closer to the point of entering the workforce was an extremely valuable opportunity to impress upon them the importance of professionalism and high standards. As a result of the students being older and therefore more confident, the GOC felt that there was a far greater two-way interaction than with first-year students. Due to the success of this one visit, the GOC is now engaging with students who are at a similar point in their studies as part of all its visits to all education institutions
- As part of its review of *Standards of Practice*, the GOC is reviewing its *Standards for Education and Training*. Part of the call for evidence included questions about how optical education and training and the CET scheme need to evolve in order to prepare professionals for optical practice in the future.

Using learning from its quality assurance visits to improve performance

13.13

During 2014/2015, the GOC has continued with its quality assurance visits to higher education training institutions and providers of assessments in optics that lead to registration with the GOC. The GOC has used the learning gathered through its quality assurance processes in different ways in order to improve education and training providers' abilities to meet its *Standards for Education and Training* as well as to improve the quality and consistency of the decisions it makes. For example:

- The GOC held a workshop with university providers to develop solutions to concerns that had been highlighted, namely that students were not getting enough experience treating patients before going on their pre-registration placement. All the universities reported that they were struggling to maintain patient bases of sufficient variety and size to guarantee that all students would be able to develop the experience and the level of confidence that their pre-registration employers expect of them. The GOC has received positive feedback from the university providers following the workshop and it appears that the solutions the providers developed as a result of it have led to an increased confidence that students are now gaining the necessary experience. The GOC also revised its education handbooks (and held training workshops) to ensure that its standards in relation to the minimum level of patient experience was clearer to both education providers and to the visitors who conduct quality assurance visits on behalf of the GOC
- The GOC has issued new guidance and a new requirement for education providers about their communication with students and employers while a

programme is under provisional rather than full approval.¹⁰⁷ Providers under provisional approval are now required to communicate more openly with students and employers about their progress in meeting the GOC's standards and to be transparent about the process and timescales for achieving full approval. The increased transparency that is now required from education providers about the status of new courses should help to minimise the negative impact on students if a course that they embark upon when it only has provisional approval subsequently fails to achieve full approval (that situation did occur in 2013/2014). The GOC has also added a new section on its website containing information about new courses.

Continuing Education and Training (CET)

- 13.14 The GOC has continued to make good progress with the implementation of its CET scheme. The GOC reports that 99 per cent of its registrants are on target to meet all of the requirements – meaning they will have demonstrated competence across their full scope of practice and have fulfilled the requirements to demonstrate their continued fitness to practise. The GOC reports that it is encouraged by the take-up of interactive CET and peer reviews, and the informal positive feedback it has received from registrants about the value of the interactive features of the CET scheme. We are pleased that the evidence indicates that the CET scheme appears to have been accepted by GOC registrants and that they are keen to try the new developmental activities.
- 13.15 The GOC is seeking to learn from the data it has gained from the CET scheme so far. The outcome of independent research that the GOC has commissioned shows that the peer review aspect of the CET scheme is effective at combating professional isolation, and that 73 per cent of practitioners have made changes to their practice after participating in case-based peer review discussions as part of the CET scheme. The GOC also reports that the majority of participants found that interacting with other practitioners within the CET scheme increased their self-confidence about their level of clinical knowledge. This research confirms our previous view that the GOC's CET scheme is an area of good practice.
- 13.16 We are pleased with the progress that the GOC has made in embedding the CET scheme and in its successful engagement of registrants in the scheme. The GOC will conduct a full evaluation of the CET scheme at the end of the first three-year cycle (in December 2015), which we hope will demonstrate the success of this scheme in ensuring the continuing fitness to practise of the GOC's registrants.

¹⁰⁷ The GOC's Education Committee reviews an education provider's application for a new programme or qualification. Once the documentation has been reviewed and it is satisfied that the submission meets the required standards, it will recommend to the GOC Council that 'provisional approval' be awarded. Provisional approval enables the new programme to be established and advertised to recruit the first cohort of students.

Registration

- 13.17 The GOC has continued to meet four of the five *Standards of Good Regulation for registration* during 2014/2015. Due to errors we identified on the register on two separate occasions, we consider the GOC did not meet the third *Standard of Good Regulation for registration*.
- 13.18 Examples of how the GOC met four of the *Standards of Good Regulation for registration* are set out below:
- The GOC has maintained an efficient and effective registrations process. It has met its key performance indicators for processing applications. An independent review of the GOC's quality assurance processes confirmed that the GOC has procedures in place to help ensure that the correct registration decisions are made and by appropriate officers. The independent review did not identify any examples of decisions that had been made outside of the GOC's processes or of decisions that were inconsistent with the information on which they were based. We encourage the GOC to act on the general recommendation from this independent review that it develops an overarching quality assurance framework for all of its regulatory functions
 - The GOC's new IT system went live in September 2014 in respect of the registration function. This should further enhance the efficiency and effectiveness of its registration process. We will look for evidence of the impact of the new system when reviewing the GOC's performance in the future
 - The GOC has continued to share the content of its register with 353 commissioners and employers who have signed up to receive its monthly amendments to the registers. This provides a mechanism outside of manually checking the register for employers and commissioners to identify changes to the registration status of those working for them
 - The GOC opened 40 new investigations into allegations of illegal optical practice between 1 April 2014 and 31 March 2015. It has taken proportionate action to manage the risks around allegedly illegal practice – for example, in eight of those cases, following receipt of a letter from the GOC, the allegedly illegal practice ceased without further action being required.

Indemnity insurance requirements

- 13.19 The Health Care and Associated Professions (Indemnity Arrangements) Order 2013 places a requirement on registered healthcare professionals to have indemnity insurance in place that is appropriate to their duties and scope of practice, for claim compensation in the event of negligence. The GOC already had this provision in its legislation and GOC registrants were already required to make a self-declaration about their indemnity insurance arrangements to the GOC. While the GOC does not routinely seek evidence of indemnity cover, it does check the indemnity insurance of any registrant who is the subject of a fitness to practise allegation. The GOC has told us that if, as a result of the checks it carries out on this group of registrants, it becomes apparent that registrants' self-declarations about their indemnity

arrangements are not reliable, it will consider changing its future approach. We recommend that the GOC also introduces a system of random checks on a proportion of registrants so that it has more information on which to base its assessment of the action it needs to take in the future.

The second Standard of Good Regulation for registration: The registration process, including the management of appeals, is fair, based on the regulators' standards, efficient, transparent, secure and continuously improving

- 13.20 Under this Standard, we take into account any data breaches arising from the registration process. The GOC reported one breach that was not so serious as to require a referral to the Information Commissioner's Office (ICO). We are concerned regarding the breach, although we do not consider that this results in the Standard not being met, as data security is only one element of the evidence to support the Standard.

The third Standard of Good Regulation for registration: Everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice

- 13.21 As part of our performance review of the regulators, we conduct an accuracy check of each regulator's register which helps us to assess compliance with the third *Standard of Good Regulation for registration*. This year, we identified six entries on the GOC's register about a registrant's fitness to practise sanction that were incorrect or misleading.
- 13.22 The GOC told us that these errors occurred for three reasons: simple human error as a result of staff misunderstandings, human error as a result of the transition to the new IT system, and human error as a result of the transition of the registrant from student to qualified status.
- 13.23 Two of the errors were associated with the introduction of the new IT system. The GOC told us that its staff received comprehensive training and that there was significant investment to support users through the early days of the adoption of the system. However, the challenging circumstances of assimilating changes to such a large number of operational processes at the same time meant that in two cases, mistakes or omissions were made as users got up to speed with the system. The GOC undertook checks on other cases that were dealt with over the period of adoption and found no similar errors.
- 13.24 Two errors occurred when student registrants were transferred to full registration status. Warnings that were shown on the student register were not transferred to their new registration records. In order to ensure that similar errors do not occur in the future, the GOC has instituted a revised checking process, and students are no longer transferred onto the register for qualified registrants until checks have been made with the Fitness to Practise and Hearings Teams. The GOC will consider (as part of a two-year project about the information on the register that it expects to undertake from 2015/2016) whether there are other steps that could be taken to provide a more system-driven way of dealing with this issue, such as moving to a system of using 'lifetime registration numbers'.

- 13.25 Two of the errors were due to simple human error caused by staff misunderstandings. One error was due to confusion about which suspension needed to be removed; the other error consisted of failing to update the register to show that the conditions on the registrant had been amended (the registration status had not changed). The GOC has ensured that all relevant staff are briefed on the problems to prevent such mistakes reoccurring in the future.
- 13.26 The GOC commissioned an internal audit to check the accuracy of its registration data. The GOC reports that the outcome of the audit shows it generally has a good control framework in place. However, there are some minor weaknesses in the control framework or areas of non-compliance which may put system or business objectives at risk. The GOC is currently considering the draft recommendations.
- 13.27 At the moment, the GOC undertakes quality assurance of its registration function through spot checks and management reporting. It is continuing to develop this process now that the new IT system is operational. The GOC has said that it will – as part of its business planning cycle – consider developing a formal independent quality assurance monitoring process, following the introduction of the new IT system (the GOC first communicated its intention to do so in 2012/2013). It has identified the introduction of a quality assurance monitoring process as a two-year project for 2015 and 2016. In light of the errors we identified that had occurred following the introduction of the new IT system, we are not confident that the GOC's current quality assurance monitoring process is adequate. We urge (as we note in paragraph 13.7, the first bullet) the GOC to prioritise the development and implementation of a formal quality assurance monitoring process for its registration function. We expect the GOC to manage the risks associated with the time taken to implement this process.

Fitness to practise

- 13.28 During 2014/2015, the GOC has demonstrated that it met eight of the *Standards of Good Regulation for fitness to practise*.
- 13.29 The GOC has failed to meet the sixth *Standard of Good Regulation for fitness to practise* due to the length of time taken for cases to progress through the fitness to practise process. We also consider that the GOC has failed to meet the tenth *Standard of Good Regulation for fitness to practise*, as it has reported four breaches, two of which were serious enough to be reported to the ICO. Further details about these Standards can be found in paragraphs 13.34–13.39 below.
- 13.30 Examples of how the GOC demonstrated that it met the other eight Standards are set out below:
- The GOC continued to work collaboratively with the GOsC in peer reviewing closed fitness to practise cases in order to share learning. The GOC peer reviewed the GOsC's cases in December 2014, as a result of which the GOC is now considering how to adapt some of the GOsC's template case review forms for its own use. Reviewing the GOsC's

processes for witness liaison also assured the GOC that its own witness liaison processes are sound

- The GOC conducted an end-to-end review of all open cases as part of its own quality assurance. This review identified a need for staff training to ensure that, before a fitness to practise case is progressed, the preliminary matters of identifying the relevant registrant and establishing that the GOC has jurisdiction have been resolved
- Since 1 January 2015, the GOC has issued press releases about all decisions to erase or suspend registrants taken at final fitness to practise hearings. Until that date, the GOC simply uploaded the fitness to practise panel's decisions to its website. We are therefore pleased with this development as it should have the dual benefit of letting patients and the public know that a particular optician should not be practising as well as potentially raising general awareness of the role of the GOC
- In the 2013/2014 Performance Review Report, we noted that our reviews of final fitness to practise panel decisions had led to frequent feedback to the GOC on the lack of sufficient detail. During 2014/2015, we have continued to offer feedback about insufficient reasoning in some of the final fitness to practise panels' decisions (we have not appealed any GOC fitness to practise panel decisions)
- The GOC has updated its witness guidance, revised a feedback form and met with its panel firms to outline the approach they should follow to ensure that witnesses are supported to participate effectively in the process. The GOC has also given its staff training in how to support vulnerable witnesses (including training on how to follow-up where there has been reference to depression or suicidal thoughts). It has also amended the way it communicates with witnesses to ensure matters that cause stress and anxiety are clarified as soon as possible. The GOC does not have a significant number of cases where witnesses are involved but the feedback it has received from those witnesses has all been positive.

Introduction of the new fitness to practise rules from 1 April 2014

13.31

On 1 April 2014, the GOC's new fitness to practise rules came into effect. The new rules implement changes to the way in which the GOC handles fitness to practise cases, makes decisions, and conducts hearings. We are pleased the GOC reports that the introduction of the new rules was smooth and that they have led to improvements. Examples of how the GOC reports the new rules have enabled improvements include:

- The drafting of allegations and preparation of case reports¹⁰⁸ (which was previously done through the Investigation Committee) is now done by case officers. This has resulted in registrants knowing the specific allegations against them at an earlier stage in the process, which is an improvement in terms of transparency

¹⁰⁸ Case reports are completed before the case goes to the registrant for representations and the case examiners for decision. They set out the case against the registrant, what the allegations are, the areas of the code breached and reference the relevant papers.

- Case examiners have taken up their roles following training. All case examiner decisions are quality assured by fitness to practise staff and feedback is given to improve the quality of their decisions (no serious issues have been identified). The GOC expects to see an improvement in the timeliness of the end-to-end process following the introduction of case examiners, and we will look for evidence of this in the future (there is currently insufficient evidence on which to base any conclusions)
- A clinical advisor assists staff by providing a clinical opinion at the outset of the case about whether there are issues that concern patient safety. This has helped to speed up the process to some extent, especially around the decision whether or not to apply for an interim order. The GOC has also used the opportunity of the new rules to start to seek legal input at the outset of cases which are considered to be more serious, to enable matters to be addressed promptly
- Due to the change in the rules, the GOC is now able to contact employers at the end of each case to advise them of the case examiners' decision, which represents an improvement in terms of transparency and protecting the public
- The GOC no longer has to hold procedural hearings before the final fitness to practise panel hearing takes place, which means it has been able to schedule the final fitness to practise panel hearings more promptly.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

13.32 In the 2013/2014 Performance Review Report, we considered that the GOC had met the fourth *Standard of Good Regulation for fitness to practise* but we had concerns about a decline in its performance in terms of the median time taken from initial receipt to interim order decision that put it at risk of not meeting this Standard in the 2014/2015 performance review.

13.33 We note the median time from receipt of information indicating the need for an interim order to an interim order decision has reduced from 4.5 weeks last year to 3 weeks this year. We encourage the GOC to continue with this improvement. However, we note that the median time taken in 2014/2015 from receipt of an initial complaint to an interim order decision is 16 weeks.¹⁰⁹ While this time frame is not unacceptable, we continue to consider that any further decline in performance could put the GOC at risk of not meeting this Standard in future reviews.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into

¹⁰⁹ Due to a change in the methodology used to calculate the performance figures since 2013/2014, a direct comparison with the figures included in the 2013/2014 Performance Review Report is not possible.

account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders

- 13.34 We are concerned to note the length of time taken to progress cases through the fitness to practise process. The median time taken from receipt of an initial complaint to the final fitness to practise panel hearing decision is 104 weeks, and the median time taken from final case examiner decision to final fitness to practise decision is 51 weeks, which we consider unacceptably lengthy.¹¹⁰ Delays in case progression adversely affect all those involved with the fitness to practise case, and they can impact on the quality of the investigation and adjudication of cases, and on public confidence in the regulator.
- 13.35 The GOC advised us that it has had difficulties in two areas. First, with arranging performance assessments in some of its older cases due to the availability and eligibility of performance assessors. Second, the GOC said that it would be recruiting a wider pool of assessors to address this. GOC reported that a restriction of its governing legislation prevents panel members who sit on final hearing panels from sitting on panels that take decisions about whether to impose an interim order relating to that complaint. This can lead to delays with scheduling hearings due to the availability of eligible panellists.
- 13.36 We note that the GOC has had to request five High Court extensions to interim orders which indicates an issue with its prioritisation and progress of cases, particularly given that the GOC has considered and concluded less cases than in 2013/2014 at the initial stages of the process. As a result of the time taken to progress cases, we consider that this Standard is not met. We expect the GOC to take steps to improve its timeliness and for us to see the effect of these steps when we next review its performance.

***The tenth Standard of Good Regulation for fitness to practise:
Information about fitness to practise cases is securely retained***

- 13.37 The GOC informed us of four data security breaches that took place during 2014/2015, two of which it reported to the ICO. The ICO has ruled on these breaches. The sensitivity of the personal data involved in one of the cases (which related to one of the individuals involved) led to that data breach being reported to the ICO, and this, together with the current absence of written procedures covering the processing of such data, means we do not consider that the GOC has met this Standard.
- 13.38 These data breaches, all of which occurred as a result of human error, involved:
- An email being sent to the wrong recipient. There was no sensitive detail contained in the email, which only referred to the administration arrangements for a substantive hearing. This breach was not reported to the ICO. The GOC immediately identified and remedied the problem. To

¹¹⁰ See footnote 109.

prevent this from happening in the future, it will double check recipients' email addresses

- An email attaching a bundle in relation to an interim order being sent to the wrong firm of solicitors. The bundle was password protected; this was mentioned in the email, which also said that the password would be sent separately. The password was sent to the same incorrect firm of solicitors. The bundle was sent to a legal professional within an organisation that has a contractual relationship of confidentiality with the GOC. The recipient was therefore bound by their own legal and contractual obligations. The breach was not reported to the ICO for this reason. The recipient contacted the GOC straight away, confirming they had received the wrong bundle of papers and confirmed deletion through email
- A copy of a private final fitness to practise panel decision was sent to another registrant (whose hearing had taken place on the same day). This was a particularly sensitive case. To prevent a similar breach occurring again in the future, the GOC says it now ensures that the checking, copying and dispatching of these documents is carried out by those involved in the hearings process and not delegated to other staff.

This breach was reported to the ICO. Given the sensitivity of the personal data involved, and the absence of written procedures covering the processing of this data, formal action – in the form of an undertaking – was considered by the ICO. However, it decided to take no formal action as the GOC had committed to completing operational manuals for the Fitness to Practise and Hearing Teams by September 2015 and March 2015 respectively. The ICO also noted the unintended recipient confirmed that they had securely destroyed the determination and there was no evidence that any unauthorised processing had taken place. In addition, the employees involved in this incident had recently received data protection training. However, the ICO advised the GOC that it should take this opportunity to review its handling of personal data, specifically with regard to the circumstances arising in this case. The ICO strongly advised the GOC to keep to the completion dates to which it had committed. The ICO warned that any further incidents involving the GOC would lead to the matter being revisited with enforcement action considered as a result

- Written statements relating to an ongoing investigation being inadvertently sent to three different registrants unconnected to the investigation. This breach was reported to the ICO and a 'lessons learned' session was held with staff. The ICO decided not to take any further action with regard to this breach. This is because the GOC had resolved its main concerns in this case, namely the absence of a published disclosure policy and the publishing of notices for interim order hearings. The ICO advised the GOC to consider improving the visibility of its Fitness to Practise and Hearings Publication and Disclosure Policy on its website. It said the policy and the page containing the link did not appear using search terms such as 'disclosure policy' when searching the GOC's website, and that the GOC may wish to consider that most regulators choose to display a link to their equivalent policy on the hearings page. The GOC advises that

the visibility of the new Fitness to Practise and Hearings Publication Disclosure Policy has now been resolved

- We note that the GOC has taken action in 2014/2015 to ensure that staff of other regulators who are involved in peer reviews of each other's fitness to practise work during 2014/2015 (as reported in the 2013/2014 Performance Review Report) sign a deed of confidentiality. We were concerned that the GOC had not identified the need for a deed of confidentiality to prevent the sharing of information about fitness to practise cases inappropriately until we queried whether the data protection implications of the peer review exercise had been considered.

13.39 We are disappointed to note that four data security breaches took place during this period, two of which were serious enough to report to the ICO. We are mindful that data security breaches can adversely affect public confidence in the regulator. However, we are pleased that the GOC's internal reporting process worked effectively in that the breaches were reported straight away and appropriate action was taken promptly to notify the relevant people. Given the number of breaches, we consider it sensible that the GOC plans to roll out further policies in relation to records management, retention and disposal, protective marking and information security. Nevertheless, in light of the seriousness of the breaches reported to the ICO, the concerns expressed by the ICO and the current absence of written procedures covering the processing of such data, and finally the matter of how data was shared during peer review exercises with the GOCs, we do not consider that the GOC has met this Standard.

14. The General Osteopathic Council (GOsC)

Overall assessment

- 14.1 In this 2014/2015 Performance Review Report, we find that the GOsC has continued to perform well and has met all of the *Standards of Good Regulation*.
- 14.2 During 2014/2015, the GOsC has also continued to contribute to the shared agenda of developing the profession with other key stakeholders such as the Institute of Osteopathy and the National Council for Osteopathic Research. The GOsC has enabled the agenda to progress in a variety of ways, such as funding grants, co-ordinating work, and contributing to the drafting of non-GOsC-specific standards. The changes being made as a result of this agenda should be beneficial to the profession and to the public – for example, the development of voluntary service standards which osteopaths can choose to adopt and thereby demonstrate that they provide a high quality service to all patients. The standards would not be enforced by the GOsC and would be owned by the profession.
- 14.3 Overall, we consider that the GOsC has demonstrated, in particular, an impressive commitment to using the learning from its work to improve its performance across its regulatory functions. For example, the GOsC identified, through its fitness to practise process, that maintenance of sexual boundaries by some of its registrants was a concern and, using its guidance and standards and education and training work, it has promoted to both registrants and prospective registrants the importance of maintaining appropriate boundaries with patients. We have, however, noted some concerns about the GOsC's performance against three of the Standards for fitness to practise and our comments about this are set out below (see paragraphs 14.15–14.24).
- 14.4 Further information about the GOsC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of this report.

Guidance and standards

- 14.5 The GOsC has met all of the *Standards of Good Regulation for guidance and standards* during 2014/2015. Examples of how it has demonstrated this are:
- Its evaluation of the strategy it used to implement the revised *Osteopathic Practice Standards* (the Standards were implemented in September 2012). The evaluation indicated that the GOsC's stakeholders generally had a good understanding of the *Osteopathic Practice Standards* but that there was more that the GOsC could do to improve their understanding. For example, the evaluation indicated that while senior level staff at Osteopathic Education Institutions understand the *Osteopathic Practice Standards*, there is less certainty that the teaching staff have the same level of understanding. We are pleased that the GOsC has taken the time to carry out an evaluation of its strategy to implement its Standards and we shall be interested to know what measures it will take in response

- The completion of its research into the effectiveness of osteopathic regulation (which began in mid-2013). Before the research was completed, we note that the GOsC supported work to develop the evidence base around the risks and benefits of osteopathic practice (in order to provide a firmer basis for some of the *Osteopathic Practice Standards*); it has also published additional materials (as set out in paragraph 14.5, the third bullet below) to supplement its existing guidance about communications and consent – those additional materials may, in part, meet the recommendation arising from the research that the GOsC should provide further communication and training on the *Osteopathic Practice Standards* which are most frequently the subject of complaints: consent, record keeping, and patient dignity and modesty
- The development of additional materials to support its existing guidance. The GOsC has published three online learning modules which relate to ‘Exploring professional dilemmas in osteopathy’, including modules about communicating appropriately and obtaining informed consent. It has also published scenario-based examples to support the consent guidance (*Obtaining Consent*), which it published in 2013/2014. The scenarios make specific reference to the legislation and the *Osteopathic Practice Standards* and include practical suggestions to assist registrants in identifying and responding to particular issues
- The GOsC has signed up to a joint statement promoting the duty of candour alongside seven of the other health and care professional regulators¹¹¹ following the recommendations made in the Francis Report.¹¹² The statement highlights the importance of being open and honest with patients or service users when harm or distress has been caused (or when there has been the potential for such harm or distress) because something has gone wrong with their treatment or care. In addition to signing up to the joint statement, the GOsC has: publicised the joint statement in its magazine (*the osteopath*), discussed the duty of candour during focus groups involving patients, the public and registrants; and it confirmed with the providers of professional indemnity insurance to osteopaths that their policies and procedures are compatible with the duty of candour (i.e. indemnity cover will not be invalidated by complying with the duty of candour)
- The GOsC has continued to enhance its methods for engaging with patients and the public. For example, it has held joint meetings with organisations with similar aims (such as local Healthwatch) at which it has sought to understand patient and public perceptions of osteopathic care. By holding such joint meetings, the GOsC has increased its opportunities to seek and hear the views of patients and the public.

¹¹¹ Joint statement from the Chief Executives of statutory regulators of healthcare professionals: http://www.pharmacyregulation.org/sites/default/files/joint_statement_on_the_professional_duty_of_candour.pdf [Accessed 11 May 2015]

¹¹² Francis, R., 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <http://www.midstaffpublicinquiry.com/report> [Accessed 11 May 2015].

