professional standards authority

Annual review of performance 2015/16

Nursing and Midwifery Council

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care[1] promotes the health, safety and wellbeing 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 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.

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

2 *Right-touch regulation revised (October 2015)*. Available at http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation

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About the Nursing and Midwifery Council

The Nursing and Midwifery Council (the NMC) regulates the practice of nursing and midwifery in the United Kingdom. Its work includes:

- Setting and maintaining standards of practice and conduct in the nursing and midwifery professions
- Setting standards for education and training of nurses and midwives, accrediting education and training providers, and assuring the quality of education and training
- Maintaining a register of qualified nurses and midwives ('registrants') that meet those standards
- Taking action to restrict or remove from practice individual registrants who are considered not fit to practise.

As at 31 March 2016, the NMC register comprised 692,550 registrants.

The annual registration fee is £120 for all registrants.

At a glance

Annual review of performance

Regulator reviewed: **Nursing and Midwifery Council**

Standards of good regulation

Core functions	Met
Guidance and Standards	**4/4**
Education and Training	**4/4**
Registration	**6/6**
Fitness to Practise	**9/10**

1. The annual performance review

1.1 We oversee the nine health and care professional regulatory organisations in the UK, including the Nursing and Midwifery Council.[3] More information about the range of activities we undertake as part of this oversight, as well as more information about these regulators, can be found on our website.

1.2 An important part of our oversight of the regulators is our annual performance review, in which we report clearly and fairly on the delivery of their key statutory functions. These reviews are part of our legal responsibility. We review each regulator on a rolling 12 month basis and vary the scope of our review depending on how well we see the regulator is performing. We report the outcome of reviews annually to the UK Parliament and the governments in Scotland, Wales and Northern Ireland.

1.3 These performance reviews are our check on how well the regulators have met our *Standards of Good Regulation* (the Standards) so that they protect the public and promote confidence in health and care professionals and themselves. Our performance review is important because:

- It tells everyone how well the regulators are doing
- It helps the regulators improve, as we identify strengths and weaknesses and recommend possible changes.

The Standards of Good Regulation

1.4 We assess the regulators' performance against the Standards. They cover the regulators' four core functions:

- Setting and promoting guidance and standards for the profession
- 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.

1.5 The Standards describe the outcomes we expect regulators to achieve in each of the four functions. Over 12 months, we gather evidence for each regulator to help us see if they have been met.

1.6 We gather this evidence from the regulator, from other interested parties, and from the information that we collect about them in other work we do. Once a year, we collate all of this information and analyse it to make a recommendation to our internal panel of decision-makers about how we believe the regulator has performed against the Standards in the previous 12 months. We use this to decide the type of performance review we should carry out.

[3] These are the General Chiropractic Council; the General Dental Council; the General Medical Council; the General Optical Council; the General Osteopathic Council; the General Pharmaceutical Council; the Health and Care Professions Council; the Nursing and Midwifery Council; and the Pharmaceutical Society of Northern Ireland.

1.7 We will recommend that additional review of their performance is unnecessary if:

- We identify no significant changes to the regulator's practices, processes or policies during the performance review period; and
- None of the information available to us indicates any concerns about the regulator's performance that we wish to explore in more detail.

1.8 We will recommend that we ask the regulator for more information if:

- There have been one or more significant changes to a regulator's practices, processes or policies during the performance review period; but
- None of the information we have indicates any concerns or raises any queries about the regulator's performance that we wish to explore in more detail.
- This will allow us to assess the reasons for the change(s) and the expected or actual impact of the change(s) before we finalise our performance review report. If the further information provided by the regulator raises concerns, we reserve the right to make a further recommendation to the panel that a 'targeted' or 'detailed' review is necessary.