Education and training

14.6 The GOsC has met all of the *Standards of Good Regulation for education and training* during 2014/2015. Evidence of how it has demonstrated this are:

- The GOsC has developed *Guidance for Osteopathic Pre-Registration Education*. The intention behind this guidance is to connect the learning outcomes expected from osteopathic training specifically to the *Osteopathic Practice Standards*. This should help the Osteopathic Education Institutions to deliver appropriate education and training, which will enable students to meet the GOsC's standards when they apply for registration
- The GOsC continued with its quality assurance visits to Osteopathic Education Institutions – it conducted three quality assurance visits, in connection with four educational programmes. It has continued to publish information in relation to its quality assurance processes and the visit outcomes
- It has resolved a problem in relation to the sharing of student fitness to practise data by education providers. In our 2013/2014 Performance Review Report, we noted that the GOsC had received a report that one Osteopathic Education Institution (OEI) refused to provide student fitness to practise data related to the findings made and the sanction imposed when the GOsC requested it. The GOsC told us that it has (subsequent to the 2013/2014 performance review) been able to obtain the information required from the provider. The GOsC also wrote to other health and care professions regulators to warn them of the potential for conflict between university regulations and professional regulators' requirements for information about student fitness to practise history. The GOsC has confirmed that it now receives, in all cases, all the information it requires from that institution. We are satisfied with the actions taken by the GOsC
- It made progress on its review of the quality assurance process (this has been ongoing since 2011/2012 and has been an iterative process). While there has been a delay in the completion of this review, we accept that this is reasonable because there are no quality assurance visits due to take place before April 2016 and the *Subject Benchmark for Osteopathy*¹¹³ is under review. Further, the GOsC has made some changes to improve the efficiency of the quality assurance process in the interim, such as the introduction of a standardised form for Osteopathic Education Institutions to use when notifying the GOsC of changes to their programmes
- It continued with its audits of registrants' continuing professional development (CPD) record folders. It has shared learning arising from those audits with its registrants in a series of articles in *the osteopath*. For

¹¹³ This document is produced by the Quality Assurance Agency for Higher Education. The statement represents a consensus of the academic community about the academic content of an osteopathy degree and is relevant because it's another tool that affects the education and training provision of osteopathic students.

example, in June/July 2014, it focused on sharing information on what did and did not count as professional development

- The GOsC has continued to develop the scheme that it will use in the future (from 2016/2017) to assure the continuing fitness to practise of its registrants.¹¹⁴ In relation to this, it has worked with other stakeholders to develop relevant guidelines (including guidelines about a central aspect of the future scheme – peer discussion review) and it has developed resources and case studies to help illustrate to registrants and to others how the continuing fitness to practise process will work. (These have been subject to public consultation, as noted below.) We note that the GOsC took additional steps to encourage patient/service user responses to its public consultation on the proposed scheme by summarising its consultation document into three pages and three questions targeted at patients/service users, and we look forward to seeing any evaluation by the GOsC of the success of that approach. We note that the next stage in the development of the scheme is scheduled for the period of June to November 2015, when the GOsC will analyse the responses to the public consultation. Following that analysis (and any changes that the GOsC decides to make to its proposals as a result), the GOsC plans to run the scheme for the ‘early adopters’, while continuing to develop the infrastructure ready for universal introduction in 2016/2017

We are pleased to note that the GOsC believes that the work to develop the continuing fitness to practise scheme is already having one effect which may ultimately benefit public protection – the GOsC believes that its development work has led a number of CPD providers to start mapping their courses to the *Osteopathic Practice Standards*, particularly in core areas such as communication and consent.

Registration

14.7 The GOsC has met all of the *Standards of Good Regulation for registration* during 2014/2015. Examples of how it has demonstrated this are set out below:

- It maintained a registration process that is efficient, transparent, secure and based on its standards.¹¹⁵ It has also received positive feedback from those new registrants whom it surveyed about the experience of registering with the GOsC. The GOsC’s view is that the response rate to that survey was adequate¹¹⁶ and was a sound basis for drawing

¹¹⁴ The scheme requires osteopaths to undertake 30 hours of CPD per year, including 15 hours of learning with others. A complete scheme cycle will take three years, making a total of 90 hours of CPD, which must include a minimum of 45 hours learning with others. CPD will remain primarily self-directed, but must include the following: a. CPD in each of the themes of the *Osteopathic Practice Standards*; b. A CPD activity in communication and consent; c. An objective activity, for example case-based discussion, peer observation and feedback, patient feedback or clinical audit; and d. At the end of the three-year CPD cycle, a peer discussion review with a colleague to discuss CPD and practice, demonstrating engagement with the CPD scheme.

¹¹⁵ We note that there was one data breach in 2014/2015 which the GOsC classified as ‘minor’ because the breach did not involve the disclosure of sensitive data.

¹¹⁶ The response rate was 18.5 per cent (just under 50 responses).

conclusions about new registrants' experience; however, it accepts that it is not a sound basis for drawing conclusions about registrants' experience generally. We note that the GOsC is considering how it can improve engagement with its new registrants' survey

- It provided evidence that its registration process has improved by:
 - Revising its online renewal of the registration tool in order to make it more user-friendly
 - Introducing a form that requires those seeking to leave the register to provide their reasons. The GOsC has used this information to check that individuals are not practising illegally after they leave the register, and to monitor whether there are any underlying issues within the profession which are affecting individuals' willingness to practise as osteopaths
- It consulted on the proposed professional indemnity insurance rules that came into effect on 1 May 2015. The rules set out that the GOsC has a choice about the type of action it can take if it identifies that an osteopath is practising without indemnity insurance – it can remove them from the register administratively, or it can take fitness to practise action. In our response to the GOsC's public consultation, we suggested that public protection would be enhanced if the GOsC treated practising without indemnity insurance as a fitness to practise concern. We are pleased to note that the GOsC has indicated that any *wilful* failure by a registrant to comply with the professional indemnity insurance rules will be treated as a fitness to practise concern
- It took appropriate action to reduce the risk of harm to the public (and of potential damage to public confidence in the profession) by successfully prosecuting two individuals for illegal practice, as well as sending other individuals 'cease and desist' letters and monitoring the effectiveness of that action.

The third Standard of Good Regulation for registration: Through the regulators' registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice

- 14.8 During 2014/2015, two issues arose about the accuracy of the GOsC's online register. The first issue concerned the accuracy of the initial registration date for all registrants displayed on the online register. The GOsC told us that these inaccuracies were a result of a technical problem and that as soon as the GOsC became aware of it, text was added to its website to bring it to the attention of website users and also to inform them that there was a telephone number they could call if they required information about initial registration dates. The GOsC told us that it also checked that there were no other problems with the integrity of the data on the register. We consider that the GOsC took appropriate action and note that the issue has subsequently been resolved (on the re-launch of the GOsC's online register). The second issue concerned an inherent fault in the online tool for updating registration details, which came to the GOsC's attention as a result of corporate complaints

made by two registrants. The registrants' complaints identified that where two or more registrants shared a practice address, an individual could inadvertently change the practice address details of another registrant when updating their own details online. The GOsC told us that it is confident (having carried out checks) that this was not a widespread problem. In any event, we note that this fault has been remedied by the re-launch of the GOsC's online register and its revised online registration tool.

- 14.9 We note that our annual check of the accuracy of the GOsC's register did not identify any errors on it.¹¹⁷
- 14.10 In our 2013/2014 Performance Review Report, we inaccurately recorded that the GOsC publishes details of admonishments on its register. In fact, the GOsC publishes details on its website, not its register. During 2013/2014, the GOsC increased the amount of time admonishment data is available on its website – from 28 days to 6 months. We note that the GOsC's Council took account of our views that all fitness to practise sanctions should be shown on the health and care professional regulators' registers¹¹⁸ when deciding that the GOsC would not publish admonishments on its register. While we are disappointed with the GOsC's decision, we recognise that it followed an appropriate process and took relevant factors into account in reaching that decision. We also note that the impact of this decision not to include details of admonishments on the register is reduced by the publication of admonishments elsewhere on the GOsC's website. We encourage the GOsC to include an explanation within the register section of its website to the effect that admonishments are not shown on the register but can be accessed elsewhere.
- 14.11 Finally, we note that the GOsC does not publish on its register the names of any individuals who have been struck off. While we would prefer regulators to include such details on their registers, we accept that some regulators consider that it could be either inappropriate or potentially confusing to do so. In those circumstances, we have encouraged regulators to include a statement on their websites/online registers explaining that if a particular individual's name cannot be located by doing a register search, that may be because they have been struck off. We are disappointed to see that the launch of the GOsC's online register in 2014/2015 has resulted in a change to the statement on the GOsC's website – we consider the current statement to be inadequate. It simply reads, 'If the osteopath you are looking for is not listed here, this does not necessarily mean they are not registered with us' and makes no reference to the possibility that the individual being searched for may have been struck off the GOsC's register. We recommend that the GOsC considers whether or not this wording could be expanded in order to improve public protection, and specifically that it considers including wording

¹¹⁷ As part of our performance review of the regulators, we conduct an accuracy check of each regulator's register which helps us assess compliance with the third *Standard of Good Regulation for registration*.

¹¹⁸ CHRE, 2010. Health professional regulators' registers: maximising their contribution to public protection and patient safety: <http://www.professionalstandards.org.uk/docs/default-source/psa-library/registers---good-practice-report.pdf?sfvrsn=0> [Accessed 11 May 2015]

similar to that used by the HCPC: 'Registrants who have been struck off as a result of a fitness to practise hearing will not appear in the online register'.

- 14.12 Although the GOsC has had some difficulties with its online register, we still consider this Standard is met. However, we expect the GOsC to consider our comments in relation to the information it publishes about struck-off registrants and that it will make changes to its online register to avoid the risk of not meeting the Standard in future reviews.

Fitness to practise

- 14.13 During 2014/2015, the GOsC has demonstrated that it met all of the *Standards of Good Regulation* for fitness to practise. While we consider that the GOsC has met the fourth *Standard of Good Regulation for fitness to practise* (which relates to the timely review of complaints and the prioritisation of serious cases, including applying for an interim order), the seventh *Standard of Good Regulation for fitness to practise* (which requires that all parties are kept updated on the progress of their case and effectively supported to participate in the process) and the tenth *Standard of Good Regulation for fitness to practise* (which requires the regulator to ensure that it keeps all fitness to practise data securely), we set out some concerns about the GOsC's performance against these Standards in paragraphs 14.15–14.24.
- 14.14 Examples of how the GOsC demonstrated that it met the *Standards of Good Regulation for fitness to practise* are set out below:
- Following changes to the Public Interest Disclosure Act 1998 (the Act that protects whistle-blowers) the GOsC is now classed as a 'prescribed body' to which certain whistle-blowing disclosures can be made. The GOsC therefore developed a policy explaining how it will manage whistle-blowing disclosures and it set up a dedicated email address for people to use when making such disclosures
 - It has continued to share information about fitness to practise concerns/outcomes with other appropriate bodies. Having identified that around two per cent of registrants on its register hold dual registration with another health and care professional regulator, the GOsC held discussions with the relevant regulators about when and how information about those dual registered registrants will be shared between them. It has also incorporated into its investigation process a process for checking whether an osteopath is dual registered and for seeking fitness to practise information from other regulators. We encourage the other regulators to introduce a similar process
 - It has developed *Guidance on Threshold Criteria for Unacceptable Professional Conduct* to explain (to complainants and registrants as well as the GOsC's decision makers) the types of issues that will be investigated under the GOsC's fitness to practise process. We agree that the use of threshold criteria should help to achieve consistency in decision making about which matters are investigated as fitness to practise concerns, and therefore help the GOsC to ensure that its resources are appropriately targeted

- The GOsC is monitoring the number of fitness to practise complaints relating to breaches of sexual boundaries. We note that the GOsC has taken various steps to ensure that professional standards in this area are appropriately upheld. It has:
 - Shared the learning from these cases with the profession via e-bulletins (in March and December 2014) and in articles in *the osteopath* (in October 2014)
 - Ensured that this area featured prominently in the GOsC's presentations to students in 2014/2015
 - Covered this subject in training for its final fitness to practise panel (the Professional Conduct Committee) as well as sharing the learning points we have fed back from our reviews of cases involving allegations of sexual boundary breaches
 - Recruited legal assessors who have specialist training on handling vulnerable witnesses and defendants. Finally, we note that the GOsC provided direct feedback about one such case to one particular Osteopathic Education Institution.
- The GOsC has managed its fitness to practise cases (including referrals to the Interim Orders Committee) efficiently. It has also reduced its internal key performance indicator of achieving a median time for the completion of fitness to practise cases from 14 months to 12 months, and it is already achieving that target. While we welcome this evidence of improvement in the GOsC's time frames for completing fitness to practise cases, we note that the GOsC continues to categorise complaints as 'formal' only once a signed complaint form or witness statement is received, instead of when the initial communication from the complainant is made. The GOsC's approach makes it more difficult to draw meaningful comparisons between the performance of the GOsC and that of other regulators by looking at median time frames for the conclusion of fitness to practise cases. We asked the GOsC to reconsider its approach to this, following our 2014 audit of the initial stages of the GOsC's fitness to practise process¹¹⁹ and we are disappointed that the GOsC has not changed its approach subsequently
- We have not identified any serious concerns about the outcomes of cases considered by the GOsC's Investigating Committee or its final fitness to practise panel (the Professional Conduct Committee) during 2014/2015. Our 2014 audit did not identify any decisions to close cases that we considered posed a risk to patient safety or to the maintenance of public confidence in the profession or the regulatory process. Our audit findings were corroborated by the findings of a more extensive external audit

¹¹⁹ Professional Standards Authority, 2014. *Audit of the General Osteopathic Council's initial stages fitness to practise process*. Available at <http://www.professionalstandards.org.uk/docs/default-source/audit-reports/gosc-ftp-audit-report-2014.pdf?sfvrsn=0> [Accessed 12 May 2015]. This audit was carried out in May 2014 and we audited eight cases closed between 1 May 2013 and 30 April 2014.

(which the GOsC commissioned) in 2014/2015.¹²⁰ We have not appealed any of the GOsC's final fitness to practise panel's decisions during 2014/2015 (although we have highlighted learning points in a number of cases). The GOsC has responded positively to the learning points that we have fed back – for example, by incorporating them into training for fitness to practise decision makers and by taking them into account when preparing guidance for decision makers on drafting determinations

- The GOsC has continued to embed its Quality Assurance Framework in its fitness to practise function. It has continued to undertake peer reviews of cases that are carried out by staff from other regulators (the GOC and GPhC). It has also continued to undertake quarterly internal audit case reviews that focus, in particular, on customer service and compliance with key performance indicators. The outcomes of the peer reviews are reported to the Council and to staff internally. The GOsC has said that it considers that the framework has been effective at highlighting issues that the GOsC does well, as well as those where improvement is needed. We note that the reports of the peer review outcomes made to the GOsC's Council indicate that while there have been improvements in customer service and record keeping since our 2014 audit report was published, there remains room for improvement in relation to record keeping.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

- 14.15 In our 2014 audit, we noted that risk assessments had been carried out upon both the receipt of the complaint and on receipt of new information in the three cases that had been received after the GOsC's new case management procedures were introduced in July 2013. However, the peer review exercises carried out and reported in July and October 2014 identified that there was some inconsistency about whether risk assessments were carried out throughout the life of each case. In January 2015, the GOsC implemented a new case review checklist that should act as a reminder to staff of the need to carry out risk assessments throughout the lifetime of a case, as well as the importance of recording reasons for their decisions. While we do not consider that this inconsistency is sufficient to render this Standard not met, we expect the GOsC to keep this area of practice under review to ensure that risk assessments are carried out consistently and continually throughout the lifetime of a fitness to practise complaint; otherwise, in future performance reviews, this Standard may not be met. We also encourage the GOsC to check that the new checklist is effective in practice given the findings of the peer review exercises.

¹²⁰ That audit reviewed a far greater number of decisions (43 Investigating Committee decisions and 13 Interim Order Committee decisions).

The seventh Standard of Good Regulation for fitness to practise: All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process

- 14.16 In our 2014 audit, we identified one or two weaknesses in the customer service provided in seven of the eight cases that we audited. Those customer service weaknesses related to: delays in responding to correspondence; delays in sharing the decisions of the Investigating Committee with the registrant and the complainant; failing to respond appropriately to correspondence or to share information at the appropriate times; and failing to update complainants at agreed intervals.
- 14.17 The GOsC took action to improve its performance following our 2014 audit. It introduced internal key performance indicators for: acknowledging the registrant's response within two working days; sharing the Investigating Committee's decision with the complainant and the registrant within 10 working days and sharing the Professional Conduct Committee's decision with the complainant and registrant within two working days; and updating complainants and witnesses every month. The GOsC reported it has achieved 100 per cent compliance in relation to sharing the decisions of the Professional Conduct Committee and the Investigating Committee. However, the GOsC has only achieved 75 per cent compliance in relation to updating complainants and witnesses every month and 66 per cent compliance in acknowledging registrants' response within two working days. The GOsC said that it will keep its key performance indicators and its performance against them under review.
- 14.18 The findings from the peer reviews conducted by staff from other regulators (as reported to the GOsC's Council in July and November 2014) were that witnesses were well supported and that good support was also offered to complainants and registrants. This also indicates no ongoing concerns about the GOsC's customer service to complainants, witnesses or registrants involved in the fitness to practise process.
- 14.19 We identified weaknesses in seven out of the eight cases we audited. However, we recognise that the majority of the cases considered in the 2014 audit were closed during 2013/2014 rather than 2014/2015 and we are pleased that the GOsC has demonstrated that its performance against this Standard has improved during 2014/2015 following publication of our audit report. Given the evidence of improvement since our audit, we consider that this Standard is met in 2014/2015. We expect the GOsC to continue to improve its performance in this area so that it consistently provides a good service to those involved with fitness to practise cases; otherwise, in future performance reviews, the GOsC may be at risk of not meeting this Standard.

The tenth Standard of Good Regulation for fitness to practise: Information about fitness to practise cases is securely retained

- 14.20 In 2014/2015, the GOsC completed the introduction of its Information Governance Framework. The framework covers a number of areas, such as the provision of training to all staff on Data Protection and Freedom of Information Law and the provision of training to all fitness to practise panel members on information governance.

- 14.21 As part of the framework, all data breaches are now formally recorded, regardless of severity. A log of the breaches is reviewed periodically by the Senior Management Team, which includes the Chief Executive. The GOsC told us that there were two minor breaches (which did not involve the disclosure of sensitive data) and one 'major' data breach during 2014/2015. The 'major' breach resulted in the disclosure of a complainant's address, email address and work and telephone number to the registrant they had complained about when a non-redacted copy of the complaint form was sent to the registrant by e-mail. We consider that the GOsC responded appropriately to this breach – it sent the complainant a written apology and obtained confirmation from the registrant that the information had been destroyed. We note that the GOsC did not consider that this breach was sufficiently serious to warrant a referral to the Information Commissioner's Office.
- 14.22 In our 2014 audit report, we noted best practice by the GOsC in the use of password-protected documents and the use of individual passwords for complainants and registrants.
- 14.23 We note that the GOsC has taken action in 2014/2015 to ensure that the staff of other regulators who are involved in peer reviews of GOsC cases have signed a deed of confidentiality to prevent them sharing any information inappropriately. We were concerned that the GOsC did not identify that such a step should be taken until we queried whether the data protection implications of the peer review exercise had been considered.
- 14.24 We recognise the GOsC's achievement in implementing a comprehensive information governance framework and we have concluded that the GOsC has met the tenth *Standard of Good Regulation for fitness to practise*; however, we are concerned by the nature of the major data breach during 2014/2015 and the inadequate controls it had in place with other regulators in relation to the peer review process.

15. The General Pharmaceutical Council (GPhC)

Overall assessment

- 15.1 In the 2014/2015 Performance Review Report, we found that the GPhC has generally performed well but that it has not met one of the *Standards of Good Regulation for fitness to practise*.
- 15.2 We concluded that the GPhC has not met the sixth *Standard of Good Regulation for fitness to practise* (that Standard relates to the timely progression of cases through the fitness to practise process).
- 15.3 During 2014/2015, the GPhC conducted over 2,000 inspections of registered pharmacy premises, as a result of which it identified the trends in compliance by registered pharmacies with various standards. Following the GPhC's inspections, action plans were issued to over 500 registered premises, in order to help track improvement in compliance with the standards. The action plans identified a range of issues for registrants in pharmacy premises to address, including the potential for unauthorised access of pharmacy premises, insufficient staffing levels, the need for safety audits of dispensing and deliveries, the need for staff training on safeguarding issues and the need for pharmacy premises to have better risk assessment in place. The GPhC is monitoring the actions plans to ensure there is improvement against the standards that were not met.
- 15.4 The GPhC also tailored its communications to registrants whom it had identified needed a greater knowledge and understanding of the standards for registered pharmacy premises. This has meant that the inspection team spent part of the inspection explaining the standards to registrants. The GPhC is also seeking to raise awareness about the *Standards for Registered Premises* by publishing articles. The GPhC has committed to holding a public consultation on issues ranging from its development of the *Standards for Registered Pharmacies*, the approach to publication of the findings from its inspections, how the GPhC will evaluate that its approach is effective, its development of any ratings that it uses to assess registered premises and the approach to using enforcement powers.¹²¹
- 15.5 We recognise that the GPhC has undertaken work during 2014/2015 ensure that its registrants understand the *Standards for Registered Pharmacies* and that it has used its inspections of registered pharmacies to ensure that registrants are made aware of any areas where they may fail to meet those *Standards*, and of any improvement measures that they should take. We hope that the legislative framework will be amended shortly so that the GPhC will be able to ensure that the public is protected by enforcing compliance with the *Standards for Registered Pharmacies* effectively.

¹²¹ The GPhC cannot currently enforce the *Standards for Registered Pharmacies* because they are not in the form of Rules. The Department of Health has agreed to amend the GPhC's legislative framework to remove the requirement for the *Standards for Registered Pharmacies* to be enshrined in Rules.

15.6 Further information about the GPhC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.

Guidance and standards

15.7 The GPhC has continued to meet all the *Standards of Good Regulation for guidance and standards*. It demonstrated this by maintaining and keeping under review its standards of competence and conduct and by engaging effectively with its stakeholders.

15.8 Examples of how the GPhC has demonstrated that it met the Standards are:

- The GPhC is developing plans for engaging its stakeholders (including patients and the public) on the drafting of the *Standards of Conduct, Ethics and Performance* (the core standards for registrants)¹²² and seeking their comments on wider themes of professionalism, decision making and complex ethical judgements. These engagement activities are scheduled to be completed by March 2016. We will look forward to learning about the outcomes from these engagement activities as the review progresses
- *Guidance for pharmacies preparing unlicensed medicines* was published in May 2014. This guidance is aimed at ensuring the safe preparation of those medicines which are not licensed for use in the UK by the Medicines and Healthcare Products Regulatory Agency, but which pharmacists are legally permitted to supply in certain circumstances. The GPhC highlighted in this guidance the importance of pharmacists providing information to patients about unlicensed medicines, in order to address feedback that it received in response to the consultation on the draft guidance
- In April 2014, the GPhC published the findings of its first major survey of registrants. The findings of the survey were made publicly available in order to help others (including those working in public health policy and workforce planning) to develop a greater understanding of pharmacy practice and specifically to provide insights about pharmacy employment, the responsibilities of GPhC registrants and appraisal systems in pharmacy. The GPhC intends to use the findings from the survey related to appraisals to inform the development of its continuing fitness to practise framework
- *Guidance for registered pharmacies providing pharmacy services at a distance, including on the internet* was finalised (this piece of work was initiated in 2012) and published in April 2015. The GPhC told us that to prevent it publishing guidance that was soon out of date and that was relevant to current pharmacy practice, it sought legal advice on the interpretation of the Human Medicines (Amendment) Regulations 2015,¹²³

¹²² The review began in 2014 and is due to complete in 2016.

¹²³ <http://www.legislation.gov.uk/uksi/2015/903/contents/made> These Human Medicines (Amendment) Regulations 2015 cover the health protection response to outbreaks of infectious disease and other

which come into force in July 2015, and considered how that legislation might impact its work on this guidance. We note that the GPhC expanded the guidance to include all situations where its registrants provide any service where both the registrant and the patient (or service user) are not present in the registered pharmacy as a result of feedback received during its engagement activities in 2014/2015. We consider this to be an example of the GPhC appropriately listening to feedback from the users of the guidance and making adjustments to the guidance so it is relevant to current pharmacy practice

- It signed up to a joint statement on the duty of candour¹²⁴ with seven of the other health and care professional regulators. The statement promotes to registrants the message that they must be open and honest with patients when something goes wrong, and, similarly, that they must be open and honest with colleagues, employers and their regulator.

15.9 In our 2013/2014 Performance Review Report, we said that we would follow up on the GPhC's approach to the regulation of open display pharmacy medicines. In 2014/2015, the GPhC decided not to publish any guidance about this issue, prior to the legislative change that the Department of Health has agreed to make in order to give the GPhC powers to enforce its *Standards for Registered Pharmacies*. While awaiting that legislative change, the GPhC has sought further information in order to inform its approach to the regulation of open display pharmacy medicines; in particular, in 2014/2015, it commissioned a literature review on the Australian model of pharmacy services. Recent changes to pharmacy regulation in Australia mean that pharmacy (P) medicines are physically separated into 'pharmacy only' and 'pharmacist only' categories and led to patients being required to have different levels of interaction with the pharmacist. The GPhC intends to use the review to take into account any relevant information about the impact of the regulatory changes on pharmacy practice and any implications of the changes on patient safety and the quality of supply of medicines. We shall be interested to learn how this work informs the final approach adopted by the GPhC. We will expect the GPhC to monitor any risks that may be associated with the non-publication of guidance about the regulation of open display pharmacy medicines while the GPhC awaits the relevant change to its legislative framework.

Education and training

15.10 The GPhC has met all of the five Standards of Good Regulation for education and training during 2014/2015.

incidents and aim to ensure that, in the event of an incident or outbreak, rapid action is taken to respond or control the spread of disease.

¹²⁴ Joint statement from the Chief Executives of statutory regulators of healthcare professionals. Available at http://www.pharmacyregulation.org/sites/default/files/joint_statement_on_the_professional_duty_of_candour.pdf [Accessed 11 May 2015].

15.11 Examples of how the GPhC has demonstrated that it met the Standards are:

- The GPhC continued the review of its education and training standards, *Future Pharmacists, standards for the initial education and training of pharmacists*, which commenced in 2013/2014 when the GPhC identified that the learning outcomes set out in the standards needed review in light of the increasingly clinical role played by pharmacists and the learning from the Francis reports.¹²⁵ Revisions to the standards are also needed in order that the GPhC can implement and quality assure a five-year period of integrated initial education and training, which forms the basis of the proposal by the Modernising Pharmacy Careers Board of Health Education England¹²⁶ to reform the structure and funding of pharmacist education. The GPhC is awaiting announcements about decisions regarding the funding and structure of pharmacy education and training in England from the Department of Health, the Department for Business, Innovation and Skills, and Health Education England. To progress this work in the meantime, the GPhC undertook design and planning work during 2014/2015. This included reviewing reports from trainees who had indicated in the 2012/2013 pre-registration survey that they had had a bad experience, as well as conducting a review of pharmacy technicians' education and training. The GPhC plans to use the data generated by this work to inform the engagement activities it will implement as part of the review of these standards going forward
- During 2014/2015, the GPhC has progressed with its development of a continuing fitness to practise framework, which is on track for implementation in 2018. The GPhC has also commenced a review of its administration of the current continuing professional development process, which is aimed at improving efficiency and management reporting. The GPhC aims to have completed this review by the summer of 2015
- One hundred and twelve registrants were removed from the register for non-compliance with the GPhC's *Standards for continuing professional development* through an administrative process (rather than through fitness to practise proceedings) during 2014/2015
- The GPhC quality assured 30 education courses in 2014/2015. As a result, two independent prescribing courses were suspended due to concerns about insufficient input from pharmacy professionals and inadequate documentation. The GPhC decided that the remaining 17

¹²⁵ Robert Francis QC chaired an independent inquiry into the failures of the Mid Staffordshire NHS Trust which reported in February 2010. The report can be found at: <http://www.midstaffspublicinquiry.com/previous-independent-inquiry>. A subsequent public inquiry, also chaired by Robert Francis, reported in February 2013. This report can be found at: <http://www.midstaffspublicinquiry.com/report> [Accessed 11 May 2015].

¹²⁶ The Modernising Pharmacy Careers Board was a professional Board of Health Education England with responsibility for reviewing the education, training and development of the pharmacy workforce to ensure it can deliver the services of the future for patients and the public. In 2011, it submitted proposals for the reform of pre-registration pharmacist training to the Department of Health. These proposals will be taken forward by Health Education England.

independent prescribing courses continued to meet its standards for education and training

- In response to our suggestion that the GPhC should consider introducing a mechanism that students can use to raise concerns about education providers, the GPhC said that it intends to consider this again as part of its review of the *Standards of Conduct, Ethics and Performance* and the review of the *Student Code of Conduct*. The GPhC will consult on its review during 2015/2016. We note that there have been very few complaints raised by students that have helped identify risks about the quality of education and training provision. We also note that the GPhC has been seeking assurance from education institutions (during its quality assurance visits) that they have been using student complaints in order to drive improvement; however, no action was identified in relation to the provision of education and training provision in pharmacy as a result of the student complaints received during 2014/2015. Due to the small number of complaints, it is not possible to conclude whether feedback from students is a useful source of information about the risks in the quality of education and training provision in pharmacy practice or whether there is no effective mechanism for students to provide relevant feedback. We consider that it would be preferable for the GPhC to introduce a mechanism that allows students to raise concerns about educational institutions directly with the GPhC, and we recommend that the GPhC keeps under review any risks arising from the absence of such a mechanism, particularly as the GPhC progresses its engagement around promotion of the duty of candour.

15.12 In our 2013/2014 Performance Review Report, we noted that the GPhC's analysis of candidates' performance in the June 2013 registration assessment¹²⁷ demonstrated that candidates who identified themselves as Black-African had performed significantly less well than other self-declared ethnic groups. The GPhC's analysis in 2014 replicated the 2013 finding. The GPhC's analysis of the data indicates that weaknesses in student performance are apparent throughout the registration assessment process – from the first stage at which students apply, through to registration assessment. The GPhC is engaging with the Equality Challenge Unit¹²⁸ about how it can make progress. The GPhC plans to run a seminar for schools of pharmacy and pre-registration training providers during the last quarter of 2015 to agree a well co-ordinated response between the schools and the GPhC to the issues raised. We recognise that the GPhC is engaging with relevant stakeholders to ensure that the processes operated by education providers are fair.

¹²⁷ Individuals wanting to become pharmacists must complete a four-year MPharm degree, complete a pre-registration training year and pass the GPhC's registration assessment before being eligible for registration as a pharmacist.

¹²⁸ The Equality Challenge Unit is a charity that works to further and support equality and diversity for staff and students in higher education institutions across the UK and in colleges in Scotland.
www.ecu.ac.uk

Registration

15.13 The GPhC has met all of the *Standards of Good Regulation for registration* during 2014/2015.

15.14 Examples of the ways in which the GPhC has demonstrated that it meets these standards are:

- The GPhC has continued to maintain accurate registers of pharmacists and pharmacy technicians that are available to the public. The GPhC conducted an external audit to test the integrity of its register data. Based on the findings of that audit, the GPhC said that it is confident in the integrity of its public register
- The GPhC improved its registration processes by: introducing an online portal for the renewal of premises' registration (which increased the efficiency of the renewal process); improving the application process for EEA-qualified pharmacy technicians (bringing the process into line with that of EEA-qualified pharmacists); and introducing a new registration database. We have concluded that the GPhC has operated an efficient registration process in 2014/2015
- The GPhC has acted to protect the public by successfully prosecuting one individual for practising as a pharmacist while they were knowingly unregistered. The GPhC has also removed one pre-registration trainee from its pre-registration scheme and referred them to the police (for applying for registration using forged documents).

Indemnity insurance arrangements

15.15 The Health Care and Associated Professions (Indemnity Arrangements) Order 2013 introduced a requirement for regulated health and care professionals to have indemnity insurance in place that is appropriate to their duties and scope of practice, so that patients/service users can claim compensation in the event of negligence. The GPhC's *Standards for Conduct, Ethics and Performance* already included a requirement for registrants to have appropriate professional indemnity cover in place, and it was therefore unnecessary for the GPhC to make significant changes to its standards as a result of the Order. During 2014/2015, the GPhC has been checking its registrants' compliance with this requirement during inspections of pharmacy premises. The GPhC has told us that it will use its strategic relationship managers¹²⁹ to reinforce the message about the importance of indemnity insurance to the 12 largest pharmacy employers. The GPhC has advised us that it is satisfied that it is taking a proportionate approach in this area.

Fitness to practise

15.16 During 2014/2015, the GPhC has demonstrated that it has met nine of the 10 *Standards of Good Regulation for fitness to practise*.

¹²⁹ See paragraph 15.19, the first bullet.

- 15.17 While we concluded that the GPhC has met the fourth *Standard of Good Regulation for fitness to practise* (which relates to the timely review of complaints and the prioritisation of serious cases, including applying for an interim order), we considered that the GPhC's performance was inconsistent against this Standard. Our comments are set out in paragraphs 15.20–15.21.
- 15.18 The GPhC has not met the sixth *Standard of Good Regulation for fitness to practise* (which relates to the timely progression of cases through the fitness to practise process) although it has improved its performance against this Standard since 2013/2014. See paragraphs 15.25–15.32.
- 15.19 Examples of how the GPhC has demonstrated that it met nine Standards are set out below:
- The GPhC appointed eight strategic relationship managers who have responsibility for managing the GPhC's relationship with the 12 largest pharmacy businesses. Fitness to practise issues are routinely discussed between the strategic relationship managers and the superintendent pharmacists of the 12 largest pharmacy businesses. In 2014/2015, this resulted in five complaints being referred to the GPhC for investigation
 - Guidance for employers on the fitness to practise process was finalised and circulated by the strategic relationship managers (although publication is not expected until 2015/2016)
 - The GPhC met with the Chief Pharmacists Group in Wales in order to raise awareness about the responsibility for raising fitness to practise concerns about pharmacists and pharmacy technicians, in light of the findings in the *Trusted to Care*¹³⁰ report (that report highlighted that some pharmacists had knowingly tolerated poor practice around the safe administration of medicines, particularly to patients who were cognitively impaired). The GPhC also established a working group to improve the process for the referral of fitness to practise concerns to the GPhC, in light of the findings in the *Trusted to Care* report. The first meeting of this group will take place in June 2015
 - We successfully appealed one of the GPhC's final fitness to practise committee's decisions during 2014/2015 using our powers that allow us to review all final fitness to practise decisions to consider whether decisions are unduly lenient and do not protect the public. The case concerned a pharmacist who had pleaded guilty to, and been convicted of, two counts of child cruelty. The final hearing panel imposed a 12-month suspension but declined to order that they be struck off the register. Following the final hearing, the GPhC highlighted to us its concerns that the hearing panel's decision was manifestly inappropriate. The High Court allowed our appeal and substituted an order for the registrant's removal from the register in place of the hearing panel's decision to suspend them. The High Court noted that while at the hearing, the registrant had admitted the

¹³⁰ *Trusted to Care: Report of the external independent review of the Princess of Wales Hospital and Neath Port Talbot Hospital at Abertawe Bro Morgannwg University Health Board*. Available at <http://gov.wales/topics/health/publications/health/reports/care/?lang=en> [Accessed 11 May 2015].

fact of their conviction and sentence, they had also 'sought not only to minimise [their] offending but also to assert facts wholly inconsistent with [their] guilt of these offences' and said that the registrant clearly regarded their failing as amounting to an error of professional judgement as opposed to 'deliberate concealment and criminal culpability.' The High Court granted our appeal because, in the circumstances of this case, the hearing panel's approach of suspending the registrant to allow them further time to develop insight into their misconduct was 'plainly wrong'. Both the registrant's 'fundamental and continuing lack of insight' and their lack of integrity meant that the hearing panel's decision to suspend rather than remove the registrant was manifestly wrong. In addition, the hearing panel had erred in failing to consider how the registrant's lack of integrity impacted on their fitness to practise and trust and confidence in the pharmacy profession and in its application of the GPhC's indicative sanctions guidance for panels. The High Court also found that the panel had not given adequate reasons to explain its decision. We also regularly fed learning points back to the GPhC about the level of detail contained in its fitness to practise panel's decisions. We note that the GPhC shares our feedback with its panel members and has provided additional training to its panellists in respect of the quality of reasoned decision making.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

- 15.20 The GPhC told us that the outcome of an external audit conducted during 2014/2015 gave it confidence that its risk assessments throughout the lifetime of each case are robust. Nevertheless, we noted that the median time the GPhC takes to apply for an interim order after the fitness to practise complaint is first received has increased during 2014/2015 to 18 weeks (it was 14 weeks in 2013/2014). This is of concern, given the implications for public protection of delay in seeking interim orders. We also note that the time take to apply for interim orders once the GPhC has received the information that indicates the need for an interim order was three weeks during 2014/2015. The difference between these two median time frames suggests that any delay that is occurring is taking place following initial receipt of the fitness to practise concern, at the point when the GPhC is assessing what evidence it will need, and requesting and obtaining that evidence.
- 15.21 While we have concluded that the GPhC has continued to meet the Standard in 2014/2015, we are concerned about the increase in the median time frame between receipt of a complaint and applying for an interim order in 2014/2015, and we consider that the GPhC may be at risk of failing to meet this Standard in future if this trend continues.

The tenth Standard of Good Regulation for fitness to practise: Information about fitness to practise cases is securely retained

- 15.22 Following two data breaches that it reported to the Inform Commissioner's Office (ICO) in 2013, the GPhC in 2014/2015 took

appropriate measures to minimise the risk of future data breaches – including reviewing its data security and information management arrangements, and identifying areas of risk, delivering training and disseminating guidance for staff on information security.

15.23 In October 2014, a further data breach occurred, which was reported to the ICO although the ICO decided to take no further action. The GPhC told us that this data breach also occurred as a result of human error and that it is confident that it has taken appropriate action to mitigate a risk of recurrence. In particular, the GPhC has introduced a requirement that any documents related to fitness to practise cases have to be password protected if they are sent by email. In addition, during 2014/2015, there were four data breaches that were reported internally. The GPhC has told us that it is working towards alignment with ISO 27001 certification for information security management, which it considers will enable it to demonstrate improvements in its performance against this standard.

15.24 We have concluded that the five data breaches during 2014/2015 (which occurred after improvements had been implemented following the two breaches in 2013 that were reported to the ICO) means that the GPhC's performance has declined against this Standard. However, given the remedial action completed in 2014/2015 and the absence of either a significant number of data breaches or any breach resulting in ICO action in 2014/2015, our overall conclusion is that the GPhC has continued to meet this Standard.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders

15.25 The GPhC implemented the following new measures in 2014/2015 aimed at improving its performance against this Standard:

- The GPhC introduced a new case supervision framework in June 2014 which requires consistent supervision at specific intervals in the lifetime of a case and which is aimed at preventing delays building up at the early stages of the investigation process. The GPhC said it considers that this has contributed to its achieving improvements in the progression of cases (and that this was a finding from a recent external audit)
- There has been an increase in the number of Investigating Committee meetings (two per month) and the number of cases that have been concluded by the Investigating Committee in 2014/2015 compared to 2013/2014 has increased from 97 in 2013/2014 to 131 in 2014/2015
- There has been an increase in the number of staff supervising and managing casework, which the GPhC advised us has enabled it to proactively manage delays caused by third parties and to reduce caseloads for individual caseworkers.

15.26 The GPhC has made efforts to improve the robustness of its investigations and the GPhC advised us that this has enabled it to have confidence that the

decisions to close cases without referral to a final fitness to practise committee are taken soundly. The GPhC said that the improvements made to the robustness of its investigations have enabled it to have confidence that there is swift progression of cases from the Investigating Committee's consideration of the case to the final fitness to practise panel hearing, with a reduced need for further information gathering and re-working of cases once the Investigating Committee has referred the case for a final fitness to practise panel hearing. The GPhC has advised us that by the end of March 2015, 89 per cent of the cases that it has opened from June 2014 had been closed or referred to the Investigating Committee. We look forward to seeing the evidence of this improvement in our next audit of the GPhC's handling of the cases closed at the initial stages of its fitness to practise process.

- 15.27 The GPhC has reviewed its cases that are over 52 to 65 weeks old. In December 2014, cases older than 52 to 65 weeks represented almost one third of its open caseload. By March 2015, the number of cases over 52 weeks old had reduced to one quarter of the open caseload. While the GPhC has reduced the number of these 'older' cases, we remain concerned that, as at March 2015, there were still 70 open cases awaiting investigation which were over 52 weeks old (we note that the GPhC says that it is unable to conclude its investigation of 17 of these cases, due to external factors), as well as a further 100 cases of a similar age awaiting decisions by the Investigating Committee or the final fitness to practise panel. The GPhC is tracking the progress of these cases through its fitness to practise process and reporting the findings to its Council. The GPhC also said that it has identified an increase in the throughput of cases in that it has identified a 97 per cent increase in the numbers of cases that are over 52 weeks old that have been closed in 2014 compared with 2013.
- 15.28 In May 2014, the GPhC closed the final three cases that had been transferred to it from the Royal Pharmaceutical Society of Great Britain. The original target date for concluding those cases was September 2012 and the GPhC has acknowledged that these cases could have been closed earlier. We are concerned that the number of open cases that are over three years old has increased from one in 2013/2014 to nine in 2014/2015. We acknowledge that six of these nine cases were delayed due to criminal and third-party investigations, which inevitably led to delays with the GPhC's own investigation. We have therefore not treated this as a factor that has contributed to our assessment of this Standard is not being met.
- 15.29 The GPhC had to apply to the High Court (or the Court of Session in Scotland) for extensions to interim orders in 19 cases in 2014/2015, compared with eight cases in 2013/2014. The increase in the number of extension applications is a matter of concern because it indicates a failure to promptly progress and close serious cases. The GPhC has told us that 11 of those 19 cases were also the subject of police investigations, and that this factor (alongside difficulties the GPhC encountered in obtaining information from the undercover investigator who was involved in five cases) inevitably delayed the conclusion of the GPhC's investigations. While we remained concerned that the GPhC had to apply for a number of extensions to their interim orders, we note that in a number of cases, this was due to delays

caused by third-party investigations and we have therefore not treated this as a factor that contributed to our assessment of this Standard not being met.

- 15.30 The final cause of concern is the median length of time taken to progress cases through the fitness to practise process which the GPhC has reported to the Authority. These are:
- From initial receipt of complaint to final Investigating Committee – 63 weeks. In 2013/2014, it was 45 weeks, so this represents an increase of 18 weeks compared to 2013/2014
 - From final Investigating Committee to final fitness to practise hearing – 46.5 weeks. In 2013/2014, it was 35 weeks, so this represents an increase of 8.5 weeks compared to 2013/2014
 - From initial receipt of complaint to final fitness to practise hearing – 85 weeks. In 2013/2014, it was 97 weeks, so this shows a decrease of 12 weeks compared to 2013/2014.
- 15.31 We recognise that the GPhC has improved its performance by reducing the median length of time it takes to process cases from the initial receipt of complaint to the final fitness to practise panel hearing since 2013/2014 (85 weeks reduced from 97 weeks). However, it is not clear to us why this median time frame is so much lower than the sum of the first two median time frames referred to above.
- 15.32 We also recognise that reviews of ‘older’ cases have been initiated by the GPhC and that this has led to some improvements in the overall proportion of the caseload that the older cases represent. However, given the median time frames reported to us for each stage of the fitness to practise process and the increase in the number of the oldest cases and the number of High Court extensions to interim orders, we do not consider that the GPhC has demonstrated that it deals with cases as quickly as possible across its entire caseload, and, as a result, the GPhC has not met this Standard.

16. The Health and Care Professions Council (HCPC)

Overall assessment

- 16.1 In the 2013/2014 Performance Review Report, we concluded that the HCPC had met all of the *Standards of Good Regulation*. However, we noted that the HCPC's performance had declined against some of the *Standards of Good Regulation for fitness to practise* – the fourth Standard¹³¹ and the sixth Standard,¹³² and that it had performed inconsistently against the tenth Standard.¹³³
- 16.2 In the 2014/2015 performance review, we found that the HCPC has met all of the *Standards of Good Regulation*.
- 16.3 The HCPC has continued to perform strongly across three of its four functions. We are disappointed to note that the concerns that we highlighted in the 2013/2014 Performance Review Report in relation to the HCPC's performance against two of the *Standards of Good Regulation for fitness to practise* have not yet been fully addressed (see paragraphs 16.28–16.35 and 16.36–16.46).
- 16.4 Further information about the HCPC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.

Guidance and standards

- 16.5 The HCPC continued to meet all of the *Standards of Good Regulation for guidance and standards* in 2014/2015. Examples of how the HCPC demonstrated that it met the Standards are set out below:
- The HCPC continued its review of the *Standards of conduct, performance and ethics* (the SCPE). These are the overarching standards of conduct that registrants must comply with in order to remain on the HCPC's register. In 2014/2015, the HCPC set up a Professional Liaison Group (comprising Council members, professional bodies, education providers, trade unions, employers, service users and carers) to help shape the content and accessibility of the revised SCPE. The HCPC published a consultation on the revised SCPE on 1 April 2015, with a view to publishing the final version in January 2016. This is the first full review of the SCPE that has been undertaken since they were last published in

¹³¹ The fourth *Standard of Good Regulation for fitness to practise*: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.

¹³² The sixth *Standard of Good Regulation for fitness to practise*: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients or service users. Where necessary the regulator protects the public by means of interim orders.

¹³³ The tenth *Standard of Good Regulation for fitness to practise*: Information about fitness to practise cases is securely retained.

2008, and we are pleased that the HCPC's work in this important area remains on track for completion in 2015/2016

- The HCPC continued its ongoing programme of work to review and revise the *Standards of proficiency* for each of the professional groups it regulates. The *Standards of proficiency* are the threshold standards that the HCPC uses to make sure that the professionals it regulates work safely and effectively. In 2014/2015, the HCPC published revised *Standards of proficiency* for biomedical scientists, clinical scientists, hearing aid dispensers and paramedics. It also publicly consulted on the revised *Standards of proficiency* for practitioner psychologists, which it expects to publish by June 2015
- The HCPC developed and consulted on the draft of the *Standards for podiatric surgery* as part of its move towards annotating the entries of those chiropodists/podiatrists on its register who have undertaken approved qualifications in podiatric surgery. The HCPC intends to use the *Standards for podiatric surgery* (once they are finalised) when approving and monitoring relevant education and training programmes and in its consideration of relevant fitness to practise cases. The HCPC expects to publish the final version in June 2015. We welcome this work, which is aimed at strengthening public protection and ensuring that members of the public make informed treatment choices based on an understanding of who is qualified to undertake podiatric surgery. We consider that the HCPC has demonstrated a right-touch approach to this area of work. Annotation of the register to make it clear which registrants have undertaken an approved specialist qualification in podiatric surgery is a proportionate response to an identifiable risk (the risk of service users suffering harm as a result of seeking podiatric surgical treatment from HCPC registrants who may not be competent to provide that specialised treatment)
- The HCPC positively engaged with stakeholders in developing and revising its guidance and standards. Specific examples of this are as follows:
 - Liaising with the professional body for the relevant profession at the start of each review of the *Standards of proficiency* to obtain their reviews on any suggested changes
 - Holding stakeholder meetings, including meetings with those who have a specific interest in the draft of the *Standards for podiatric surgery* (such as the Royal College of Surgeons, the College of Podiatry and the General Medical Council)
 - Producing a stakeholder mapping document which lists stakeholders individually and by groups and which includes potential key areas of interest and current engagement. The HCPC plans to use this document to identify specific engagement activities and to support its ongoing communications work. We referred to this work in the 2012/2013 and 2013/2014 Performance Review Reports and are pleased that it has been brought to a conclusion in 2014/2015.

- 16.6 In October 2014, the HCPC publicly consulted on the draft of the revised guidance for people with disabilities who want to become health and care professionals (this work was initiated in 2011/2012). The consultation closed in January 2015 and the HCPC expects to publish the finalised revised guidance early in 2015/2016. The timetable for completing this work was slightly delayed in order to avoid consulting over the summer period, and to enable education providers to fully engage with the proposed changes. We consider that this is a reasonable approach and look forward to seeing the outcome of the HCPC's work when we next review its performance.
- 16.7 In our advice to the Secretary of State for Health in October 2013,¹³⁴ we encouraged the health and care professional regulators to sign up to a joint statement declaring their support for, and expectation that, their registrants meet a common professional duty of candour, as described in the Francis Report.¹³⁵ In October 2014, a joint statement was published and signed by all of the health and care professional regulators except the HCPC. The statement highlights the importance of being open and honest with patients when harm or distress has been caused (or where there was the potential for such harm or distress) because something has gone wrong with their treatment or care. The HCPC declined to sign up to the joint statement, as it was unhappy with the wording and it decided to consult with its stakeholders on the issue first. We expressed our disappointment with the HCPC's decision in our subsequent advice to the Secretary of State for Health in November 2014.¹³⁶ We are pleased to note that the HCPC published the revised SCPE for consultation on 1 April 2015 and that this document includes a standard requiring registrants to be open and honest when things go wrong and to support service users and carers in raising concerns about their care or treatment.

Education and training

- 16.8 The HCPC continued to meet all of the *Standards of Good Regulation for education and training* in 2014/2015. It demonstrated this through the areas of work detailed below.
- The HCPC continued to audit registrants' compliance with its standards for continuing professional development (CPD).¹³⁷ No registrants were removed as a result of failing to meet the CPD requirements. The HCPC

¹³⁴ Professional Standards Authority, October 2013. *Can professional regulation do more to encourage professionals to be candid when healthcare or social work goes wrong? Advice to the Secretary of State for Health*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/candour-advice-to-secretary-of-state---final.pdf?sfvrsn=0> [Accessed 11 May 2015].

¹³⁵ Francis, R, 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <http://www.midstaffpublicinquiry.com/report> [Accessed 11 May 2015].

¹³⁶ Professional Standards Authority, November 2014. *Progress on strengthening professional regulation's approach to candour and error reporting: Advice to the Secretary of State for Health*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/141127-candour-common-approach-progress-advice-final.pdf?sfvrsn=0> [Accessed 12 May 2015].

¹³⁷ Under the HCPC's existing CPD scheme, registrants who wish to renew their registration are required to confirm that they have met the HCPC's CPD standards by undertaking relevant learning and development activities. The HCPC audits a percentage of CPD records. Action can be taken to remove a registrant from the register if their CPD records are not adequate to meet the CPD standards.

advised us that in each audit, up to 10 per cent of registrants selected for audit were removed from the register because they did not renew their registration or they asked to be voluntarily removed from the register or they were removed from the register for failing to participate in the CPD audit

- The HCPC continued with its research activities, which will inform its decision as to whether any changes or enhancements are needed to its CPD scheme, including in relation to the professions it has recently begun to regulate. It commissioned research into the perceptions and experiences of registrants of its existing CPD standards and its audit process. This research is due to conclude in June 2015. A second research project has also been commissioned by the Department of Health to look at the impact and costs of the HCPC's CPD standards and system of audits. This work is expected to conclude in April 2016 and we look forward to seeing the outcome in due course
- The HCPC continued to quality assure education and training programmes through its approval and monitoring processes as well as by considering any concerns brought to its attention about education providers. At the time of writing, the HCPC was responsible for quality assuring 142 education providers and 967 programmes. During 2014/2015, the HCPC carried out a total of 69 approval visits.¹³⁸ The HCPC informed us that no visits had resulted in non-approval or withdrawal of approval and in the majority of cases, the outcome was 'approval subject to conditions'.¹³⁹ We are not concerned by the high rate of conditional approvals, as we consider that it is indicative of a robust quality assurance process
- The HCPC continued to run its social work suitability scheme, which enables it to deal with concerns about social work students in England. This includes considering the outcomes of an education provider's fitness to practise procedures to determine whether a student should be prohibited from a programme and maintaining a record of students who are not permitted to participate in social work programmes in England. The HCPC received 10 new cases concerning student social workers in 2014/2015, eight of which have been concluded

Improvements to the quality assurance process

- 16.9 During 2014/2015, the HCPC carried out a number of activities in order to apply the learning from and continuously improve its quality assurance process.
- 16.10 The HCPC implemented and raised awareness of a new requirement within the *Standards of education and training* for service user and carer

¹³⁸ The HCPC informed us that at the date of writing this report, approximately 24 per cent of all final decisions still needed to be made from 2014/2015 (either relating to recent visits or programmes currently making changes to meet conditions).