1.9 We will recommend that a 'targeted' or 'detailed' performance review is undertaken, if we consider that there are one or more aspects of a regulator's performance that we wish to examine in more detail because the information we have (or the absence of relevant information) raises one or more concerns about the regulator's performance against one or more of the Standards:

- A 'targeted' review may be carried out when we consider that the information we have indicates a concern about the regulator's performance in relation to a small number of specific Standards, usually all falling within the same performance review area
- A 'detailed' review may be carried out when we consider that the information we have indicates a concern about the regulator's performance across several Standards, particularly where they span more than one area.

1.10 We have written a guide to our performance review process, which can be found on our website www.professionalstandards.org.uk.

2. What we found – our decision

2.1 We have reviewed the NMC's performance from 01 April 2015 to 31 March 2016. Our initial review included an analysis of the following:

- Council papers, including performance and risk reports, and reports from the Midwifery and Audit Committees
- Reports issued by the NMC
- Policy and guidance documents
- Performance dataset (see sections below)
- Third party feedback
- Register check
- Information available to us though our review of final fitness to practise decisions under the Section 29 process.[4]

2.2 On the basis of this analysis we decided to carry out a targeted review of Standards 3, 5, 6, 7 and 8 of the *Standards of Good Regulation* for Fitness to Practise.

2.3 We sought and obtained further information from the NMC relating to these Standards through targeted written questions. We also undertook a targeted audit of 100 fitness to practise cases handled by the NMC and closed during the period 1 April 2015 to 31 March 2016. The cases audited were divided into the following four sample categories:

- Cases considered by case examiners to determine whether there was a case to answer;
- Cases reviewed by the NMC's Registrar using the new power to review no case to answer decisions;
- Cases considered for disposal via voluntary removal (VR)[5];
- Cases considered for disposal via consensual panel determination (CPD)[6].

[4] Each regulator we oversee has a 'fitness to practise' process for handling complaints about health and care professionals. The most serious cases are referred to formal hearings in front of fitness to practise panels. We review every final decision made by the regulators' fitness to practise panels. If we consider that a decision is insufficient to protect the public properly we can refer them to Court to be considered by a judge. Our power to do this comes from Section 29 of the NHS Reform and Health Care Professions Act 2002 (as amended).

[5] 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.

[6] 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.

2.4 Further detail on these sample categories can be found in the relevant sections below.

2.5 We carried out a detailed consideration of the information obtained from the NMC together with the findings of our targeted audit. In the light of this, we decided that all but one of the Standards were met. The reasons for this are set out in the following sections of the report.

Summary of the NMC's performance

2.6 For 2015/16 we have concluded that the NMC:

- 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 nine out of the ten *Standards of Good Regulation* for Fitness to Practise. The NMC did not meet the sixth Standard.

This represents a significant improvement in the NMC's performance against the *Standards of Good Regulation* by comparison to previous years and reflects considerable, sustained work by the NMC. It should be noted that we identified concerns in respect of some of the other Standards and we will continue to monitor how the NMC addresses those concerns over the coming year.

Key comparators

2.7 We have identified with all of the regulators the numerical data that they should collate, calculate and provide to us, and which items of data we think provide helpful context about each regulator's performance. Below are the items of data that we have identified as being key comparators across the Standards.

2.8 We expect to routinely report on these comparators both in each regulator's performance review report, and in our overarching reports on performance across the sector. We will compare the regulators' performance against these comparators where we consider it appropriate to do so.

2.9 Set out below is the comparator data which the NMC has provided to us for the period 1 October 2015 to 31 December 2015 (quarter 3) and 1 January 2016 to 31 March 2016 (quarter 4).

2.10 We invited the regulators to send us quarterly data from the start of the revised performance review process, as we set out in our published guidance to the process. As requested, the NMC provided data for the third and fourth quarters of the year. As such we recognise the data below does not demonstrate the NMC's performance across the full 12-month period under review (April 2015 to March 2016) unless otherwise stated. The NMC continues to provide quarterly data and therefore we will report on data for the full performance review period in 2016/17.