¹³⁹ This means that the education provider is required to provide further evidence that the standard has been met before approval is granted or their ongoing approval is confirmed.

involvement in education and training programmes. The requirement applies to all education programmes relating to all 16 professions regulated by the HCPC seeking approval as of September 2014. The HCPC made various resources available for education providers to support the change, including formal guidance, a YouTube video, seminars, and a dedicated webpage. It also amended the recommended agenda for its approval visits to education providers to incorporate a specific meeting with service users and carers at each visit.

- 16.11 From September 2014, the HCPC required all visitor panels to include a lay visitor.¹⁴⁰ In summer 2014, the HCPC recruited and trained 17 lay visitors to participate in approval visit panels. The HCPC intends to review the involvement of lay visitors at the end of the 2014/2015 academic year.
- 16.12 We welcome the developments noted above, as they should ensure that the HCPC's quality assurance process for education programmes incorporates the views and perspectives of patients, service users and their carers.
- 16.13 The HCPC also reviewed the integration of new professions into its quality assurance process, including by carrying out a review of the second year of approval visits (i.e. those relating to the 2013/2014 academic year) to social work education programmes. The HCPC published its report of the review in January 2015. The report highlighted a five per cent increase in the number of social work programmes that are recommended for approval subject to conditions, compared with the number of other programmes where approval is conditional. However, the report also identified a decrease in the percentage of conditional approvals for social work programmes in the 2013/2014 academic year compared with the previous year. The HCPC considers that this is due to its ongoing engagement with the profession and education providers and increased familiarity with its quality assurance process. We commend the HCPC's efforts to analyse the data from its quality assurance work in order to identify risks and trends across the various professions that it regulates. This approach is in keeping with right-touch regulation.
- 16.14 The HCPC reviewed its publication *Approval process: supplementary information for education providers* to take account of recent changes such as the introduction of lay visitors and service user and carer meetings. It also reviewed the education pages on its website to improve signposting and to update the content.

Review of the Standards of education and training

- 16.15 In 2014/2015, the HCPC commenced a review of its *Standards of education and training*. The revised Standards are due for publication in May 2017.
- 16.16 The HCPC received feedback from some stakeholders that the link between the *Standards for education and training* and the SCPE could be strengthened. We have not seen any evidence that the HCPC's existing

¹⁴⁰ Lay visitors are non-professionals with experience of using or engaging with the services of the health and care professions regulated by the HCPC.

Standards of education and training and associated guidance present any public protection risks. However, we are pleased that the HCPC is taking these stakeholder views seriously and that it will be examining this issue as a key theme during the review.

Registration

16.17 The HCPC continued to meet all of the *Standards of Good Regulation for registration* in 2014/2015. Examples of how the HCPC demonstrated that it met the Standards are set out below:

- The HCPC improved its processing times for initial registration applications in relation to all types of applicants as set out below. The HCPC considers that these improvements are the result of better resource planning and workload management in the registration department, following the introduction of new service standards in September 2014 and the implementation of a new operations team to ensure the effective operational running of the department
 - For UK graduates, the HCPC’s processing time decreased from seven working days in 2013/2014 to five working days in 2014/2015
 - For EU applicants, the HCPC’s processing time decreased from 30 working days in 2013/2014 to 24 working days in 2014/2015
 - For overseas applicants, the HCPC’s processing time decreased from 43 working days in 2013/2014 to 26 working days in 2014/2015.
- The HCPC maintained an accurate register that includes details of any restrictions on registrants’ practice and is available to the public. We are pleased that our register check¹⁴¹ in 2014/2015 did not identify any incorrect entries in the HCPC’s register, suggesting that the error we identified last year was an isolated incident
- During 2014/2015, the HCPC carried out a communication exercise with employers about its register of visiting health or social work professionals¹⁴² after some instances of European Economic Area (EEA) professionals unlawfully using protected titles came to light. The HCPC updated its website to include guidance on temporary and occasional registration for health and care professionals visiting the UK from the EEA. It also sent a mailing to employers to draw their attention to the updated information on its website and has continued to include briefings on the issue at its employer events (it holds five such events each year). Since undertaking this exercise, the HCPC has seen a reduction in the number of instances where it has refused EEA individuals’ declarations of their intention to provide services in the UK on a temporary and

¹⁴¹ As part of our performance review of the regulators, we conduct an accuracy check of each regulator’s register, which helps us assess compliance with the third *Standard of Good Regulation for registration*.

¹⁴² Registration as a visiting professional only allows the professional to practise on a temporary and occasional basis using their home State professional title in the language of that State. It does not permit the use of a professional title protected by the Health and Social Work Professions Order 2001.

occasional basis. The HCPC says that it will continue to monitor this area and take action where necessary

- The HCPC published additional guidance, *Professional indemnity and your registration*, in July 2014. This guidance explains the new statutory requirement for regulated health and care professionals (excluding social workers) to have appropriate indemnity arrangements in place.¹⁴³ The HCPC also consulted on draft amendments to its rules to allow it to ask registrants to complete declarations about their professional indemnity arrangements at the point of registration and to take appropriate action where such arrangements are not in place. The amended rules came into force on 1 April 2015
- The HCPC revised its guidance on the processes that it follows when assessing the health and character of people who apply to, or are on, its register in order to take account of a new category of 'protected' cautions and convictions,¹⁴⁴ which registrants are not required to disclose during the registration process
- The HCPC continued to take appropriate action when it was notified about alleged illegal practice. In 2014/2015, the HCPC received 323 complaints about the use of protected titles by non-registrants.¹⁴⁵ An example of this would be a person who claims to provide chiropody services when they are not registered with the HCPC as a chiropodist and podiatrist. At the date of writing, the HCPC had closed 208 of these cases,¹⁴⁶ having issued 27 'cease and desist' letters, and 115 cases were still under investigation. The HCPC also successfully initiated criminal proceedings against one non-registrant for using a protected title (chiropodist).

Information and resources on CPD processes and registration renewal

16.18 In our 2013/2014 Performance Review Report, we concluded that the HCPC's use of social media (Twitter) to promote its registration renewal and CPD processes was innovative practice. During 2014/2015, the HCPC increased the information and resources available to its registrants in order to engage with them on the CPD audit processes and registration renewals, as follows:

- It held four webinar events in October 2014, to coincide with the registration renewal period for two of its registrant groups: social workers (in England) and operating department practitioners

¹⁴³ The Health Care and Associated Professions (Indemnity Arrangements) Order 2014.

¹⁴⁴ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

¹⁴⁵ The HCPC informed us that 63 of the new cases were received in March 2015 and that this was double the forecasted amount.

¹⁴⁶ The HCPC informed us that when cases are closed without further action being taken, this is usually because confirmation has been received that the individual is complying with the law and there are no ongoing concerns.

- It continued its 'tweet chats' specifically with physiotherapists in 2014 as well as its online discussions for the social work profession
- It produced a series of short films which achieved a combined estimated reach of more than 30,000 within six months of their launch
- It continued to work with the relevant professional bodies in order to produce CPD sample profiles (demonstrating how registrants can meet its CPD standards). The HCPC has published on its website at least one sample profile for each of the 16 professions it regulates.

16.19 We concluded that the HCPC's work in this area in 2014/2015 is an example of good practice. This is supported by the amount of 're-tweets', 'shares' and positive feedback the HCPC has received about it on social media; the number of views it has received on its YouTube channel and visits to its website; and anecdotal feedback it has received from individuals.

The second Standard of Good Regulation for registration: The registration process, including the management of appeals, is fair, based on the regulators' standards, efficient, transparent, secure and continuously improving

16.20 We were disappointed to note that there were four data breaches in the HCPC's registration department during 2014/2015. Three of these incidents involved four applicants receiving information pertaining to other applicants' registration applications that were being processed by the HCPC. The fourth incident resulted in a letter relating to a registrant being included in an unconnected registration appeal bundle. None of the breaches were referred to the Information Commissioner's Office. The HCPC apologised to the individuals affected and took remedial action, for example, by introducing an additional check on applications being posted out to applicants to mitigate the risk of further data breaches occurring in its registration department. It also implemented a new process in its registration department whereby data breaches are reported to the Registration Quality Assurance Manager to log all relevant details and this information is shared with the HCPC's cross organisational Information Security and Governance Group on a weekly basis. We are mindful of the impact that data security breaches can have on public confidence in the regulator. However, data security is only one aspect of the second Standard and we have balanced our concerns against the HCPC's good performance against the second *Standard of Good Regulation for registration* in all other respects (see paragraphs 16.17–16.19 above). We have therefore concluded that the HCPC continued to meet this Standard in 2014/2015.

Fitness to practise

16.21 We have concluded that during 2014/2015, the HCPC has met all of the *Standards of Good Regulation for fitness to practise*. We concluded that the HCPC performed inconsistently against the fourth Standard (see paragraphs 16.28–16.35 below) and remained at risk of not meeting the sixth Standard (see paragraphs 16.36–16.46 below). Examples of how the HCPC demonstrated that it met the remaining *Standards of Good Regulation for fitness to practise* are set out below.

- In May 2014, the HCPC commissioned an external peer review of its fitness to practise process from the perspective of service users and complainants. This identified areas of good practice, as well as areas for improvement (in relation to: tailoring the process to the individual needs of complainants; undertaking risk assessments more rigorously at key points in the investigation; and communicating clearly and concisely). At the date of writing, the HCPC's work to implement the report's recommendations was ongoing. The HCPC also completed an internal review of its handling of complaints received about the HCPC's investigation of fitness to practise cases and produced two new guidance documents: *Handling complaints received about Fitness to Practise* and *Managing Unacceptable and Unreasonable Behaviour*. We welcome the HCPC's work to evaluate and improve its complaints-handling process. The timely and effective handling of complaints encourages public confidence in the regulator and we consider that the HCPC's work in this area is good practice
- The HCPC continued its work to raise its profile with employers. It revised its brochure, *Information for employers and managers – the Fitness to Practise Process*, which was published in April 2015. The HCPC also updated the employer audience pages on the fitness to practise section of its website to reflect this revised brochure and introduced opportunities at the fitness to practise sessions of its employer events for employers to meet on a one-to-one basis with a HCPC case manager so that they can raise any specific queries. This work should help to ensure that the HCPC receives appropriate and timely fitness to practise referrals
- The HCPC analysed the data from its case management system and case progression meetings to look for patterns in the time taken to deal with referrals received from different sources (for example, referrals received from members of the public compared to referrals from employers) and to examine the reasons for any differences. We are pleased that the HCPC is using its available data to try to drive improvements
- The HCPC reviewed its Investigating Committee processes and procedures and made the following changes, in order to improve the quality and consistency of decision making and the timeliness of case progression:
 - It developed a checklist for the Investigating Committee to use to ensure that all key issues are addressed when they draft decisions
 - It provided training for case managers on generating and using the HCPC's Investigating Committee case list report in order to achieve more efficient scheduling of cases for consideration by the Investigating Committee

- In September 2013, the HCPC began to pilot the use of mediation as a means of resolving fitness to practise complaints.¹⁴⁷ In appropriate cases, mediation can be used to settle cases and avoid a hearing, while still achieving an outcome that protects service users. Since the pilot study commenced, the HCPC has identified seven cases deemed to be suitable for mediation. In 2014/2015, the HCPC successfully concluded one of these cases by mediation, after a written agreement was reached between the parties. As the take-up rate for mediation has been lower than expected, the HCPC has decided to extend the pilot until autumn 2015, when it plans to undertake a full evaluation
- The HCPC continued to carry out debriefing teleconferences with vulnerable witnesses¹⁴⁸ and had completed 37 at the date of writing this report. The HCPC uses the feedback it receives during these calls to make improvements to its witness support processes. It made a number of improvements to its processes during 2014/2015 including:
 - Revising its witness information packs so that they include more comprehensive information
 - Updating its witness feedback forms to make them more user-friendly for electronic completion
 - Revising the procedure for contacting witnesses prior to the hearing, by sending a notification email prior to making telephone contact with them (this was on the advice of Mind)¹⁴⁹
 - Organising training by Mind for staff involved in contacting witnesses.

16.22 In our 2013/2014 Performance Review Report, we noted a slight increase in the number of HCPC final fitness to practise hearing decisions that we appealed to the High Court compared to the number we had appealed in the previous three years. During 2014/2015, we have appealed five HCPC final fitness to practise hearing decisions.¹⁵⁰ We remain of the view that the numbers involved are not significant enough for us to draw any conclusions about the quality of the HCPC's decision making at the final stages of the fitness to practise process from the relatively small number of cases that we appeal.

16.23 Our work in this area revealed a concern about the transparency of the information that the HCPC provides to its final fitness to practise panels. It became apparent during the course of three of our appeals against HCPC

¹⁴⁷ Article 26(6)(a) of The Health and Care Professions Order (2001) enables the Investigating Committee to decide that mediation can be undertaken in relation to a complaint.

¹⁴⁸ The HCPC carry out debriefing telephone calls to those witnesses who appear to have found the process particularly stressful. This is with a view to ensuring that the experience has not had a detrimental impact upon their well-being and to signpost them to suitable agencies for further assistance where appropriate.

¹⁴⁹ Mind is a national UK charity that provides advice and support to anyone experiencing a mental health problem.

¹⁵⁰ At the time of writing this report, one of the appeals had been upheld, another was withdrawn after the registrant's application for voluntary removal from the register was granted, one had been settled by consent order and one was ongoing and one had been dismissed.

final fitness to practise panel decisions that the HCPC does not routinely inform a final fitness to practise panel considering an application for voluntary removal¹⁵¹ from the register if the Authority has lodged an appeal in the case and that appeal has yet to be decided. This is a concern, as the existence of such an appeal is a matter of public record that is known to the HCPC, and it is relevant to the final fitness to practise panel's consideration of the public interest when deciding whether to allow voluntary removal of the registrant from the register. The HCPC has told us that it has not made a conscious decision to withhold this information from its final fitness to practise panels. We consider that the HCPC should consider whether greater transparency is needed in order to ensure that the public interest can be properly addressed by its final fitness to practise panels in these circumstances, and we are encouraged to note that the HCPC agrees with our assessment and says that it will make sure that it informs panels considering applications for voluntary removal about any outstanding appeals by the Authority in the future.

***The tenth Standard of Good Regulation for fitness to practise:
Information about fitness to practise cases is securely retained***

- 16.24 In the 2013/2014 Performance Review Report, we concluded that the HCPC had performed inconsistently against the tenth Standard. This was because five data breaches had occurred in its fitness to practise department, one of which was reported to the ICO (although the ICO decided not to take any further action). We concluded that the HCPC still met this Standard, as we were satisfied that it had taken appropriate action to minimise the risk of such breaches recurring in the future.
- 16.25 In 2014/2015, there were 31 data breaches in the fitness to practise department. One of these breaches involved the disclosure of a vulnerable service user's home address to the registrant (the HCPC reported this incident to the ICO but the ICO decided not to take any further action). This is a significant increase on the number of data breaches that occurred in 2013/2014. The HCPC told us that the increase in the number of data breaches in 2014/2015 is the result of introducing a more robust incident reporting procedure in order to achieve certification against ISO 27001:2013 (the international standard for information security management). We consider that likely to be a valid explanation for the increase, given that at the date of writing this report, the HCPC was in the final stages of seeking ISO 27001:2013 certification.
- 16.26 The HCPC also informed us of the following initiatives which it introduced in 2014/2015 or which it plans to introduce in order to improve its performance in this area:
- Reviewing its internal operating guidance on confidentiality and information to include additional guidance on redacting documents (after

¹⁵¹ In cases where the HCPC is satisfied that it would be adequately protecting the public if the registrant was permitted to resign from the register, it may enter into a Voluntary Removal Agreement allowing the registrant to do so, but on similar terms to those which would apply if the registrant had been struck off.

this was identified as an issue through the Quality Compliance Manager's log of issues). The revised guidance was rolled out in June 2014

- Providing data security refresher training for fitness to practise staff in April 2015 (training was last held in 2013)
- Double-bagging bundles of evidence that are posted to registrants and panel members, and investigating the feasibility of introducing electronic rather than paper bundles. The HCPC also has a system in place to ensure that parties know when to expect a bundle to arrive, and how to let the HCPC know if they cannot take receipt of the bundle at the scheduled time.

16.27 We are mindful that data security breaches can damage public confidence in the regulator. However, we acknowledge the steps taken by the HCPC to mitigate the impact of the data breaches that occurred in 2014/2015 and the improvements it has made to its processes and procedures to minimise the risk of such breaches recurring. The HCPC appears to have a reasonable data security reporting framework in place at management level, and from May 2015, it will begin reporting data breaches to its Council. It is significant that the HCPC is in the final stages of seeking ISO 27001:2013 certification – this certification will provide a significant level of assurance about the robustness of the HCPC's systems for identifying, classifying, reporting and remediating data breaches. We acknowledge that one of the impacts of improving the breach identification systems in place to achieve the standard required for ISO accreditation may be that the number of data breaches identified is elevated, compared to the number of breaches identified by other similar organisations and/or compared to the number identified prior to the implementation of robust breach identification systems. Further, as only one of the data breaches identified in 2014/2015 was of a level to merit reporting to the ICO and the ICO decided to take no further action in respect of it, we have concluded that the HCPC has met the Standard in 2014/2015.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

16.28 We noted in our 2013/2014 performance review that the HCPC was at risk of not meeting the fourth standard due to:

- Concerns identified during our 2013 audit of the initial stages of the HCPC's fitness to practise process (as well as by the HCPC itself) in relation to failures to carry out risk assessments at all required stages of the process, in line with its operational guidance
- A significant increase in the median time taken from the receipt of a complaint to a decision being made about an interim order – from eight weeks in 2012//2013 to 15 weeks in 2014/2015.

16.29 In 2013/2014, we did not conclude that the HCPC had failed this standard, as we were satisfied that it was taking appropriate action to remedy its performance.

- 16.30 It is clear that the HCPC has been active in trying to improve its practice around risk assessments (having identified the concerns itself prior to our 2013 audit). In June 2014, the HCPC updated its guidance on *Risk Profiling and Interim Orders* to provide further information about the level of detail that should be included in risk assessments, as well as to include an express requirement that risk assessments should be completed within five working days of receipt of the referral.
- 16.31 The HCPC's Quality and Compliance Team conduct monthly case file audits which include a check that risk assessments have been completed at the appropriate stages of the case as well as a check on the quality of the risk assessments. Case file audit reports from November 2014 indicated that the completion of risk assessments, both in terms of timeliness and quality, remained a concern (particularly the completion of risk assessments before cases are considered by the Investigating Committee). However case file audits from January and February 2015 indicated an improvement in the quality of risk assessments. The HCPC has also told us that it is introducing thematic reports from May 2015 which will help in identifying issues with the completion of risk assessments, developing solutions, and training staff.
- 16.32 The HCPC's performance against the median time taken from receipt of information that indicates the need for an interim order to the making of an interim order decision remains good. In fact, its time of 2.4 weeks is the best across all of the health and care professional regulators that we oversee.
- 16.33 We are concerned to note that the median time taken from the receipt of a complaint to the decision being made about an interim order increased further in 2014/2015. The median time was 20.4 weeks in 2014/2015, compared to 15 weeks in 2013/2014 (and only eight weeks in 2012/2013). Our concern about this is that it could indicate a failure to investigate cases promptly upon receipt, so that serious cases (including cases where an interim order may be required) are identified promptly and prioritised appropriately. After bringing this concern to the HCPC's attention, it carried out a review of 30 cases from 2014/2015 that took longer than the median time from receipt of the complaint to the interim order decision. This analysis demonstrated that receipt of new information during the lifetime of a case – which would not have been available to the HCPC on receipt of the complaint (for example, because cases were subject to ongoing police or employer investigations or new/deteriorating health conditions) and which changed its assessment of risk – was a significant factor in the majority of these cases. The HCPC was also satisfied that all of these cases had an initial assessment that considered the imposition of an interim order, as well as regular reviews of significant material or documents on receipt prior to receiving the material that resulted in the interim order application. The HCPC informed us that it intends to undertake further, more detailed analysis of the reasons, which may result in a delay in a risk assessment being completed.
- 16.34 The HCPC also identified an increase in the rate of adjournments of interim order applications, after a cluster of three interim order applications and three interim order review hearings were adjourned in three consecutive months. The HCPC informed us that this coincided with the introduction of a number

of new panel members and HCPC staff. We note that the HCPC saw an increase in the rate of adjournments of interim order hearings (from 1.3 per cent in 2013/2014 to nine per cent (eight cases) in 2014/2015). We note that none of the adjournments resulted from any procedural error by the HCPC staff. The HCPC issued guidance to its panel members in June 2014 on the circumstances in which it may be appropriate to adjourn an interim order hearing so as to ensure that there is no unnecessary risk to the public.

- 16.35 The HCPC has not consistently demonstrated the level of improvement that we hoped to see in this area. On this basis, we have concluded that the HCPC continued to meet the fourth Standard in 2014/2015 but that its performance against the Standard was inconsistent.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct on both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary, the regulator protects the public by means of interim orders

- 16.36 In our 2013/2014 Performance Review Report, we noted an increase of seven weeks in the median time taken by the HCPC to progress cases to a final fitness to practise panel hearing: from 61 weeks in 2012/2013 to 68 weeks in 2013/2014. We also noted that the number of cases that were over two years old by the time they reached a final fitness to practise panel hearing had risen from 23 in 2012/2013 to 44 in 2013/2014.
- 16.37 We concluded that the HCPC met this Standard, as we were satisfied that the median time taken remained reasonable, and that the HCPC had identified the reasons for the increase and taken remedial steps.
- 16.38 We are disappointed to report a further downturn in the HCPC's performance against this Standard in 2014/2015. Specifically, we have identified:
- A further increase in the median time taken from receipt of an initial complaint to the final fitness to practise panel hearing decision: from 68 weeks in 2013/2014 to 73 weeks in 2014/2015
 - An increase in the median time taken from receipt of an initial complaint to the final Investigating Committee decision: from 27 weeks in 2013/2014 to 33 weeks in 2014/2015
 - An increase in the median time taken from the final Investigating Committee decision to the final fitness to practise panel hearing decision: from 37 weeks in 2013/2014 to 39 weeks in 2014/2015
 - A further increase in the number of cases that are older than two years by the time they reach a final fitness to practise panel hearing: from 44 cases in 2013/2014 to 94 cases in 2014/2015. Also of concern is that the number of cases that are older than three years has increased from two cases in 2013/2014 to 14 cases in 2014/2015
 - A decline in the HCPC's performance against its key performance indicator for 70 per cent of cases to conclude at a final fitness to practise

panel hearing within eight months of the Investigating Committee's decision. In 2014/2015, this target was only achieved in 42 per cent of cases.

- 16.39 The HCPC informed us that the reasons for the delay in those cases that did not meet the key performance indicator included lengthy investigations by the police, counter-fraud agencies or employers, the suspension of cases because of ongoing court action, and complex witness availability issues. The HCPC also told us that one of the factors behind the increase in the median time for concluding cases during this performance review period is that it has been focusing on progressing older and/or more complex cases.
- 16.40 In addition, during 2014/2015, the HCPC made 15 applications to the High Court for extensions to interim orders (all of which were granted). In three of these cases, the applications were made following delays in investigations which were being managed by the HCPC's external lawyers. The HCPC has informed us that these cases were delayed due to complexities and factors outside the control of HCPC or its external lawyers, rather than poor case management. We note, in paragraph 16.21, the measures that the HCPC has put in place to monitor more robustly those fitness to practise investigations which are carried out by its external lawyers.
- 16.41 The HCPC identified three main areas where delays occur – at the initial stage of an investigation (when the HCPC is evaluating whether a complaint meets the standard of acceptance),¹⁵² during investigation by external lawyers, and when the case is waiting to be scheduled for a final fitness to practise panel hearing. In an effort to improve the timeliness of its investigations, the HCPC:
- Targeted a group of cases that were 12 months old where no date had been fixed for consideration by the Investigating Committee. The HCPC reviewed these cases and allocated each of them a red/amber/green risk rating, depending on the urgency of the action required. It reviewed 120 cases – 48 cases were rated red or amber, and given case progression plans. At the date of writing, 26 of those cases had been closed. The HCPC is overseeing the remaining cases and monitoring progress against the agreed actions at monthly case progression conferences
 - Redesigned the electronic system it uses to instruct lawyers, which now has automatic triggers (for example, the expiry of an interim order) that are used to provide exception reports to the HCPC when any of its service level agreement targets are not met. Weekly teleconferences are held between the HCPC's fitness to practise managers and its lawyers to obtain updates on the exception cases. The HCPC also introduced stricter targets for the completion of 90 per cent of cases within 2.5 months instead of 3.5 months. The HCPC informed us that these measures have resulted in noticeable improvements in the accuracy and consistency of the assessments by its external lawyers of the complexity

¹⁵² The Standard of Acceptance is the threshold which allegations must normally meet before they will be investigated by the HCPC.

and time frame for completion of cases, and also in data completeness and early communication to resolve any potential problems.

- 16.42 The HCPC also plans to make greater use of preliminary fitness to practise panel hearings in order to resolve pre-hearing issues so that final fitness to practise panel hearings can progress smoothly and in order to reduce adjournments or delays in concluding cases.
- 16.43 In July 2014, the HCPC provided its Council with a paper analysing the length of time taken to progress cases through each stage of its process. This paper is updated each month and shared with the Executive Management Team, as well as with the Council on a quarterly basis. We are pleased that the HCPC's Council is receiving regular updates which we hope will enable it to scrutinise its performance in this area.
- 16.44 The HCPC informed us that as at May 2015, only 13 of the 483 social worker cases that it inherited from the General Social Care Council (GSCC) (on the transfer to the HCPC of the regulation of social workers in England on 1 August 2012) remained open. One case (which was subject to a complex police investigation) remained under investigation and had not been considered by the Investigating Committee. A further 12 of these inherited cases were awaiting a final fitness to practise panel hearing.
- 16.45 The HCPC analysed the differences between the time taken to complete fitness to practise cases that it inherited from the GSCC, and those social work cases that the HCPC handled from start to finish (because they were initiated in or after August 2012). The HCPC found that it handled the non-GSCC transfer cases within a similar time frame to cases involving professionals other than social workers, and that the time taken to investigate GSCC transfer cases was not a reflection on its fitness to practise investigation processes.
- 16.46 We acknowledge the HCPC's efforts to progress the GSCC transfer cases and the steps it has taken to try and address the timeliness of its fitness to practise investigations. It is disappointing that the HCPC has not demonstrated the improvement that we hoped to see in this year's performance review. However, its timescales for investigating fitness to practise cases are still not unreasonable, particularly when compared across the health and care professional regulators that we oversee. For this reason, we have concluded that the HCPC met the sixth Standard in 2014/2015 but remained at risk of not doing so should it fail to demonstrate improvements in this area when we next review its performance.

17. The Nursing and Midwifery Council (NMC)

Overall assessment

- 17.1 In the 2014/2015 performance review, we saw an overall improvement in the NMC's performance against the *Standards of Good Regulation* and found that it has:
- Met all of the *Standards of Good Regulation for standards and guidance*
 - Met four of the five *Standards of Good Regulation for education and training*. As in 2013/2014, it did not meet the second standard which requires the regulator to have in place a system for continuing professional development or revalidation
 - Met four of the five *Standards of Good Regulation for registration*. As in 2013/2014, it did not meet the third standard, which requires the regulator to have an accurate and accessible register. However, it did meet the second standard, which requires the regulator to have appropriate registration processes in place and which was not met in 2013/2014
 - Met seven of the 10 *Standards of Good Regulation for fitness to practise*. It did not meet the seventh,¹⁵³ eighth,¹⁵⁴ or tenth¹⁵⁵ Standards (see paragraphs 5.25–5.29, 5.30–5.36 and 5.37–5.43 below).
- 17.2 We highlight improvements and/or good practice across all of the NMC's functions. This includes its work in publishing the revised *Code*,¹⁵⁶ with input from its key stakeholders; carrying out an extraordinary review into concerns raised about midwifery practice in Guernsey; introducing new and improved processes in its registration function; and meeting its key performance indicator for 90 per cent of cases to be progressed through the adjudication stage of the fitness to practise process to the first day of a hearing (or meeting) within six months of being referred from the Investigating Committee.

¹⁵³ The seventh *Standard of Good Regulation for fitness to practise*: All parties to a fitness to practise complaint are kept updated on the progress of their case and supported to participate effectively in the process.

¹⁵⁴ The eighth *Standard of Good Regulation for fitness to practise*: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession.

¹⁵⁵ The tenth *Standard of Good Regulation for fitness to practise*: Information about fitness to practise cases is securely retained.

¹⁵⁶ *The Code: Professional standards of practice and behaviour for nurses and midwives* (published on 29 January 2015, effective from 31 March 2015).

- 17.3 Key legislative changes to the NMC's registration and fitness to practise processes took effect from March 2015, as a result of a Section 60 Order¹⁵⁷ and corresponding changes to the NMC's rules. These include:
- Introducing case examiners¹⁵⁸ who will take most of the decisions that previously could only be taken by the Investigating Committee
 - Giving the NMC the power to review 'no case to answer' decisions (i.e. decisions by the case examiners/Investigating Committee not to refer a case for a final fitness to practise panel hearing)
 - Removing the requirement for registration appeal panels to be chaired by an NMC Council member and the requirement to include a registered medical practitioner where the health of the person bringing the appeal is in issue
 - Introducing the verification of information relating to each registrant's professional indemnity arrangements
 - Clarifying the NMC final fitness to practise panel's ability to make striking-off orders when reviewing suspension or conditions of practice orders in cases where the registrant's impairment of fitness to practise arises as a result of ill-health or lack of competence, provided the registrant has been subject to the suspension/conditions for at least two years.¹⁵⁹
- 17.4 The NMC expects these changes to enable it to improve the effectiveness and efficiency of its registration and fitness to practise processes. We look forward to seeing evidence of further improvements when we next review the NMC's performance.
- 17.5 Further information about the NMC's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.
- Guidance and standards**
- 17.6 The NMC has continued to meet all the *Standards of Good Regulation for guidance and standards* in 2014/2015. It demonstrated this through the areas of work detailed below.
- The review of the Code**
- 17.7 The NMC concluded its review of the *Code*, which began in June 2013.
- 17.8 During 2014/2015, the NMC carried out part two of its public consultation about the *Code*.¹⁶⁰ This consisted of an online survey and qualitative

¹⁵⁷ Section 60 of the Health Act 1999 enables orders to be made that permit modifications to the regulation of healthcare professions (including the NMC's legislative framework) without an Act of Parliament.

¹⁵⁸ These are two senior NMC staff who will reach decisions on the referral of each case for a final fitness to practise panel hearing.

¹⁵⁹ To clarify the legal position following the decision in *Okeke v Nursing and Midwifery Council* (2013) EWCH 714 (Admin).

¹⁶⁰ We reported on part one of the NMC's consultation on the review of the *Code* in our Performance Review Report 2013/2014, paragraph 17.6. Available at

research including workshops, focus groups and online forums with registrants, employers, patients and the public, including seldom heard groups.

- 17.9 We expressed a number of concerns about the draft of the revised *Code* in our response to the consultation in August 2014.¹⁶¹ Our concerns related to the length and tone of the *Code*, the lack of clarity around the status of the opening section about patients' and public expectations, use of the term 'aspirations', and repetition across the individual standards. These concerns were also echoed in consultation responses provided by other key stakeholders. The NMC listened and responded positively to the stakeholder feedback it received by making changes to the draft *Code* before it was finalised. For example, in response to the feedback, the NMC reduced the length of the *Code*, removed the patients' and public expectations section of it, and replaced 'aspirations' with four themes: 'Prioritise people', 'Practise effectively', 'Preserve safety', and 'Promote professionalism and trust'.
- 17.10 In our 2013/2014 Performance Review Report, we raised concerns about whether the NMC's timetable would allow it sufficient time to fully consider any consultation responses and take them into account in the final version of the *Code*. We are pleased to report that the NMC published the final revised *Code* on 29 January 2015 (it became effective from 31 March 2015). The NMC also published updated guidance for registrants on raising concerns, new guidance for registrants on using social media responsibly and information on the new *Code* for both employers and the public.
- 17.11 The NMC has received a positive response to the new *Code*, including from feedback received through social media. The new *Code* has also been awarded the Plain English Campaign Crystal Mark. We commend the NMC's efforts in bringing this major piece of work to a conclusion in 2014/2015, while, at the same time, ensuring that stakeholder views were adequately taken into account.

The review of the regulation of midwives

- 17.12 The NMC completed its review of midwifery supervision and regulation (which the NMC commissioned the King's Fund¹⁶² to lead). This work was prompted by the Parliamentary and Health Service Ombudsman's investigations into three complaints arising from failures in maternity care at Morecambe Bay NHS Foundation Trust. The Ombudsman's reports (which were published in December 2013)¹⁶³ identified serious concerns about the

<http://www.professionalstandards.org.uk/docs/default-source/scrutiny-quality/performance-review-report-2013-2014.pdf?sfvrsn=0> [Accessed 12 May 2015].

¹⁶¹ Professional Standards Authority, August 2014. *Response to the Nursing and Midwifery Council consultation on a draft revised Code and proposed approach to revalidation*. Available at <http://www.professionalstandards.org.uk/docs/default-source/psa-library/140812-nmc-code-and-reval-consultation-final.pdf?sfvrsn=4> [Accessed 12 May 2015].

¹⁶² The King's Fund is an independent charity working to improve health and health care in England.

¹⁶³ Parliamentary and Health Service Ombudsman, 2013. *Midwifery supervision and regulation: recommendations for change*. All reports are available at <http://www.ombudsman.org.uk/reports-and-consultations/reports/health/midwifery-supervision-and-regulation-recommendations-for-change> [Accessed 12 May 2015].

way in which three complaints about midwives had been investigated and managed by the Local Supervising Authority. The reports recommended that midwifery supervision and regulation should be separated and that the NMC should be in direct control of regulatory activity.¹⁶⁴

- 17.13 In September 2014, we submitted written evidence for the Public Administration Select Committee's follow-up session on the Ombudsman's December 2013 report, *Midwifery supervision and regulation: recommendations for change*.¹⁶⁵ In our written evidence, we concluded that there was a lack of evidence to suggest that the risks posed by contemporary midwifery required an additional tier of regulation (i.e. for the NMC to oversee the supervision of midwives by the Local Supervising Authorities at a local level). This, in our view, brought into question the proportionality of the current system when compared to that operating for other professions.
- 17.14 In January 2015, the NMC's Council considered the final report from the King's Fund, following the review. After taking advice from its Midwifery Committee, the Council agreed to action the report's recommendation that the NMC should have direct control of regulatory decisions, and that the supervision of midwives should no longer form part of the NMC's statutory framework. Implementing the recommendation will require legislative change, but in the interim, the NMC has committed to playing a role in ensuring a smooth transition.
- 17.15 We have been monitoring the progress of this work, given its clear implications for the future of midwifery regulation and public protection. We recognise that achieving an appropriate outcome has required the NMC to engage and negotiate with a range of stakeholders and interested parties. We consider that this work provides a further example of the NMC's effective engagement with stakeholders in 2014/2015, which can only improve the level of confidence that key stakeholders and the public have in the NMC as a regulator.

Additional guidance

- 17.16 The NMC published additional guidance (or contributed to the development of guidance) on the following subjects:
- *Professional duty of candour*. In October 2014, the NMC signed a joint statement on the duty of candour alongside seven of the eight other UK health and care professions regulators, in response to the

¹⁶⁴ The King's Fund's report defined the core functions of regulation as: the registration and renewal of registration of professionals; ensuring the quality of pre-registration and post-registration education and training; setting standards for professional conduct and practice and ensuring ongoing practice standards; and the investigation and adjudication of fitness to practise cases.

¹⁶⁵ Professional Standards Authority, 2014. *Written Evidence for the Public Administration Select Committee follow up session on the Parliamentary and Health Service Ombudsman's Report into severe sepsis and midwifery supervision and regulation*. Available at <http://www.professionalstandards.org.uk/library/document-detail?id=eba5599e-2ce2-6f4b-9ceb-ff0000b2236b> [Accessed 12 May 2015].

recommendations made in the Francis Report.¹⁶⁶ The statement highlights the importance of being open and honest with patients when harm or distress has been caused (or when there has been the potential for such harm or distress) because something has gone wrong with their treatment or care. In November 2014, working jointly with the General Medical Council (GMC), the NMC also completed a public consultation on suggested guidance for doctors, nurses and midwives on applying the duty of candour in practice. The NMC informed us that the final guidance is expected to be published in summer 2015. We are pleased that the NMC and the GMC went beyond simply signing the joint statement by the regulators, and worked together to produce joint guidance for their registrants on the practical application of it. This is the first time that two of the health and care professional regulators we oversee have collaborated in this way, and we consider it to be an example of good practice. We would encourage joint working among the healthcare regulators to develop standards/guidance that achieve consistency across professions wherever possible

- *End of life care.* The NMC was a member of the Leadership Alliance for the Care of Dying People (comprising 21 organisations), which was established following an independent review of the Liverpool care pathway for the dying patient.¹⁶⁷ In June 2014, the Leadership Alliance published new guidance on the approach to caring for dying people, *One chance to get it right*.¹⁶⁸ This guidance focuses on achieving five priorities of care, but in a way that reflects the needs and preferences of the dying person and the setting in which they are being cared for. The NMC also liaised with the other members of the Leadership Alliance and the One Chance to Get it Right Advisory Group to ensure that the five priorities of care were appropriately reflected in the NMC's revised *Code*
- *Safe staffing.* In June 2014, the NMC published a statement, *Appropriate staffing in health and care settings*.¹⁶⁹ The statement makes clear that it is not the NMC's role to set or assure standards related to appropriate staffing, and explains how staffing issues may be relevant to its work (for example, when considering the fitness to practise complaints about NMC registrants).

¹⁶⁶ Francis, R, 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, chaired by Robert Francis QC, 2013*. Available at <http://www.midstaffpublicinquiry.com/report> [Accessed 12 May 2015].

¹⁶⁷ Department of Health, 2013. *More care, less pathway: A review of the Liverpool Care Pathway*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212450/Liverpool_Care_Pathway.pdf [Accessed 12 May 2015].

¹⁶⁸ Leadership Alliance for the Care of Dying People, 2014. *One chance to get it right: Improving people's experience of care in the last few days and hours of life*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323188/One_chance_to_get_it_right.pdf [Accessed 12 May 2015].

¹⁶⁹ Available at <http://www.nmc-uk.org/Documents/Press/Safe%20staffing%20position%20statement.pdf> [Accessed 12 May 2015].

Education and training

- 17.17 The NMC met four of the five *Standards of Good Regulation for education and training* in 2014/2015. The NMC continued not to meet the second Standard, which relates to having a system of revalidation or continuing professional development (CPD) in place (see paragraphs 3.5–3.11 below).
- 17.18 Examples of how the NMC demonstrated that it has met the remaining standards are set out below:
- The NMC worked with Health Education England on the *Shape of Caring* review. The review considered what education and training for nurses and care assistants needs to look like in order to deliver high quality care over the next 10 to 15 years. The final report¹⁷⁰ was published in March 2015. We consider that this is an example of joint working for the public benefit, as recommended by the Francis Report
 - In September 2014, the NMC commissioned an evaluation of its pre-registration education standards for both nursing and midwifery (published in 2010 and 2009) and an evaluation of its standards to support learning and assessment in practice (published in 2008). In order to inform this work, the NMC conducted surveys with the public, students and new registrants to seek their views on the standards
 - The NMC evaluated and refined the quality assurance framework that it introduced in September 2013. An audit report commissioned by the NMC and received in March 2015 indicated that the quality assurance framework was operating effectively
 - In April 2014, the NMC published *Training Nurses and Midwives*, aimed at helping the public understand how its registrants are educated and trained. This leaflet has also been awarded the Plain English Campaign crystal mark.

The quality assurance process

- 17.19 The NMC continued to quality assure nursing and midwifery education programmes. This included: approving 19 programmes against the revised *Standards for preparation of supervisors of midwives*,¹⁷¹ and publishing information on its website about the outcomes of its monitoring visits to Approved Education Institutions and Local Supervising Authorities. The NMC also continued to take action to address concerns about education and training establishments. For example, it withdrew approved programme status from one university that had failed to engage with the quality assurance process.

¹⁷⁰ Health Education England (in partnership with the NMC), Lord Willis Independent Chair, 2015. *Shape of Caring: A Review of the Future Education and Training of Registered Nurses and Care Assistants*. Available at <http://hee.nhs.uk/wp-content/blogs.dir/321/files/2015/03/2348-Shape-of-caring-review-FINAL.pdf> [Accessed 12 May 2015].

¹⁷¹ These standards were published in February 2014 and contain the principles of supervision of midwives and guidance on how to implement them.

17.20 In October 2014, after being made aware of concerns about midwifery practice in Guernsey, the NMC carried out an extraordinary review of the Local Supervising Authority to assess whether sufficient measures were in place to protect patients. The NMC published the report of its findings on 30 October 2014.¹⁷² The report concluded that a number of standards relating to how midwives' practice had been supervised were not met. At the date of writing, the NMC was continuing to work with Guernsey Health and Social Services Department and the Local Supervising Authority to review its action plans and next steps. Through its extraordinary review the NMC has drawn attention to serious and wide-ranging concerns (which did not necessarily fall within its regulatory remit) in order to drive improvements in maternity care in Guernsey, in the interests of public protection and the safety of mothers and babies. Taking an active leadership role on such a high-profile matter is also likely to have a positive impact on public confidence in the NMC and the system of regulation. We conclude that this work amounts to good practice.

The second Standard of Good Regulation for education and training: Through the regulator's continuing professional development (CPD)/revalidation systems, registrants maintain the standards required to stay fit to practise

17.21 Under the NMC's proposed model of revalidation,¹⁷³ every three years, nurses and midwives will be required to declare that they have:

- Practised for a minimum number of hours
- Undertaken CPD
- Obtained feedback about their practice
- Reflected on the *Code*, CPD and feedback about their practice and discussed these with another NMC registrant
- Made a good health and character declaration
- Appropriate cover under an indemnity arrangement.

17.22 The NMC will select a sample of nurses and midwives who will be asked to provide further information or evidence to verify their application. The NMC's work on this aspect of its revalidation model was still ongoing at the date of writing this report. We would expect the NMC to ensure that it selects a statistically valid sample.

17.23 The NMC informed us that its plan for implementing revalidation by October 2015¹⁷⁴ remains on track. In 2014/2015 the NMC:

¹⁷² *Extraordinary LSA review: Princess Elizabeth Hospital, Health and Social Services Department, Guernsey 01-03 October 2014*. Available at http://www.nmc-uk.org/Documents/MidwiferyExtraordinaryReviewReports/Extraordinary_Review%20LSA_South_West_Guernsey_01-03%20Oct_14.pdf [Accessed 12 May 2015].

¹⁷³ Where revalidation is defined as a formal periodic assessment of fitness to practise.

¹⁷⁴ Revalidation will replace the NMC's current CPD standards (post-registration education and practice standards) from 31 December 2015. At the date of writing, no active checks or audits were being carried out by the NMC on the CPD undertaken by its registrants.

- Completed its two-phase consultation and published an evidence review summarising the responses and feedback it received from stakeholders
- Developed the high-level provisional policy for revalidation (which was approved by its Council in December 2014)
- Developed provisional standards for revalidation, draft guidance and related materials (which were considered by its Council in January 2015)
- Developed the draft publication, *How to revalidate with the NMC: requirements for renewal of your registration and demonstrating your continuing fitness to practise*. The purpose of this publication is to set out in a single document everything that participants in the revalidation pilot (and ultimately, all registrants) need to do in order to complete revalidation successfully
- Recruited 19 organisations who employ nurses and midwives (or whose members are nurses and midwives) from a range of roles and settings to pilot the revalidation process
- Supported the setting up of Chief Nursing Officer-led Programme Boards in each of the four countries (including senior government and employer representation) that will oversee and assess the readiness of each country for the introduction of revalidation
- Commissioned two evaluations to inform the final revalidation model. Those evaluations will focus on:
 - Understanding the registrant experience of revalidation through the revalidation pilots
 - Cost benefit analysis, impact on the system¹⁷⁵ and readiness to implement revalidation by December 2015.

17.24 We recognise that the NMC has made significant progress during 2014/2015 towards implementing revalidation, including clarifying its requirements for registrants. However, some of our most significant concerns about the NMC's proposed revalidation model remain.¹⁷⁶ These include:

- The NMC's failure to evaluate the risks associated with its different registrant groups – it has decided instead to proceed with a 'one size fits all' model
- The lack of available information about both the costs and benefits of the proposed revalidation scheme (as opposed to other models of assuring continuing fitness to practise) and the operational impacts on the NMC and third parties involved.

17.25 We acknowledge that the NMC has taken our feedback (and that of other stakeholders) into account and that it carried out an initial assessment of the implications for employers of implementing its proposed revalidation model.

¹⁷⁵ The system is used by the NMC to refer to the health and care system and a range of other settings in which nurses and midwives practice.

¹⁷⁶ See footnotes 160 and 161.

The NMC told us that the outcome of that initial assessment will be used to inform further work it has commissioned that will run alongside the revalidation pilots. In our view, it might have been advantageous for the NMC to have undertaken that work at an earlier stage, so that it could have informed the pilots.

- 17.26 At the date of writing, the NMC planned to complete the pilots by June 2015, leaving it with only four months to make any adjustments before the final model is considered by its Council for approval in October 2015.¹⁷⁷ However, we note that the NMC's Council is being kept informed about progress and we are reassured by the NMC's commitment not to implement revalidation until system readiness has been established.
- 17.27 In the absence of any effective current system of CPD or revalidation, we have to find that the NMC did not meet the second *Standard of Good Regulation for education and training* in 2014/2015. We will continue to monitor the NMC's progress in developing a revalidation model that ensures its registrants demonstrate they have maintained the standards required to stay fit to practise. We will report on the outcome of the NMC's work in this area in due course.

Registration

- 17.28 The NMC has met four of the five *Standards of Good Regulation for registration* in 2014/2015. In particular, we note that the NMC demonstrated improved performance against the second Standard (which it did not meet in 2013/2014) and that this Standard is now met (see paragraph 17.29–17.46 below). We concluded that the third Standard remains not met (see paragraph 17.47–17.54 below). Examples of how the NMC demonstrated that it has met the remaining standards are set out below.
- From October 2014, the NMC introduced a new process for registration of nurses and midwives who trained outside the UK/European Economic Area (overseas applicants). This includes a Test of Competence that is based on current UK nursing and midwifery pre-registration education and competency standards (see paragraph 17.35–17.37 below).
 - The NMC implemented the new legal requirement for registrants to have professional indemnity arrangements in place in order to be registered (effective from July 2014) by taking the steps highlighted below.¹⁷⁸ It also developed a process that it will use to verify that each registrant is covered by appropriate indemnity arrangements once the necessary changes have been made to its rules (which took effect in March 2015). Specifically, the NMC:

¹⁷⁷ The NMC informed us that its Council would be asked to consider the final requirements, readiness and approval of the revalidation model in October 2015. Subject to the Council's approval, then from that date, nurses and midwives would be able to familiarise themselves with the requirements and the first nurses and midwives to revalidate would be those with an April 2016 renewal date.

¹⁷⁸ The Health Care and Associated Professions (Indemnity Arrangements) Order 2014.

- Updated its previous version of *The Code: Standards of conduct, performance and ethics for nurses and midwives* (originally published on 1 May 2008)
 - Produced information for applicants and registrants to help them understand the new registration requirements
 - Amended its registration processes to require a signed self-declaration by each registrant that an appropriate indemnity arrangement is in place on both initial registration and renewal of registration, as well as on submission of a midwifery intention to practise form¹⁷⁹
 - Amended the relevant standard operating procedures within its fitness to practise department – in particular, to include a request for information about a registrant’s professional indemnity cover when notifying them that a fitness to practise investigation has been opened
- The NMC produced updated advice and information for employers in September 2014 to remind them of their responsibilities to check the register as well as to promote the availability of the NMC’s Employers Confirmation Service.¹⁸⁰ It is positive to see that the NMC has taken further steps (in addition to those noted in our 2013/2014 Performance Review Report)¹⁸¹ to raise awareness of the need to check nurses’ and midwives’ registration status
 - The NMC continued to take appropriate action when it was notified about cases of potential illegal practice. In 2014/2015, it referred one case to the police and other appropriate bodies where there was evidence of a deliberate intent to mislead (this is a requirement under the NMC’s protected title legislation).

The second Standard of Good Regulation for registration: The registration process, including the management of appeals, is fair, based on the regulator’s standards, efficient, transparent, secure and continuously improving

17.29 In the 2013/2014 Performance Review Report, we concluded that the NMC did not meet the second Standard due to our concerns about the following aspects of the NMC’s performance: customer service, responding to changes in legislation, the registration process for overseas applicants, the efficiency of the registration process, and introducing online registration.

17.30 We are pleased to report that the NMC has made good progress in these key areas in 2014/2015, as set out under each of the headings below.

¹⁷⁹ For a midwife to legally provide midwifery care in the UK to women and babies and be called a ‘practising midwife’, they must be registered on the midwives’ section of the NMC register and have handed to their named supervisor of midwives a completed form, known as an intention to practise notification that confirms they are intending to practise as a midwife for the coming year.

¹⁸⁰ This is an online service that employers can use to confirm that a nurse or midwife is on the NMC’s register.

¹⁸¹ See paragraph 17.4, the fourth bullet point.

Customer service

- 17.31 The NMC achieved the following improvements in the level of customer service that it provides to registrants and the public:
- It introduced online registration from June 2014 (see paragraph 17.24–17.25 below)
 - It made some progress in terms of improving its performance in the call centre, with nine per cent (20,916) of calls going unanswered between April and September 2014. In comparison, 11 per cent (26,956) of calls went unanswered in the NMC’s call centre during the same period in 2013/2014. It is also positive that callers who are placed on hold are now advised of the NMC’s online services and directed to the information available on its website. The NMC has been collecting feedback from individuals who contact its call centre through an online survey. Feedback received between September and December 2014 was largely positive with 69.15 per cent of respondents indicating that their query was answered in a very good or good time frame and 78.14 per cent of respondents indicating that their overall experience with the NMC was very good or good. We would recommend that the NMC keeps this aspect of its performance under review
 - It planned for the expected peak in initial registration applications in September/October 2014 (due to the academic timetable) through the use of temporary staff and additional NMC staff. The call centre received 54,417 calls in September and answered 91 per cent (49,598). Sixty-one per cent of calls were answered within 40 seconds. This forward planning also had a positive impact on the NMC’s UK initial registration processing times – the NMC saw increasing improvement in its registration processing times during September and October, including while it experienced a peak in UK application volumes in October.

Responding to changes in legislation

- 17.32 We are pleased to report that the NMC amended its registration processes and guidance to reflect the amendments to the Rehabilitation of Offenders (Exception) Order 1975 in relation to protected cautions and convictions.
- 17.33 The NMC amended its Notice to Practise form to clarify the circumstances in which cautions and convictions need to be declared, both on initial registration applications and on renewal of registration. In our 2013/2014 Performance Review Report, we noted our concerns about the NMC’s failure to make prompt changes to its registration processes, forms and guidance to take account of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. That Order created a new category of ‘protected’ cautions and convictions, which registrants are not required to disclose during the registration process. We are pleased that the NMC has, in 2014/2015, taken the necessary steps (including amending its Notice to Practise form) to ensure that its registration processes and guidance reflect up-to-date legislation and practice.
- 17.34 The NMC also strengthened its arrangements for monitoring legislative changes that affect its work by introducing monthly searches of legislation

using key phrases. The results of these searches are assessed by its Policy and Legislation Team, and any legislation that is found to have an impact on the NMC's work is highlighted to the relevant directorate. The NMC gave an example of how its legislation search had resulted in the identification of changes affecting its work: its search identified the Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2014, which affected and resulted in changes to its *Raising Concerns* guidance.

Registration process for overseas applicants

- 17.35 From October 2014, the NMC introduced a new registration process for nurses who did their nursing training outside the European Economic Area.¹⁸² The new process involves an online application process and a two-part competence test.¹⁸³
- 17.36 The NMC issued an advance briefing to employers and Directors of Nursing in July/August 2014 in order to help them prepare for the new process and to explain the transitional arrangements. The NMC also updated its website with information about the new process, including frequently asked questions and test examples.
- 17.37 The NMC completed an initial evaluation of the operation of the registration process for overseas applicants, which it shared with employers and international recruitment agencies. It informed us that it plans to carry out an external review after the full process (i.e. both parts of the Test of Competence) has been operating for a reasonable period of time. We will follow up on this when we next review its performance.

Efficiency of the registration process

- 17.38 In the 2013/2014 Performance Review Report, we highlighted our concerns about the NMC's fluctuating performance in processing initial registration applications during 2013/2014, after the NMC took the decision to pause its processing of overseas applications between February and April 2013, due to concerns it identified about its approach in this area (see paragraphs 4.8–4.10).
- 17.39 We are pleased to report that we saw improved performance in this area in 2014/2015. Specifically, the NMC:
- Improved its processing times for initial registration applications in relation to both UK and overseas applicants as follows:
 - For UK graduates, the NMC's processing time decreased from six days in 2013/2014 to two days in 2014/2015

¹⁸² As we reported in our 2013/2014 performance review, the NMC had previously been operating a different system for evaluating the training requirements for applicants from New Zealand, America, Canada and Australia compared to applicants from other non-European countries.

¹⁸³ The two-part competence test involves a computer-based multiple choice test and an objective structured clinical examination – a practical test of conduct and competence in a simulated practice environment.

- For overseas applicants, the NMC’s processing time decreased from seven days in 2013/2014 to one day in 2014/2015
- Slightly improved its performance against its key performance indicator for 90 per cent of registration applications to be completed within 90 days (it achieved 86 per cent in 2014/2015 compared with 85 per cent in 2013/2014).

Registration appeals

17.40 The NMC improved its performance in processing of registration appeals during 2014/2015. It concluded 53 appeals in 2014/2015, 45 of which were completed within eight months (85 per cent) and 38 of which were completed within six months (72 per cent).¹⁸⁴ The NMC’s performance in this area is particularly noteworthy as, over the past two years, it has reduced its target for completing registration appeals from nine months to six months.

17.41 The NMC informed us that it had implemented changes to improve timeliness, including earlier scheduling of appeals and better follow-up of responses internally and from appellants. The NMC also expects that the section 60 Order (see paragraph 1.3) changes that came into effect in March 2015 will enable it to hear appeals more quickly. These changes remove the requirements for members of the NMC’s Council to chair appeals panels and to have a registered medical practitioner on the panel in health cases.

Online registration

17.42 From June 2014, the NMC introduced online registration services, following an initial pilot phase. Registrants are now able to make applications for initial and subsequent registration through the NMC’s online registration facility, as well as to access other features (such as recording qualifications and changing contact information). At the date of writing this report, the NMC informed us that:

- 236,983 users had signed up to the service and 197,475 accounts had been activated
- It had processed 3,854 initial registration applications.

17.43 The NMC provided guidance for registrants on how to use its online registration service, and has been promoting use of the service with renewal packs and on its website. The NMC has been collecting feedback from registrants using its new online registration services through an online survey. Initial feedback received between December 2014 and March 2015 has been positive and the NMC has made some adjustments to improve the customer service experience.

¹⁸⁴ In the 2013/2014 Performance Review Report, we noted that we were pleased that between 1 April 2013 and 31 March 2014, the NMC concluded 49 of its registration appeals, 36 of which were concluded within its target which was nine months at that time (73 per cent).

¹⁸⁵ The NMC informed us that its formal target for completing registration appeals in 2014/2015 was eight months but that it had been working to a target of six months, which would be made formal from 1 April 2015.

Information security

- 17.44 The NMC informed us that there was one data breach in the registration function during 2014/2015. This was classified as a level 3 incident¹⁸⁶ but the NMC said that it did not meet the criteria for a report to the Information Commissioner's Office (ICO). This resulted from an error by the NMC's printing supplier who amalgamated a number of Intention to Practise request packs with employers' confirmation reports. As a result, 64 midwives did not receive their forms, which were sent in error to employers who had no connection with the midwives. The NMC informed us that the data breach may have resulted in some midwives being unable to practise or a delay in them starting work.
- 17.45 We were concerned about this incident and the possible implications for those registrants affected, as well as for public confidence in the NMC as a regulator. We were also concerned that the NMC categorised the incident as one data breach on the basis that each individual breach of midwives' data resulted from the same root cause. However, we note that the NMC took action to introduce additional checks into its printing supplier's processes, which it says should ensure that such errors are detected prior to documents being sent out in the future.
- 17.46 It is clear that the NMC has made a number of significant improvements to its registration function during 2014/2015. We particularly welcome the introduction of online registration – which should further improve customer service – as well as the new registration process for overseas applicants – which should enable the NMC to run a fair and effective registration process for applicants from all countries. The addition of these services will also bring the NMC's processes in line with those of some of the other health and care professional regulators that we oversee. We are also pleased that the NMC has introduced new customer service standards for dealing with registration matters from 1 April 2015 and has committed to report on key aspects of its performance in the registration function to its Council going forward. This should ensure greater oversight of its performance in this area and ensure that any improvements are maintained or exceeded. We have concluded that the NMC met the second *Standard of Good Regulation for registration* in 2014/2015. We hope that the NMC will continue to implement and evaluate its new and improved registration processes and we will follow up on this when we next review its performance.
- The third Standard of Good Regulation for registration: Through the regulators' registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice.***
- 17.47 Each year, as part of the performance review process, we carry out a random check of each regulator's register to ensure that it accurately reflects the registration status of its registrants.

¹⁸⁶ The NMC has five classification levels for information security incidents. Level 3 incidents are those with a moderate impact on its reputation, and where, in relation to data breaches, the data is sensitive or there is the possibility of wide exposure of the data.

- 17.48 We are pleased to report that for the second year running, we did not identify any incorrect entries on the NMC's register. We highlighted one case to the NMC where, although the register had been annotated to record that the registrant was subject to conditions of practice, the conditions did not appear on the NMC's conditions of practice list. The NMC acknowledged that the most recent conditions of practice order had not been added for this registrant at the date of our check, and rectified the matter immediately. The NMC informed us that it plans to introduce automated quality assurance checks between website updates and fitness to practise outcomes as part of its ongoing information and communications technology improvement programme. Until this additional functionality is introduced, the NMC is carrying out additional checks of the information on its fitness to practise case management system against the conditions of practice/suspension order pages on the website. These additional checks have picked up a small number of errors¹⁸⁷ and the NMC has assured us that corrections have been made to its website where appropriate.
- 17.49 We do not consider that this issue raises any public protection concerns, as the register entries in these cases were accurate and showed that the registrants in question were subject to the correct sanctions. However, we are pleased that the NMC is taking additional steps to ensure that the information it provides in relation to the registration status of its registrants is as complete and up to date as possible.
- 17.50 We were concerned about 12 registration errors which the NMC identified through its routine daily reconciliation checks and weekly audits¹⁸⁸ and reported under its serious events and adverse incidents reporting process in 2014/2015. We set out details of these incidents below:
- In two cases, interim conditions of practice orders were not promptly replaced by interim suspension orders (for periods of six days and 7.5 months)
 - In another case, an interim suspension order was wrongly replaced by an interim conditions of practice order for a period of 22 days before the error was rectified
 - In six cases, the register was not updated to show that an interim order had been imposed for between four and six days
 - In one case, the register displayed that the registrant was subject to a caution order when an interim conditions of practice order had been imposed (that error was not rectified for a period of approximately six months)
 - In one case, the register was not updated for around two months following a voluntary removal

¹⁸⁷ As at 4 February 2015, the NMC had identified two cases where there were errors, out of a total of 309 cases checked.

¹⁸⁸ The NMC carries out daily reconciliation checks of the registration and fitness to practise databases and weekly audits of 10 per cent of its case outcomes.

- In one case, an interim suspension order was wrongly replaced for a period of two months with a conditions of practice order that related to another fitness to practise case involving the same registrant.

17.51 The NMC also strengthened its routine daily checks and weekly audits in response to the findings of an external audit that was carried out in April/May 2014. The audit aimed to evaluate the NMC's current processes for capturing and maintaining accurate registrant data rather than testing the accuracy of the data held by the NMC. The audit report provided an amber-green rating, meaning that minor weaknesses were identified in the NMC's control framework. The NMC implemented both recommendations made in the audit report by:

- Adjusting its weekly checks so that they include checks back to the fitness to practise panel's decision on the website, in order to ensure that the information is an accurate reflection of the decision made by the panel
- Undertaking periodic checks of data on the registration system that has been subject to changes outside of the normal changes following from the conclusion of a final fitness to practise panel hearing.

17.52 At the date of writing, the NMC had established a new Registration Continuous Improvement Team. It informed us that part of this team's work would be to provide additional periodic checks of data on the registration system.

17.53 We are pleased that the NMC has taken further steps in 2014/2015 to improve the integrity of its register. The number of registration errors that were reported as serious events/adverse incidents in 2014/2015 was not unexpected given the scale of the NMC's registration activity (8,088 fitness to practise updates were made to the register during the same period and the NMC told us that this equated to a 0.15 per cent critical error rate). However, the nature of the incidents reported could have implications for public protection, as well as cast doubt on the integrity of the register. In a number of these cases, the NMC's register showed that the registrants in question were subject to less severe sanctions than those that had actually been imposed – in one case, for as long as 7.5 months. It is concerning that the NMC has been carrying out its routine daily checks and weekly audits since 2012, yet errors such as these were not being identified promptly – this suggests weaknesses in the NMC's checking and auditing processes.

17.54 Given these concerns, and despite improvements, we have concluded that the NMC has still not met the third Standard in 2014/2015. We hope that the improvements the NMC has made in 2014/2015 will be fully embedded going forward so that the NMC can demonstrate further improvements in this area when we next report on its performance.

Fitness to practise

17.55 During 2014/2015, the NMC has met the first, second, third, fourth and ninth *Standards of Good Regulation for fitness to practise*, but did not meet the seventh, eighth or tenth Standards (see paragraphs 17.79–17.98 below). We also found that the NMC met the sixth Standard with concerns and performed inconsistently against the fifth Standard (see paragraphs 17.61–17.78

below). Examples of how the NMC has demonstrated that it has met the remaining Standards are set out below.

- In September 2014, the NMC published updated advice and information for employers on when and how to refer a fitness to practise concern
- Between March and November 2014, as a follow-up to its visits last year, the NMC held a number of workshops with the 11 NHS trusts that were placed in special measures following the Keogh report¹⁸⁹ in order to help them understand how and when to make fitness to practise referrals to the NMC. The workshops covered professional accountability by reference to the *Code*, raising concerns and the role of fitness to practise proceedings, including managing concerns locally. We are pleased that the NMC has continued to work constructively with these NHS trusts in order to ensure that it receives appropriate and timely fitness to practise referrals
- Between April and 30 September 2014, the NMC made 171 fitness to practise referrals to other regulatory bodies
- In July 2014, the NMC published guidance for its decision makers about assessing insight, remediation and the risk of repetition. The guidance aimed to consolidate the NMC's existing decision-making principles and practice. The NMC consulted on the new guidance through an online survey and by holding a listening event with key stakeholders
- The NMC notified parties involved in fitness to practise cases of the outcomes of its investigations in a timely manner and continued to publish fitness to practise decisions on its website. Between 1 April and 30 September 2014, the NMC sent:
 - Investigation stage decision letters to the parties within five days in 97 per cent of cases
 - Adjudication stage decision letters to the parties within five days in 99 per cent of cases.

The fourth Standard of Good Regulation for fitness to practise: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel

17.56 In the 2013/2014 Performance Review Report, we concluded that the NMC had performed inconsistently against the fourth Standard. We recognised that the NMC had demonstrated improvement in relation to this Standard, but we identified concerns about its management of cases at the final fitness to practise panel hearing stage of the fitness to practise process, specifically:

¹⁸⁹ Keogh, B, 2013. *Review into the quality of care and treatment provided in 14 hospital trusts in England: overview report*. Available at <http://www.nhs.uk/NHSEngland/bruce-keogh-review/Pages/published-reports.aspx> [Accessed 12 May 2015].

- Two cases where interim orders had expired before the final fitness to practise panel hearing concluded, as a result of errors in the way they were recorded on the NMC's case management system¹⁹⁰
- A significant increase in the number of applications to the High Court/Court of Session in Scotland for extensions to interim orders. (We discuss our views on the NMC's performance in this area in 2014/2015 in paragraph 17.73.)¹⁹¹

17.57 The NMC continued to perform strongly against its key performance indicator for 80 per cent of interim orders to be imposed within 28 days of referral. In 2014/2015, the NMC achieved this target in 92 per cent of cases (a significant improvement on 84 per cent in 2013/2014). This is also reflected in the median time taken from the receipt of a complaint to a decision being made about an interim order – 3.9 weeks – which compares favourably with the other health and care professional regulators that we oversee. The NMC also maintained its rate of adjournments of interim order hearings – in 2014/2015, 4.3 per cent of interim order hearings were adjourned, compared with 4.5 per cent in 2013/2014. The NMC introduced revised guidance to make it clear that an interim order hearing should only be adjourned where absolutely necessary. It also told us that its Decision Review Group reviews all decisions to adjourn interim order hearings and feeds back learning points to panel members, legal assessors and other NMC staff.

17.58 During 2014/2015, the NMC carried out research into the circumstances in which interim orders are imposed, the relationship between cases where an interim order application is made during the investigation, and the final fitness to practise panel outcomes. As a result of its research, the NMC reviewed its employer referral form and developed a letter to be sent to registrants in cases where it considers that an interim order application may be required – both of which are aimed at obtaining all relevant information at an early stage in the process.

17.59 Our 2014 audit of the initial stages of the NMC's fitness to practise process highlighted some areas of concern that relate to the NMC's handling of interim order cases. The report will be available on our website once it is published: <http://www.professionalstandards.org.uk/>

17.60 Nevertheless, we concluded that the NMC met the fourth Standard in 2014/2015.

The fifth Standard of Good Regulation for fitness to practise: The fitness to practise process is transparent, fair, proportionate and focused on public protection

17.61 In the 2013/2014 Performance Review Report, we concluded that the NMC had performed inconsistently against the fifth Standard. This was because of concerns about:

¹⁹⁰ In 2014/2015, we have considered this aspect of the NMC's performance under the sixth *Standard of Good Regulation for fitness to practise*.

¹⁹¹ In 2014/2015, we have considered this aspect of the NMC's performance under the sixth *Standard of Good Regulation for fitness to practise*.

- The NMC's handling of consensual panel determination cases¹⁹²
- The NMC's handling of voluntary removal cases¹⁹³
- The NMC's process for reviewing closed cases. Our concerns specifically related to the NMC's review of cases it had closed involving members of staff who had worked at the Mid Staffordshire NHS Foundation Trust
- The publication of an erroneous decision, whereby the NMC incorrectly informed the media that a registrant had been found guilty of misconduct by a final fitness to practise panel before the panel had delivered its decision at the hearing.

17.62 Our 2014 audit of the initial stages of the NMC's fitness to practise process highlighted some continuing areas of concern in relation to the NMC's handling of voluntary removal cases. The report will be available on our website once it is published: <http://www.professionalstandards.org.uk/>

17.63 We review all final fitness to practise hearing decisions made by the health and care professional regulators for the purpose of considering whether to exercise our right to appeal any unduly lenient outcomes to the courts. We also lodged three court appeals¹⁹⁴ against unduly lenient final fitness to practise panel decisions following the use of the consensual panel determination process. All three of these cases involved dishonesty, which we did not consider had been appropriately investigated by the NMC or that appropriate allegations had not been put before the final fitness to practise panel. We also had concerns about the quality of the consensual panel determination provisional agreements in these cases and whether they included all relevant information to enable the final fitness to practise panel to make a fully informed decision. We considered that it was not appropriate for the NMC to have used the consensual panel determination process to conclude these cases and that they should have been considered at full hearings at which the final fitness to practise panels could have considered all relevant documentary evidence and heard any relevant witness evidence.

17.64 The NMC informed us that the relevant learning from our three court appeals has been fed back to its legal team and will be incorporated into training for its fitness to practise panels. The NMC also made the following improvements to its consensual panel determination process during 2014/2015:

¹⁹² The consensual panel determination process, which was introduced by the NMC in January 2013, allows a nurse or midwife who is subject to a fitness to practise allegation to agree a provisional sanction with the NMC. The consensual panel determination provisional agreement is then considered by a fitness to practise panel, which has discretion to decide whether to accept the agreement or to require a hearing to be held.

¹⁹³ The voluntary removal process, which was introduced by the NMC in January 2013, allows a nurse or midwife who admits that their fitness to practise is impaired and does not intend to continue practising to apply to be permanently removed from the register without a full public hearing of the fitness to practise allegations against them.

¹⁹⁴ At the time of writing this report, two of the appeals had been settled and one was outstanding.

- It developed an action plan to address the learning points and required improvements that had been identified during the first 12 months of operation of the consensual panel determination process. One of the key learning points identified by the NMC concerned inconsistency in the quality of the content of consensual panel determination provisional agreements, with some agreements failing to properly address sanction and public interest considerations
- It undertook 'dip sampling' of its lawyers' work on consensual panel determination. The NMC informed us that its quality assurance had revealed a consistently high standard of work. Some areas for improvement were identified, including in relation to the drafting of consensual panel determination provisional agreements
- It updated its consensual panel determination information sheet in November 2014 to take account of our learning points as well as the feedback from panel members and stakeholders
- It provided training for fitness to practise panel members, including through a bespoke consensual panel determination e-learning module.

17.65 We hope that these measures will lead to an improvement in the quality of fitness to practise panel decisions in consensual panel determination cases going forward and we will look for evidence of this when we next review the NMC's performance.

17.66 In October 2014, the NMC received a report from an external review of its handling of one fitness to practise case whereby it published an erroneous decision. The NMC incorrectly informed the media that a registrant had been found guilty of misconduct by a final fitness to practise panel before the panel had delivered its decision at the hearing. The report made a number of recommendations in order to mitigate the risk of such an error occurring in the future. At the date of writing this report, the NMC informed us that it expected to implement the actions by April 2015. We recognise that this case is a one-off. However, we consider that it is appropriate to take it into account in considering the fairness of the NMC's fitness to practise process, as well as considering the potential impact of the type of errors that occurred on public confidence in the regulator. We were concerned about the NMC's handling of the complaint that it received from the registrant who was affected and, in particular, its delay in providing a substantive response to them. We also considered that the case raised concerns about the NMC's quality assurance as errors occurred but were not identified at various stages of the process. The NMC assured us that it had taken action to apply the learning from this incident in order to minimise the risk of such errors occurring in the future.

17.67 Based on this evidence, we concluded that the NMC continued to perform inconsistently against the fifth Standard in 2014/2015.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides.

Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders

- 17.68 In the 2013/2014 Performance Review Report (as in 2011/2012 and 2012/2013), we concluded that the NMC had not met this Standard. We noted that some improvements in performance had been achieved, but identified that key areas of concern remained. These were as follows:
- The adjournment rate for final fitness to practise panel hearings remained at an unacceptably high level
 - The NMC's poor performance against its key performance indicator (KPI), which states that 90 per cent of cases should be progressed through the adjudication stage to the first day of a final fitness to practise panel hearing (or meeting) within six months of being referred from the Investigating Committee.
- 17.69 During 2014/2015, the rate of adjournments of final fitness to practise panel hearings was 24 per cent (a slight increase on 22 per cent in 2013/2014). The NMC informed us that 19 per cent of these cases were part heard, meaning that generally the charges will have been considered and witness evidence heard before they are adjourned, but the panel will not have completed its decision making. The NMC explained that it sometimes deliberately schedules cases to go part heard – for example, to accommodate the availability of witnesses (including witnesses with disabilities) or where cases are complex and include many allegations. We are concerned by this approach, as we do not consider it is good practice for fitness to practise panels' consideration of cases to be interrupted in this manner should those interruptions last for lengthy periods. In our view, such interruptions could adversely impact on the quality of the final decisions made by the fitness to practise panel. In addition, any delay in concluding the case may potentially impact negatively on the perceptions of the regulatory process held by the registrant, the complainant and any other witnesses involved.
- 17.70 The NMC continued to collect and analyse data about the causes of adjournments and introduced a number of initiatives aimed at reducing the adjournment rate. For example, from May 2014, NMC staff are required to complete and document checks on cases 45 days in advance of the hearing date ('pre-hearing 45 day sign offs'). The checks include ensuring that:
- The notice of the hearing and all relevant documents have been sent to the registrant and their legal representative
 - The charges (allegations) are not deficient
 - Witness issues (such as special arrangements for any vulnerable witnesses and the potential for non-attendance of witnesses) have been considered
 - The time estimate for the hearing has been reviewed
 - The contents of the bundle of evidence that the NMC will present to the final fitness to practise panel has been reviewed.

- 17.71 We hope that these additional measures will help the NMC demonstrate a reduction in adjournments of final fitness to practise panel hearings when we next review its performance.
- 17.72 During 2014/2015, the NMC significantly improved its performance against its adjudication KPI.¹⁹⁵ It delivered its commitment to meet the target by the end of December 2014, achieving 93 per cent in December 2014. The NMC informed us that it achieved the target by scheduling the oldest cases (the majority of which had already missed the target) first. This left the cases that were six months or younger in the remaining caseload to be scheduled in December 2014. We note that the NMC's performance against its KPI in January 2015 dipped slightly to 89 per cent. Its performance in February and March 2015 also remained slightly below the KPI at 80 per cent and 86 per cent respectively. This still represents a real improvement on the NMC's performance in 2013/2014.¹⁹⁶ The NMC carried over a proportion of cases from its existing caseload¹⁹⁷ into 2015, either because they had to adjourn before the hearing concluded or because the hearing did not start by the end of December 2014. The NMC will continue to update its Council periodically on the progress of the outstanding cases, so that the Council can be assured that there is no ongoing or undue delay in progressing them to a final fitness to practise panel hearing. Importantly, the NMC has assured us that cases that have been referred by the Investigating Committee for a final fitness to practise hearing since the beginning of July 2014 are being scheduled for hearing within six months.¹⁹⁸ Provided that the remaining 257 cases that were carried over from 2014 are concluded without significant delay, the NMC should be able to maintain its improved performance in terms of the adjudication KPI going forward.
- 17.73 Furthermore, the number of applications for extensions of interim orders that the NMC made to the High Court/Court of Session in Scotland remained at a lower rate than in previous years. In 2014/2015, the NMC made 457 applications for interim order extensions in the High Court/Court of Session in Scotland and two of these applications were refused. The NMC told us that 20 per cent of these cases were recorded as being or having been subject to third-party investigations which we recognise means that the time frame for concluding those cases may have been outside of the NMC's control.¹⁹⁹ While the number of interim order extension applications remains high compared to most other regulators, we recognise that it reflects an improvement in terms of the NMC progressing cases through the fitness to practise process more quickly.

¹⁹⁵ The key performance indicator is, for 90 per cent of cases, to be progressed through the adjudication stage to the first day of a final fitness to practise panel hearing (or meeting) within six months of being referred from the Investigating Committee.

¹⁹⁶ It achieved the KPI in only 23 per cent of cases.

¹⁹⁷ 257 of the 1,106 cases that were in its caseload as at July 2014. As at the date of writing, 129 of these cases remained open: 73 cases were part heard and 56 were yet to have their first day of hearing.

¹⁹⁸ 97 per cent of cases referred since 1 July 2014 met the KPI in both February and March 2015.

¹⁹⁹ The NMC only began recording systematically whether cases were subject to a third-party investigation in February 2013 and believe that the total proportion of interim order extension cases that have been subject to third-party investigations is likely to be higher than 20 per cent.

- 17.74 In 2014/2015, there was one instance of an interim order expiring before the fitness to practise proceedings had been concluded. The NMC failed to identify and record on its systems that the High Court, when granting an interim order extension, had only granted a six-month extension. This was only identified after the extended order had expired – at the time that the NMC’s system recorded the order as being due for review. The NMC informed us that it investigated the matter as a serious event review and that it updated its administrative process for logging High Court interim order extensions as a result.
- 17.75 Other improvements achieved in the NMC’s performance against this standard in 2014/2015 were as follows:
- The NMC significantly improved the median time taken from receipt of an initial complaint to the final outcome of the fitness to practise panel hearing – from 97 weeks in 2013/2014 to 81.2 weeks in 2014/2015
 - The NMC improved the median time taken from the final Investigating Committee decision to the final fitness to practise hearing decision – from 44 weeks in 2013/2014 to 34.5 weeks in 2014/2015
 - The NMC reduced the number of outstanding cases that had been received two or more years previously – from 376 in 2013/2014 to 187 in 2014/2015
 - The NMC concluded all six remaining cases in its historic caseload, which had previously been on hold due to third-party investigations.
- 17.76 We noted a slight increase in the median time taken from receipt of an initial complaint to the Investigating Committee’s decision – from 39 weeks in 2013/2014 to 45.5 weeks in 2014/2015. We would recommend that the NMC keeps its timescales for concluding the initial stage of its fitness to practise process under review, and particularly that it analyses the impact on overall timeliness of the introduction of case examiners in 2014/2015 (who will, going forward, take most of the decisions that would previously have been taken by the Investigating Committee).
- 17.77 Our 2014 audit of the initial stages of the NMC’s fitness to practise process also highlighted some areas of concern that are relevant to this Standard. The report will be available on our website once it is published:
<http://www.professionalstandards.org.uk/>
- 17.78 The timely progression of cases is an essential element of a good fitness to practise process. We recognise the significant progress that the NMC has made in this area in 2014/2015, particularly in reducing its median time frames and reducing the number of ‘older’ cases left to be concluded. We consider that the NMC’s enhanced performance is likely to lead to improved public confidence in its fitness to practise function, as well as improving the experience of both registrants and complainants. We remain concerned about the rate of adjournments of final fitness to practise panel hearings and the high number of applications for extensions of interim orders made in 2014/2015 (see paragraph 17.73 above). We are also concerned by the information the NMC has given us about its approach to scheduling hearings, referred to in paragraph 17.69 above. While we have therefore concluded

that the sixth *Standard of Good Regulation for fitness to practise* in 2014/2015 is met, we note our concerns and our hope that the NMC will have addressed them when we next review its performance.

The seventh Standard of Good Regulation for fitness to practise: All parties to a fitness to practise complaint are kept updated on the progress of their case and supported to participate effectively in the process.

- 17.79 In the 2013/2014 Performance Review Report, we highlighted some improvements in the NMC's customer service. However, we concluded that the NMC had not met this Standard, as weaknesses remained.
- 17.80 We note that the NMC has made some improvements in its performance against this Standard during the year:
- It identified areas for improvement in customer service and witness feedback from an analysis of its customer and witness feedback forms and complaints about its fitness to practise processes. Areas for improvement that were identified included keeping parties updated on the progress of their cases and managing customer expectations on what would happen during the process
 - The NMC introduced a new Witness Liaison Team from September 2014. The team was initially based at the NMC's hearings centres, providing on-the-day support to distressed and vulnerable witnesses. The NMC has informed us that, as of March 2015, it expanded the team's role to provide support to all witnesses, from their first contact by the NMC through to the conclusion of the final fitness to practise panel hearing. This is a welcome development. Improved witness support should result in greater willingness by witnesses to participate in final fitness to practise hearings, which is likely to improve the quality of the evidence available to the final fitness to practise panels at those hearings
 - In relation to one particular group of cases concerned with events at a single residential setting, the NMC agreed to meet with the residents' family members to listen to their concerns and feedback. It subsequently agreed to provide these individuals with monthly updates on all the cases so that they had a single source of information (the cases in question were at different stages of the fitness to practise process). We were pleased to see the NMC tailoring its approach to witness/complainant contact appropriately in this situation.
- 17.81 However, our 2014 audit of the initial stages of the NMC's fitness to practise process highlighted some continuing areas of concern that are relevant to this Standard. The report will be available on our website once it is published: <http://www.professionalstandards.org.uk/>
- 17.82 The feedback that we received from third parties about the NMC's customer service in 2014/2015 was also mixed, both in terms of general customer service and witness support. The feedback, together with our 2014 audit findings, indicates that sufficient improvements to the NMC's processes have not yet been made and/or that they are not yet being implemented consistently.

17.83 We are encouraged that the NMC is taking action to improve its performance against this Standard; however, we have not yet seen sufficient evidence of improvement and we have concluded that the NMC continued not to meet the seventh Standard in 2014/2015.

The eighth Standard of Good Regulation for fitness to practise: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession

17.84 In our 2012/2013 and 2013/2014 performance reviews, we reported that we had seen some improvement in the quality of decision making by the NMC's decision makers. However, we were not satisfied that the improvements had been maintained consistently across the NMC's caseload. For this reason, we concluded that the eighth Standard had not been met.

17.85 Our 2014 audit of the initial stages of the NMC's fitness to practise process highlighted some areas of concern that are relevant to this Standard. The report will be available on our website once it is published:
<http://www.professionalstandards.org.uk/>

17.86 We also note our concerns about the NMC's practice of scheduling hearings to go part heard and the impact that this may have on the quality of the final fitness to practise panel decisions reached in these cases (see paragraph 17.69 above).

17.87 We note that NMC has its own internal quality assurance mechanism in place, in the form of its Decision Review Group which meets monthly to identify any learning from decisions made by the Investigating Committee (or case examiners) and fitness to practise panels. Between 1 April 2014 and 21 January 2015, 133 cases were referred to the Decision Review Group for consideration. The NMC informed us that the Decision Review Group's findings will feed into the development of panel member training for 2015/2016.

17.88 The NMC reviews our learning points and its lawyer outcome reviews²⁰⁰ as well as its Decision Review Group findings. The analysis is reported to the Senior Leadership Team and any themes that are identified are fed back to staff and used to inform training and process and policy development.

17.89 During 2014/2015, we appealed 14 NMC final fitness to practise panel decisions (out of 2,476 NMC final fitness to practise hearing outcomes) to the courts. This represents a significant increase in the number of NMC final fitness to practise panel decisions appealed compared to 2013/2014. We also held a further nine case meetings where we ultimately concluded not to appeal the NMC panel's decision. Again, the number of case meetings held in 2014/2015 significantly exceeds the number held in 2013/2014. In our view, the reasons for the apparent upward trend in case meetings and court referrals is a matter that the NMC may wish to consider when carrying out its

²⁰⁰ The NMC's Regulatory Legal Team considers all case outcomes to determine whether any further actions or learning points can be drawn from the case.

own internal quality assurance of fitness to practise panel decision making, in order to identify any trends it needs to address and/or any remedial action that it would be appropriate to take.

17.90 We are pleased that the NMC now has internal processes in place to identify any issues with the quality of decision making by its decision makers and to apply any learning, for example, through training or making changes to its guidance. However, we would encourage the NMC to put appropriate measures in place to monitor the impact of any improvements made, so that it can assure itself that any problem areas have been adequately addressed.

17.91 Based on this evidence, we concluded that the NMC continued not to meet the eighth Standard in 2013/2014.

***The tenth Standard of Good Regulation for fitness to practise:
Information about fitness to practise cases is securely retained***

17.92 In the 2013/2014 Performance Review Report, we concluded that the NMC had not met the tenth Standard. We noted that there had been a reduction in the number of fitness to practise data breaches – from 68 in 2012/2013 to 48 in 2013/2014. However, we remained concerned about the number and seriousness of the data breaches that had occurred.

17.93 During 2014/2015, there were 53 data breaches in the NMC's fitness to practise function. The incidents included: unauthorised disclosure of documents either as a result of sending documents to the wrong recipient in error or enclosing information in error which should not have been enclosed with correspondence; unauthorised disclosure by email as a result of emailing an incorrect addressee, unauthorised disclosure by email as a result of a failure to redact a patient name from an email sent externally, breach of confidentiality via the website; two incidents in which parties at a hearing were given information about another case in error; and unauthorised disclosure of confidential data by its toxicology test supplier.

17.94 The NMC reported three of these breaches to the ICO. In two of these cases (see first and second bullet points below), the ICO decided not to take any further action. In the remaining case (see final bullet point below), the ICO's investigation was still ongoing at the date of writing this report. The details of these breaches are as follows:

- Publication of a registrant's address in the determination uploaded to the NMC's website in error (this was the subject of a complaint by the registrant to the ICO)
- Papers containing sensitive personal data (including reference to a police caution for child neglect) relating to one registrant being enclosed with the hearing documentation for another registrant (this error was identified by the Royal College of Nursing)
- Papers for a pre-hearing meeting at an external hearing venue being received at the venue but mislaid prior to the hearing.

17.95 Our 2014 audit of the initial stages of the NMC's fitness to practise process also highlighted some areas of concern that are relevant to this Standard.

The report will be available on our website once it is published at <http://www.professionalstandards.org.uk/>

- 17.96 The NMC informed us that the following actions are being taken forward in its fitness to practise department in order to strengthen its information security controls:
- Information security e-learning training is being provided for all employees (including temporary and fixed-term contract staff and panel members). At the date of writing, 99 per cent of NMC staff in the fitness to practise directorate and 99 per cent of its fitness to practise panel members had completed the training
 - It has reviewed its *Fitness to Practise Disclosure Policy* and training. The review recommended training for staff on checking the identity of the person to whom information is being disclosed and redaction
 - It has reviewed the use and possible elimination of faxes in the fitness to practise directorate and concluded that faxes are rarely used, but when they are, there is no breach of the NMC's security policies (staff ensure that the recipient is present to receive the fax)
 - It has reviewed and improved the security of the process for couriering documents between NMC sites. The NMC has moved to using locked metal boxes to improve the security of document transport
 - In October 2014, it concluded a review of the methods of postal transmission used for hearings-related documentation. The review concluded that most transmissions were compliant with the requirements for secure transmission set out in the NMC's *Information Classification and Handling Policy*
 - It provided training for staff in the use of Egress (the email encryption software used by the NMC) in September 2014.
- 17.97 The NMC acknowledged that the highest information security risk in its fitness to practise department relates to publication of hearing outcomes on its website (errors were made in five of the 1,870 hearing documents published on its website between April and October 2014). The NMC informed us that ensuring that there are no errors in this area is a priority for improvement and that it has set up a working group which meets regularly to analyse any errors within determinations and identify learning.
- 17.98 It is unfortunate that the number of data breaches that occurred in the NMC's fitness to practise department has increased rather than decreased in 2014/2015 compared with 2013/2014 (although it still remains at a lower level than in 2012/2013). Data security breaches, particularly of the number and seriousness of those described in paragraphs 17.92 and 17.93 above, can damage public confidence in the regulator. We also consider that the number of breaches, together with our 2014 audit findings, indicate a weakness in the NMC's information governance controls. For this reason, we have concluded that the NMC continued not to meet this Standard in 2014/2015.

18. The Pharmaceutical Society of Northern Ireland (PSNI)

Overall assessment

- 18.1 In the 2014/2015 performance review, we found that the PSNI has generally performed well but that it has not met one of the *Standards of Good Regulation*.
- 18.2 We concluded that the PSNI's performance has not met the fifth *Standard of Good Regulation for fitness to practise* (which relates to the fitness to practise process being transparent, fair, proportionate and focused on public protection) because the PSNI only identified 18 months after its new legislation came into effect that, as an unforeseen consequence of the wording of the new legislation, the PSNI no longer had the legal power to take action in relation to fitness to practise concerns about student registrants. The PSNI had continued to progress fitness to practise cases in relation to a number of students²⁰¹ during the period since its new legislation came into effect. Details of our concerns about this can be found in paragraphs 18.25–18.29.
- 18.3 In 2013/2014, the PSNI met all but one of the *Standards of Good Regulation*. It did not meet the tenth *Standard of Good Regulation for fitness to practise* (which relates to information about fitness to practise cases being securely retained) due to a significant data protection breach that occurred in June 2013. We consider that the PSNI has improved its performance against this Standard and we are pleased that it was met in 2014/2015.
- 18.4 Further information about the PSNI's performance against the *Standards of Good Regulation* in 2014/2015 can be found in the relevant sections of the report.

Guidance and standards

- 18.5 The PSNI has continued to meet all of the *Standards of Good Regulation for guidance and standards* during 2014/2015. It has demonstrated this by maintaining and keeping under review its standards of competence and conduct and additional guidance, and by engaging effectively with its stakeholders in this work.
- 18.6 Examples of how the PSNI has demonstrated that it continued to meet these Standards are:
- The PSNI progressed its review of the *Code of Ethics 2009*, which began in 2013. The PSNI engaged with its stakeholders in a number of pre-consultation communications in order to gather their views on the current *Code of Ethics 2009*. One of the proposals was to rename the document the *Code of Conduct*. The draft *Code of Conduct 2015* sets out the

²⁰¹ Where we refer to student registrants, this relates to pre-registration trainees undertaking a one-year training course in a pharmacy in patient-facing roles.

professional standards, behaviour and conduct that the public can expect from pharmacists. It is intended to guide and support registrants in their practice, professional development and decision making. The PSNI's consultation on the *Code of Conduct* ended in May 2015

- The PSNI conducted its second annual survey of registrants – which achieved a somewhat higher response rate than the 2013 registrant survey (15.6 per cent compared with 10 per cent). While the PSNI considers that this improved response rate means it can now draw out key themes from the survey, we remain of the view that it cannot do so with confidence as the response rate is still very low, and that the work that the PSNI is doing to consider how to improve registrant engagement with this survey should continue
- During 2013/2014, the PSNI told us that it planned to conduct a perception survey of the public during 2014. That plan was reconsidered by the PSNI in 2014/2015 and it decided instead to engage with the stakeholders it is regularly in contact with to seek their perceptions about the PSNI as an organisation
- The PSNI reviewed its communication and engagement strategy in 2014/2015 and, as a result, decided to target its communication and engagement activities at various specific stakeholder groups, such as ethnic minorities in Northern Ireland and members of the lesbian, gay, bisexual and transgender community. We commend the PSNI for seeking the views of under-represented groups in its work.

Raising concerns

18.7 In the 2012/2013 and 2013/2014 Performance Review Reports, we commented on concerns about an apparent reluctance among some pharmacists in Northern Ireland to raise concerns about other regulated health and care professionals. It is therefore particularly welcome that in October 2014, the PSNI signed up to a joint statement with seven of the eight other health and care professional regulators in the UK to promote the professional duty of candour, and that the PSNI has indicated that the duty of candour will be considered as part of the review of the *Code of Ethics 2009*. In addition, following a review of its own *Guidance on Raising Concerns* as well as discussions with its stakeholders, the PSNI identified that organisational culture may be a barrier to its registrants raising concerns. In order to address this, the PSNI plans to meet with employers during 2015 in order to discuss complaint management, raising concerns, and the duty of candour. The PSNI also plans to take forward work to improve the reporting of dispensing errors during 2015 as part of its contribution to the Rebalancing Programme.²⁰² One of the key objectives of the programme is to improve

²⁰² The Rebalancing Medicines Legislation and Pharmacy Regulation Programme Board is reviewing the balance between pharmacy and medicines legislation and regulation to ensure these provide safety for users of pharmacy services, reduce unnecessary legislation, and allow innovation and development of pharmacy practice. The PSNI is a member of the Board. More information can be found at <https://www.gov.uk/government/groups/pharmacy-regulation-programme-board> [Accessed 11 May 2015].

candour by improving the reporting of incidents and near misses relating to dispensing errors. The work by the PSNI to promote the duty of candour is particularly noteworthy as we acknowledge that the recommendations of the Francis Report²⁰³ do not apply to Northern Ireland.

Education and training

18.8 The PSNI has met all of the *Standards of Good Regulation for education and training* during 2014/2015. Examples of the ways in which the PSNI has demonstrated this are:

- In April 2014, the PSNI published the final version of its *CPD Framework and Standards* which sets out what its registrants must do in order to satisfy the statutory requirement for registrants to complete continuing professional development (CPD). The PSNI reviewed and updated the information about this on its website, it finalised guidance documents for stakeholders and it engaged with its stakeholders in relation to this piece of work. As a result of the feedback about the CPD process that was provided by the responses to the PSNI's second annual survey of registrants (see paragraph 18.6 second bullet above), the PSNI has identified the need to make various improvements to the CPD process in the future, including encouraging registrants to engage earlier in the CPD process (the PSNI considers that earlier engagement by registrants is likely to lead to a reduction in non-compliance with the requirements)
- The PSNI continued to quality assure the pre-registration training programme. This included obtaining feedback from an external examiner, as well as seeking views from trainees and tutors. The external examiner carries out a review of the pre-registration process each year and during 2014/2015, they expressed satisfaction with the current process and the current pre-registration training standards
- The PSNI discussed with the educational institutions that provide undergraduate training how they manage complaints and the mechanisms by which concerns about the institutions can be raised by undergraduate students and other parties, as well as the impact of the duty of candour. The PSNI concluded that the educational institutions it oversees have mechanisms in place to appropriately enable undergraduate students to raise concerns about their training. The PSNI told us that it is satisfied that risks about the quality of education and training provision can be properly identified through these existing mechanisms, and informed us that there have been few complaints during 2014. Pre-registration trainees work in a pharmacy setting for the duration of their one-year training. The PSNI said it encourages trainees to raise any concerns with the PSNI during the training year and that it considers that the appraisal process for trainees is also an appropriate opportunity for trainees to raise concerns about education provision. We consider that it would be preferable for the PSNI to introduce a dedicated mechanism

²⁰³ Francis, R, 2013. *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, chaired by Robert Francis QC, 2013. Available at <http://www.midstaffpublicinquiry.com/report> [Accessed 11 May 2015].

that allows undergraduate students and trainees to raise concerns about educational institutions and/or the provision of training directly with the PSNI, and we recommend that the PSNI keeps under review any risks arising from the absence of such a dedicated mechanism, particularly as the PSNI progresses its engagement around promotion of the duty of candour.

Continuing Professional Development (CPD) and continuing fitness to practise

- 18.9 In June 2013, the PSNI gained statutory powers to remove registrants from the register if their fitness to practise could not be assured due to their failure to complete CPD. The PSNI implemented its mandatory CPD scheme in 2014/2015 – the scheme requires all registrants to submit a portfolio of the CPD they have carried out, together with an explanation of its relevance to their practice. Having reviewed a proportion of the CPD portfolios, during 2014/2015, the PSNI removed 10 registrants from the register for failing to comply with the statutory requirements for CPD. We consider this demonstrates the effective use of the PSNI’s new statutory power.
- 18.10 The PSNI has also continued to progress its plans for establishing an outcomes-focused model for assuring its registrants’ continuing fitness to practise. The model will be based on an enhanced version of the current CPD framework – registrants will be required to complete the relevant CPD and to have their practice independently assessed. We are pleased that the PSNI’s Council has agreed that the continuing fitness to practise model will be in line with our paper, *An Approach to Assuring Continuing Fitness to Practise based on Right-Touch Regulation Principles*,²⁰⁴ and that it will be risk-based and relevant for registrants working in all aspects of pharmacy practice. The PSNI considers that legislative change may be required to provide it with power to enforce compliance with the continuing fitness to practise model – it has developed two model schemes, only one of which would mean that legislative change was necessary. The PSNI anticipates implementing its continuing fitness to practise scheme in 2019/2020. We encourage the PSNI to take account of the risks that may arise in the interim period and/or from any delay to the anticipated timetable for implementation.

Registration

- 18.11 The PSNI has met all of the *Standards of Good Regulation for registration* during 2014/2015. Examples of how the PSNI has demonstrated this are set out below:
- The PSNI has continued to ensure that only those individuals who meet the requirements for registration are registered. During 2014/2015, the PSNI removed 10 registrants from the register for failing to comply with the statutory requirements for CPD (see paragraph 18.9 above). Before any individual who has been removed from the register either as a result

²⁰⁴ CHRE, 2012. An approach to assuring continuing fitness to practise based on right-touch regulation principles. Available at <http://www.professionalstandards.org.uk/library/document-detail?id=69393f02-d5a3-4ae0-a1bba7b437dc3485> [Accessed 11 May 2015].

of non-compliance with the CPD requirements or as a result of an application for voluntary removal is permitted to return to the register, they are required to provide evidence that they have completed the CPD requirements

- The PSNI has continued to publish fitness to practise information about its registrants on its online register and website. In June 2014, it published its final policy on the disclosure and publication of fitness to practise information (following a public consultation that took place in 2013). This policy was developed to take account of the expanded range of fitness to practise sanctions that was introduced by the changes to the PSNI's legislation in October 2012
- We are pleased to note that the PSNI publishes a separate list of the names of individuals who have been struck off from its register on its website and has made it clear that the register does not contain the names of any individuals whose names have been struck off
- As part of our performance review of the regulators, we conduct an accuracy check of each regulator's register, which helps us assess compliance with the third *Standard of Good Regulation for registration*. We are pleased that all entries that we checked on the PSNI register were accurate
- The PSNI commissioned an external audit of its registration function in October 2014. The PSNI declined to provide us with the audit report or a summary of its findings (citing contractual reasons). The PSNI told us that the audit revealed no significant concerns
- The PSNI has continued to promote to pharmacy employers the importance of checking the registration status of their employees. During 2014, the PSNI conducted a survey about the accessibility of the register to employers which showed that respondents checked the online register at least once a year. One employer advised the PSNI that they did not check the registration status of their employees and the PSNI made appropriate follow-up enquiries to satisfy itself that unregistered persons were not working at the premises.

Regulation of pharmacy technicians

18.12

In the 2012/2013 and 2013/2014 Performance Review Reports, we noted that the PSNI was undertaking work to consider the value of introducing a voluntary register for pharmacy technicians in Northern Ireland. As part of this work, the PSNI evaluated detailed surveys about the roles and responsibilities of registered pharmacy professionals (including pharmacy technicians) that had been carried out by the GPhC in relation to pharmacy professionals in Great Britain. The PSNI then consulted a group of community, hospital and academic pharmacy stakeholders in Northern Ireland in order to consider the survey findings within the context of delivering pharmacy services in Northern Ireland. During 2014/2015, the PSNI's Council considered the information in the GPhC's survey and concluded that the evidence supported the introduction of statutory (rather than voluntary) regulation of pharmacy technicians in Northern Ireland. The PSNI is currently

in discussions about this with the Department of Health, Social Services and Public Safety for Northern Ireland (DHSSPSNI). This will be taken forward as part of the Rebalancing Programme.²⁰⁵

Guidance on how the PSNI will check compliance with indemnity insurance requirements

- 18.13 The Health Care and Associated Professions (Indemnity Arrangements) Order 2013 introduced a statutory requirement on regulated health and care professionals to have appropriate indemnity insurance in place, so that individual patients or service users can claim compensation in the event of negligence. In connection with this, in April 2014, the PSNI consulted on its draft guidance about indemnity insurance (which aims to explain how the PSNI will check registrants' indemnity cover and what action it will take if appropriate cover is not in place). We were disappointed that the PSNI rejected the suggestion we made in response to the consultation – that the PSNI should supplement the checks it proposed to undertake (it proposed only to ask registrants for evidence of their indemnity cover if a complaint has been made, or in the event of concerns, that appropriate indemnity cover may not be in place) by also carrying out random checks on a proportion of registrants. The PSNI took the decision not to introduce any random checks as it considers that would be disproportionate.
- 18.14 The guidance also suggested that in the majority of circumstances, a failure to hold appropriate cover could be dealt with by administratively removing the registrant from the register. However, we know from our scrutiny of regulators' fitness to practise decisions that practising without indemnity insurance calls into question a health professional's commitment to patient safety. In our response to the PSNI's public consultation, we suggested that public protection would be enhanced if the PSNI treated practising without indemnity insurance as a fitness to practise concern. We encourage the PSNI to treat any *wilful* failure by a registrant to comply with the professional indemnity insurance rules as a fitness to practise concern.

Fitness to practise

- 18.15 During 2014/2015, the PSNI has demonstrated that it met nine of the *Standards of Good Regulation for fitness to practise*.
- 18.16 We concluded that the PSNI has not met the fifth Standard (the fitness to practise process is transparent, fair, proportionate and focused on public protection) for the reasons set out in paragraphs 18.25–18.29. However, we are pleased to report that the PSNI has demonstrated that it now meets the tenth *Standard of Good Regulation for fitness to practise* (information about fitness to practise cases is securely retained).
- 18.17 Examples of how the PSNI has demonstrated that it met eight of the *Standards of Good Regulation for fitness to practise* are as follows:

²⁰⁵ See footnote 202.

- The PSNI introduced a new process that it applies where the complainant no longer wishes to pursue their complaint. The process involves risk assessing the concerns and the Registrar making attempts to verify the facts and allegations by contacting various stakeholders in Northern Ireland such as the Pharmacy Network Group. When we reviewed the process, we considered that the PSNI should seek to ensure its approach achieves the correct balance between maintaining confidentiality and ensuring that concerns are properly investigated. We suggest that the PSNI considers amending this process in order to ensure that serious fitness to practise concerns can be investigated even where the complainant wishes to withdraw from the process. We consider it to be particularly important that the PSNI maximises its ability to investigate in such circumstances, given the context of an apparent reluctance by some pharmacists in Northern Ireland to raise concerns about others
- We are pleased to report that in February 2014, the PSNI introduced a mechanism for obtaining feedback from registrants and complainants about the service they receive during the fitness to practise process. During 2014/2015, the PSNI sent anonymous questionnaires to participants involved in fitness to practise cases that had concluded in order to capture their experience of the process. The PSNI only received two responses during 2014/2015 (both of which provided positive feedback). The PSNI recognises that it is not possible to draw meaningful conclusions from such a small number of responses
- In May 2014, we carried out an audit of all the cases that the PSNI had closed at the initial stages of its fitness to practise process (i.e. without referral to a final fitness to practise panel hearing) in the period from 1 August 2013 to 30 April 2014. We concluded that the PSNI's closure decisions posed no significant risk to public protection or to public confidence in the profession.²⁰⁶ We identified some improvements that the PSNI had achieved since our previous audit (in 2013) and we made a series of recommendations for the improvement of risk assessments, evidence gathering, record keeping and the reasoning provided in the decision letters sent to the parties. The PSNI has advised us that, subsequent to our audit report being published, it is progressing those recommendations. The audit did not raise any concerns about the PSNI's performance against the *Standards of Good Regulation for fitness to practise*, other than the concern about the PSNI's handling of fitness to practise complaints about student registrants, which is detailed in paragraphs 18.25–18.29 as it is relevant to the fifth Standard for fitness to practise
- The PSNI made a change to the threshold criteria that are used by the Registrar when deciding about whether to refer a complaint about the fitness to practise of a registrant to the Scrutiny Committee (the

²⁰⁶ Professional Standards Authority, 2014. *Audit of the Pharmaceutical Society of Northern Ireland's initial stages fitness to practise process*. Available at <http://www.prtenthofessionalstandards.org.uk/docs/default-source/audit-reports/psni-ftp-audit-report-2014.pdf?sfvrsn=0> [Accessed 11 May 2015]

committee that decides whether to refer cases to a final fitness to practise hearing). This change was made in order to expressly highlight the appropriateness of a referral where there is evidence that the registrant has failed to demonstrate high standards of personal and professional conduct. We will check to see how the threshold criteria are being applied by the PSNI in future reviews of its performance

- During 2014/2015, the PSNI's Statutory Committee (its final fitness to practise panel) concluded four cases. We did not appeal any of its decisions. We note that the PSNI held training for its fitness to practise panel members in May 2014 which included consideration of the learning points we had highlighted in previous cases
- The PSNI has also progressed its review of the indicative sanctions guidance used by its final fitness to practise panel (the Statutory Committee) in deciding which sanction to impose. During 2014/2015, the PSNI sought the views of Statutory Committee members – who confirmed that they find the document comprehensive and easy to use. The PSNI now plans to commence a targeted stakeholder review of this guidance during 2015 to inform its decision about whether any revisions are required. We are pleased to note that the PSNI has confirmed that it will consult on any revisions to its indicative sanctions guidance, particularly as it did not consult on the current version of the guidance. We note the length of time that it has taken to complete the review of the indicative sanctions guidance and we hope that this review is completed in 2015/2016 given the importance of this guidance for ensuring that consistent decisions are taken by the final fitness to practise panel
- In April 2014, the PSNI commissioned an external audit of all its activities, including its fitness to practise process. We are unable to comment on that audit's findings, as the PSNI has declined (on the basis of contractual reasons) to provide us with the audit report or a summary of it. We note, however, that the PSNI has told us that the audit did not reveal any significant concerns, although it did lead to the PSNI undertaking some improvement work.

The sixth Standard of Good Regulation for fitness to practise: Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders

18.18

During our 2014 audit of the initial stages of the PSNI's fitness to practise process, we identified delays in three of the 12 cases the PSNI had closed during the period 1 August 2013 to 30 April 2014. Overall, however, we concluded that the PSNI had adequate systems in place for monitoring case progression.

18.19

During 2014/2015, the median length of time taken from receipt of the complaint to the final fitness to practise hearing increased by 17 weeks, so that it is now 91 weeks. While we would regard any median time frame of that length as unacceptable generally, in the case of the PSNI, we do not consider that that figure is likely to be representative of the general timeliness

of its fitness to practise process. We have reached that conclusion because in 2014/2015, the PSNI only concluded four cases at a fitness to practise hearing and, exceptionally, in three of those cases²⁰⁷ police or health investigations inevitably delayed the conclusion of the PSNI's proceedings.

- 18.20 During both 2013/2014 and 2014/2015, the PSNI failed to meet its key performance indicators (KPIs) relating to the time taken to conclude cases at its final fitness to practise panel (Statutory Committee) hearings – no case met the KPIs in either year. The PSNI advised us that all four cases that were considered by the Statutory Committee did not meet this KPI during 2014/2015. In addition, the PSNI failed in two out of three cases to meet its KPI relating to the time taken to refer the case to its Scrutiny Committee following receipt of a report from the DHSSPSNI or the Health and Social Care Board. However, as referred to in paragraph 18.19 above, there were exceptional reasons for the delay in these cases in 2014/2015, relating to police or health investigations.
- 18.21 During 2014/2015, the PSNI changed its KPI to provide for longer time frames for the conclusion of cases, following a review of the actual times achieved in the cases it had already concluded during 2013/2014 and 2014/2015, as well as the KPI used by the other health and care professional regulators.
- 18.22 We recognise that it may be more challenging for the PSNI to set itself achievable KPI than it is for some of the larger health and care professional regulators, given the small number of cases it handles (which means that if only one or two involve exceptional circumstances, they can significantly affect the overall performance data).
- 18.23 As well as the revisions to its KPI, the PSNI is seeking amendments to an existing MOU with the Pharmacy Network Group to improve the timeliness of information sharing at the investigation stage and to take into account the revisions it has made to its KPI. It also plans to work with its external solicitors to improve the timeliness of documents produced by them when investigations are completed and it has employed a legal officer which it hopes will also lead to a reduction in the length of its investigations.
- 18.24 While we have some concerns about the PSNI's performance, we have concluded that the PSNI has met this Standard during 2014/2015. We are reassured that the PSNI is considering how it can improve efficiency in its fitness to practise process and we encourage the PSNI to continue to do so.

The fifth Standard of Good Regulation for fitness to practise: the fitness to practise process is transparent, fair, proportionate and focused on public protection

- 18.25 As a result of our 2014 audit of the initial stages of the PSNI's fitness to practise process, we identified a serious concern that, following the change to the PSNI's legislative framework in October 2012, it had failed to identify

²⁰⁷ The fourth case was one that should not have proceeded to a fitness to practise hearing in any event, as it concerned a student registrant.

that it no longer had the legal power to investigate the fitness to practise of student registrants, and that it had continued to investigate fitness to practise concerns relating to student registrants. Our audit identified that the PSNI had opened three investigations into student registrants (or individuals applying to become student registrants) in May 2013. Shortly after our on-site audit concluded, the PSNI informed us that its final fitness to practise panel (the Statutory Committee) had identified in May 2014 (18 months after the new legislation came into effect) during the hearing of one of these three cases that the PSNI had no legal power to take fitness to practise action against student registrants.

18.26 We are pleased to report that the PSNI took immediate remedial action in respect of the three student registrants concerned, which was:

- To delete the relevant fitness to practise records, provide information to the relevant student registrants and rectify one warning that had been issued
- To update the information on its website to accurately reflect the current procedure if concerns are raised about a student registrant's fitness to practise
- To make amendments to its processes so that any fitness to practise issues can be addressed after a student registrant has successfully registered as a pharmacist.

18.27 In addition, the PSNI introduced a change to its *Procedures for the initial education and training of pharmacists in Northern Ireland* to state that any serious concerns raised about pre-registration trainee pharmacists will be investigated by the PSNI. The concerns will be notified to the trainee, their tutor and their employers. The PSNI may also require a trainee to sign an undertaking that may restrict their activity or working conditions in a specified way for a specified period. A serious concern may lead to a further investigation and regulatory action by the PSNI after the trainee applies for admission to the register of pharmacists. The document is being used by education institutions and sections of the guidance related to how concerns about trainees are handled are routinely brought to the attention of trainees at the beginning of the pre-registration training programme

18.28 We note that the PSNI's approach to handling concerns about pre-registration trainees is different from the approach taken by the GPhC (the pharmacy regulator for Great Britain) due to their different legislation. The PSNI assesses any fitness to practise concerns about trainees after their registration as pharmacists, whereas the GPhC assesses any fitness to practise issues as a part of considering the application for registration. We will follow up on the impact/effectiveness and proportionality of the PSNI's approach in future reviews of the PSNI's performance.

18.29 While we recognise that it was not the PSNI's intention to act outside of its legal jurisdiction during 2014/2015, nevertheless, it did so in relation to three individuals due to a failure to appreciate the impact of the legislative changes that had taken effect. We have therefore concluded that the PSNI did not meet this Standard in 2014/2015.

19. Annex 1: Index of regulated health and care professions

Regulator	Regulated profession
General Chiropractic Council	Chiropractors
General Dental Council	Dentists Dental hygienists Dental therapists Clinical dental technicians Orthodontic therapists Dental nurses Dental technicians
General Medical Council	Doctors
General Optical Council	Dispensing opticians Optometrists
General Osteopathic Council	Osteopaths
General Pharmaceutical Council	Pharmacists Pharmacy technicians
Health and Care Professions Council	Arts therapists Biomedical scientists Chiropodists Clinical scientists Dieticians Hearing aid dispensers Occupational therapists Operating department practitioners Orthoptists Orthotists Paramedics Physiotherapists Podiatrists Practitioner psychologists Prosthetists Radiographers Social workers in England Speech and language therapists
Nursing and Midwifery Council	Nurses Midwives
Pharmaceutical Society of Northern Ireland	Pharmacists

20. Annex 2: Our Standards of Good Regulation

Introduction

- 20.1 Our *Standards of Good Regulation* cover the regulators' four core functions. These are:
- Setting and promoting guidance and standards for the profession(s)
 - Setting standards for, and quality assuring, the provision of education and training
 - Maintaining a register of professionals
 - Taking action where a professional's fitness to practise may be impaired.
- 20.2 The *Standards of Good Regulation* are the basis of our performance review process. They describe the outcomes of good regulation for each of the regulators' functions. They also set out how good regulation promotes and protects the health, safety and well-being of patients, service users and other members of the public, and maintains public confidence in the profession.
- Using the *Standards of Good Regulation* in the performance review**
- 20.3 We ask the regulators to submit evidence on whether they meet the standards and how they have evaluated the impact of their work in promoting and protecting the public and maintaining public confidence in the profession. To help the regulators in the drafting of their submissions, we have suggested examples of the type of evidence that they could provide us with. We also provide an evidence template for the regulators to complete. The suggested evidence may change over time.
- 20.4 Once we have received the regulators' evidence, we assess their performance against the Standards by:
- Identifying each regulator's strengths
 - Identifying any areas for improvement
 - Identifying good practice and excellence.
- 20.5 We also ask the regulators at the beginning of their evidence (Section 1) to comment on their overall performance by answering a set of questions.

21. Annex 2, Section 1: Overview

Introduction

- 21.1 This section covers general issues relating to the regulators' performance, including how they have responded to last year's review, how they comply with the principles of good regulation and their liaison with other bodies.

Response to last year's performance review

- What consideration have you given to issues raised in the previous year's Performance Review Report, including the adoption of any good practice?
- How have you addressed the areas for improvement identified in your individual Performance Review Report?
- Where has your performance improved since last year?
- What areas for concern have you identified in each of the four functions and how have these been addressed?
- What areas of good practice have you identified in each of the four functions?

Responding to change, learning and information

- How is learning from the following five areas taken into account in each of the functions?
 - Other areas of your work, such as fitness to practise, policy development or quality assurance of educational institutions
 - Organisational complaints
 - The outcomes of the Authority's work
 - Feedback from stakeholders from the four UK countries
 - Public policy programme reports from the four UK countries
- How have you addressed information, other than formal fitness to practise complaints, which you may have received from other sources on possible failures in performance of organisations or individuals?
- How have you responded to changes in regulation or forthcoming changes in regulation?

Liaison with other bodies

- How have you worked with service regulators, other regulatory bodies or other bodies with shared interests to:
 - Ensure that relevant intelligence is shared, within legislative requirements, on individuals or organisations?
 - Ensure that cross-regulatory learning is shared?

22. Annex 2, Section 2: Guidance and standards

Introduction

- 22.1 All of the regulators are responsible for publishing and promoting standards of competence and conduct. These are the standards for safe and effective practice which every health and care professional should meet to become registered and to maintain their registration. They set out the quality of care that patients and service users should receive from health and care professionals.
- 22.2 Regulators also publish additional guidance to address specific or specialist issues. These complement the regulators' standards of competence and conduct.

The Standards of Good Regulation relating to guidance and standards

1. Standards of competence and conduct reflect up-to-date practice and legislation. They prioritise patient safety and patient-centred care.
2. Additional guidance helps registrants apply the regulators' standards of competence and conduct to specialist or specific issues, including addressing diverse needs arising from patient-centred care.
3. In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and international regulation, and learning from other areas of the regulators' work.
4. The standards and guidance are published in accessible formats. Registrants, potential registrants, employers, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed.

How does good regulation through standards and guidance promote and protect the health, safety and well-being of patients, service users and other members of the public and maintain public confidence in the profession?

- Provides a clear framework that health and care professionals in the UK and social workers in England should meet when providing care, treatment and services to patients and service users
- Provides a clear framework so that members of the public, service users and patients can hold registrants to account by raising concerns when the standards and guidance are not followed
- The standards and guidance meet the needs of relevant stakeholders.

What evidence could be provided?

- 22.3 We need to know:

- How the regulators have met the *Standards of Good Regulation*
- How they have evaluated the impact of their work in this area.

22.4 The following evidence could be provided:

- The standards of competence and conduct and information on how they reflect up-to-date practice and legislation, prioritise patient safety and patient-centred care
- Guidance produced or being developed and how this will help registrants apply the regulators' standards of competence and conduct to particular issues
- Plans for reviewing or developing guidance and standards, including what stakeholders were approached and how their views and experiences were taken into account alongside external events and learning from other areas. The outcomes of the revision or development and how the learning from this work is used within and outside of the standards and guidance function
- Details of how the regulators ensure that the documents are understandable and accessible – for example, publication in different languages, easy read, plain English and circulation in GP practices and the Citizen Advice Bureaux
- Evidence of work undertaken to take account of the developments in European and international regulation
- The mechanisms used by the regulator to assess how they are performing and how they use the results to improve their practices.

23. Annex 2, Section 3: Education and training

Introduction

- 23.1 The regulator has a role in ensuring that students and trainees obtain the required skills and knowledge to be safe and effective. They also have a role in ensuring that, once registered, professionals remain up to date with evolving practices and continue to develop as practitioners.
- 23.2 As part of this work, the regulators quality assure and, where appropriate, approve educational programmes that students must complete in order to be registered. Some also approve programmes for those already on the register who are undertaking continuing professional development (CPD), a particular qualification or specialist training.

The Standards of Good Regulation relating to education and training

1. Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user-centred care. The process for reviewing or developing Standards for education and training should incorporate the views and experiences of key stakeholders, external events and the learning from the quality assurance process.
2. Through the regulator's CPD/revalidation systems, registrants maintain the standards required to stay fit to practise.
3. The process for quality assuring education programmes is proportionate and takes account of the views of patients, service users, students and trainees. It is also focused on ensuring the education providers can develop students and trainees so that they meet the regulator's standards for registration.
4. Action is taken if the quality assurance process identifies concerns about education and training establishments.
5. Information on approved programmes and the approval process is publicly available.

How does good regulation through education and training promote and protect the health, safety and well-being of patients, service users and other members of the public and maintain public confidence in the profession?

- Assures the public that those who are registered have and/or continue to meet the regulator's standards
- Assures the public that those providing education and training to students, trainees and professionals give them the required skills and knowledge so that they can practise safely and effectively
- Effective stakeholder involvement in the education and training process increases everyone's trust, confidence and knowledge of health and care

professional regulation in the UK and the regulation of social workers in England.

What evidence could be provided?

23.3

We need to know:

- How the regulators have met the *Standards of Good Regulation*
- How they have evaluated the impact of their work in this area.

23.4

The following evidence could be provided:

- The standards to be met by students and how they link to the standards of competence and conduct for registrants
- Where available, evidence of the regulator's mechanisms, which enable them to be aware of action taken by training establishments against students on fitness to practise issues and a system for learning from these outcomes. For example, are outcomes taken into account in the quality assurance process and revision of standards?
- The standards to be met by education and training providers, how these reflect patient- and service user-centred care and protect the public, and how they link to standards of competence and conduct for registrants
- Guidance given to education and training establishments to help ensure that disabled students do not face unnecessary barriers to successful careers in health in the UK or careers in social work in England
- The plans for reviewing or developing standards for students and education and training providers, including what stakeholders were approached, and how their views and experiences and other areas of learning are taken into account. The outcomes of this work and how the learning from this work is used within and outside of the education function
- Details of the monitoring and approval processes for education and training providers, including how the views and experiences of stakeholders and other quality assuring bodies are taken into account
- Details of how many assessments were undertaken, how many concerns were identified through the quality assurance process and what action was taken to address these concerns
- Details of how stakeholders can access the regulator's final assessments of education and training providers and the regulator's approval process – for example, through publication on its website
- Details of the regulator's revalidation proposals
- Details of how the regulator ensures that CPD is targeted towards the professional developing their skills and knowledge in their areas of practice and that public protection is prioritised. For example, how many audits were carried out, were issues identified and how were these addressed?
- The mechanisms used by the regulator to assess how they are performing and how they use the results to improve their practices.

24. Annex 2, Section 4: Registration

Introduction

- 24.1 In order for a health and care professional to practise legally in the UK, and for social workers to practise legally in England, they must be registered with the relevant regulator. The regulators only register those professionals who meet their standards. The regulator is required to keep an up-to-date register of all the professionals it has registered. The register should include a record of any action taken against a professional that limits their entitlement to practise.

The Standards of Good Regulation relating to registration

1. Only those who meet the regulator's requirements are registered.
2. The registration process, including the management of appeals, is fair, based on the regulators' standards, efficient, transparent, secure, and continuously improving.
3. Through the regulators' registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice.
4. Employers are aware of the importance of checking a health and care professional's registration in the UK or a social worker's registration in England. Patients, service users and members of the public can find and check a health and care professional's registration in the UK or a social worker's registration in England.
5. Risk of harm to the public, and of damage to public confidence in the profession, related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner.

How does good regulation through registration promote and protect the health, safety and well-being of patients, service users and other members of the public and maintain public confidence in the profession?

- Assures the public that professionals are regulated and are required to meet certain standards before they are able to provide care, treatment or services to them
- Informs the public of any limits imposed on the way a registered professional is allowed to practise
- Helps the public and others to identify and report those who practise illegally.

What evidence could be provided?

- 24.2 We need to know:

- How the regulators have met the *Standards of Good Regulation*
- How they have evaluated the impact of their work in this area.

24.3 The following evidence could be provided:

- Details of the checks carried out by the regulator to ensure that only those who are fit to practise are registered including revalidation/CPD checks
- Details of the registration process, including the management of appeals and how the regulator ensures that applications are processed efficiently
- Evidence of activity undertaken to ensure that only EEA and international registrants who meet the regulators' standards, within the legal framework, are registered
- The number of registration applications considered
- The number of appeals considered
- The number of appeals upheld
- How the case management system/process enables the collection and analysis of reliable data to ensure that there is no bias in the process, with evidence of this testing being carried out by the regulator
- How the processes and procedures in place are fair, objective and free from discrimination
- The level of detail included on the register and the reasons for this: for example, a council decision, legislation, rules or the regulator's disclosure policy
- Evidence of the regulator's compliance with its information security policies and with the relevant legislation. The number of data loss/breach incidents which have occurred
- The activities undertaken to communicate to employers the importance of checking that a professional is registered. Evidence of employers informing the regulators that a professional is no longer registered or not registered
- How the regulators make their registers available to the public, service users and patients. Evidence of the amount of contacts from public, service users and patients about the regulator's registers
- Activities undertaken to identify non-registrants using a protected title or undertaking a protected act. Details of proportionate and risk-based action taken to reduce the risk of harm to the public and damage to public confidence in the profession of non-registrants using a protected title or undertaking a protected act: for example, increasing public awareness of the importance of health and care professional registration and regulation, sending 'cease and desist' letters, and fostering relationships with organisations that have a shared interest in preventing title misuse
- The mechanisms used by the regulator to assess how it is performing and how it uses the results to improve their practices.

25. Annex 2, Section 5: Fitness to practise

Introduction

25.1 Anyone, including members of the public, employers and the regulators themselves, can raise a concern about a registered professional's conduct or competence that calls into question their fitness to practise. The regulators are required to take action under their fitness to practise procedures where they receive such concerns. This can lead to a variety of outcomes, including no further action, a registered professional being prevented from practising or restrictions being imposed on their practice.

The Standards of Good Regulation relating to fitness to practise

1. Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant.
2. Information about fitness to practise concerns is shared by the regulator with employers/local arbitrators, system and other professional regulators within the relevant legal frameworks.
3. Where necessary, the regulator will determine if there is a case to answer and, if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation.
4. All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.
5. The fitness to practise process is transparent, fair, proportionate and focused on public protection.
6. Fitness to practise cases are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients. Where necessary, the regulator protects the public by means of interim orders.
7. All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process.
8. All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession.
9. All final fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders.
10. Information about fitness to practise cases is securely retained.

How does good regulation through fitness to practise promote and protect the health, safety and well-being of patients, service users and other members of the public and maintain public confidence in the profession?

- Assures the public that action is taken against those professionals whose fitness to practise is impaired

- Assures the public that those whose fitness to practise is impaired are not able to continue practising or practising unrestricted
- Helps the public to understand why action is and is not taken to limit a health and care professional's practice in the UK or a social worker's practice in England
- A joined up approach to fitness to practise mitigates the risk to public protection from regulators working independently of each other
- Effective involvement of all parties in the fitness to practise process increases trust, confidence in – and knowledge of – health and care professional regulation.

What evidence could be provided?

25.2 We need to know:

- How the regulators have met the *Standards of Good Regulation*
- How they have evaluated the impact of their work in this area.

25.3 The following evidence could be provided:

- Activities undertaken to publicise how all individuals (including those with particular health or language needs) and organisations can raise concerns about the fitness to practise of health and care professionals and the evaluation of this work. For example, publication of public information/employer leaflets, information available via the telephone or email and liaison with other organisations
- Examples of where the regulator has raised and taken forward a fitness to practise concern itself. For example, the number of cases taken forward and the reasons for this
- Examples of the regulator's work with other relevant bodies on when to refer fitness to practise complaints. For example, evidence of liaison with other organisations and feedback from those organisations on the effectiveness of this help
- Examples of information that has been shared between the regulators and other relevant bodies, within legal requirements, on the fitness to practise of individuals and the results of this work. For example, exchange of information through memoranda of understanding and, where possible, discussion on what use was made of this data
- Examples of where serious cases have been identified, prioritised and, where possible, referred to an interim orders pane. For example, the number of cases identified and the process for how this is carried out
- Examples of how the case management system and case management process helps prevent excessive delay and manages identified delays. Information on current time frames and/or delays in the system
- Examples of how the regulator ensures that all parties are regularly updated on progress of the fitness to practise case. How many complaints were received about lack of an update notification?

- How the case management system/processes enables the collection and analysis of reliable data to ensure that there is no bias in the process, with evidence of this testing being carried out by the regulator
- How the processes and procedures in place are fair, objective and free from discrimination
- Activities undertaken to meet the individual needs of parties to the fitness to practise process, particularly those who are vulnerable, and the outcomes of this work; for example, use of video link facilities, witness support arrangements, participant feedback surveys and numbers of complaints from participants about lack of support
- The appointment and appraisal process for committee members, panellists and advisors to fitness to practise cases. Relevant training, guidance and feedback provided to committee members, panellists and advisors to fitness to practise cases. How this has helped improve decision making
- Evidence of steps taken to identify and mitigate risks in fitness to practise decisions. For example, outcomes of the regulator's quality assurance of decisions, number of appeals and their outcomes. How learning from this process is used to improve decision making
- The regulator's disclosure policy in relation to fitness to practise proceedings and the disclosure of fitness to practise information to third parties
- The regulator's information security policies and compliance with the relevant legislation. The number of data loss/breach incidents which have occurred
- The mechanisms used by the regulator to assess how they are performing and how they use the results to improve their practices.

26. Annex 3: Third-party feedback

26.1 As part of this year's performance review, we wrote to a wide range of organisations who we considered had an interest in how the regulators performed against the *Standards of Good Regulation*, and to our public and professional stakeholder networks. We invited them to share their views with us on the regulators' performance in relation to the Standards. We explained that we would use the information provided to challenge the regulators' evidence and ensure that we had a more rounded view of the regulators' performance. We also placed a general invitation to provide views on the regulators' performance on our website.

26.2 Below is a list of the third parties whose feedback we took into account:

- British Acupuncture Council
- British Dental Association
- Bupa UK
- Care Council for Wales
- Council of Deans
- Disclosure and Barring Services
- Independent Midwives UK
- NHS Grampian
- Nina Murphy Associates LLP
- Royal College of Midwives
- Royal College of Nursing
- Royal College of Physicians of Edinburgh
- Scottish Government
- St Theresa's Hospice
- The Welsh Government
- 87 individuals.

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