2.11 The key comparators are:

	Comparator	Quarter 3	Quarter 4	Annual data
1	The number of registration appeals concluded, where no new information was presented, that were upheld	0	0	N/A
2	Median time (in working days) taken to process initial applications for: UK graduates EU (non-UK) graduates International (non-EU) graduates	 4 14 21	 2 10 10	N/A
3	Time from receipt of initial complaint to the final Investigating Committee/Case Examiner decision (in weeks): Median Longest case Shortest case	 50 193 10	 55 184 10	N/A
4	Time from receipt of initial complaint to final Fitness to Practise hearing (in weeks): Median Longest case Shortest case	N/A	N/A	 83 321 26
5	Time to an interim order decision from receipt of complaint (in days)	26	25	N/A
6	Outcomes of the Authority's appeals against final fitness to practise decisions:	N/A	N/A	

	Dismissed Upheld and outcome substituted Upheld and case remitted to regulator for re-hearing Settled by consent Withdrawn			0 1 0 3 0
7	Number of data breaches reported to the Information Commissioner	0	0	N/A
8	Number of successful judicial review applications	N/A	N/A	0

2.12 As with the other regulators, where we had concerns relating to the data we received, we looked at these as part of our targeted review. These are discussed in the relevant sections below.

3. Guidance and Standards

3.1 The NMC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2015/16. Examples of how it has demonstrated this are indicated below each individual Standard.

Standard 1: Standards of competence and conduct reflect up-to-date practice and legislation. They prioritise patient and service user safety and patient and service user centred care

3.2 The NMC's revised Code, setting out professional standards of practice and behaviour for nurses and midwives, came into effect on 31 March 2015. A presentation introducing the Code and a list of frequently asked questions in relation to it can be accessed via the NMC website. Guidance leaflets on what the Code means for patients and for employers are also available.

3.3 We have concluded that this Standard remains met.

Standard 2: Additional guidance helps registrants apply the regulator's standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care

3.4 In June 2015 the NMC and the GMC produced joint guidance for their registrants on the practical application of the professional duty of candour. The NMC also produced case studies designed to help nurses and midwives understand the professional duty of candour, what it means for their practice and how to meet it in a range of scenarios.

The NMC produced guidance for European Economic Area (EEA) trained nurses and midwives on how to provide evidence of their English language competence following the introduction of new language controls.

3.5 Guidance supplementary to the Code on the issues of conscientious objection and female genital mutilation was also made available on the NMC website this year.

3.6 We have therefore concluded that this Standard remains met.

Standard 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

3.7 In October 2015 the NMC produced a policy on new requirements relating to English language competence for EEA trained nurses and midwives following the revision of the European Directive on Mutual Recognition of Professional Qualifications[7]. The new policy sets out the minimum standard of English language competence required for registered nurses and midwives to practise safely and effectively.

[7] Mutual Recognition of Professional Qualifications (MRPQ) Directive 2005/36/EC.

3.8 A public consultation was held to inform the development of English language requirements for EEA trained nurses and midwives and it is clear that the NMC took account of the views expressed.

3.9 We have therefore concluded that this Standard remains met.

Standard 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

3.10 The new Code referred to in paragraph 3.2 was awarded the Plain English Campaign Crystal Mark when it was introduced in March 2015. The Code and all of the supporting guidance, leaflets and FAQ documents are available to download in Welsh. English and Welsh 'easy read'[8] versions of the leaflet for patients are also available.

3.11 The new NMC website, launched in April 2015, was developed to make information on guidance and standards more accessible for visitors, with content arranged by subject, rather than audience, and written in plain English.

3.12 BrowseAloud[9] technology is available on the NMC website to improve accessibility for a wide range of people with differing needs.

3.13 We have therefore concluded that this Standard remains met.

4. Education and Training

4.1 The NMC has met all of the *Standards of Good Regulation* for Education and Training during 2015/16. Examples of how it has demonstrated this are indicated below each individual Standard.

Standard 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

Removal of maximum time limits from education programmes

4.2 In May 2015 the NMC removed mandatory maximum time limits for completion of education programmes to ensure that they comply with the Equality Act 2010. It devolved the responsibility for management of completion timescales to the approved education providers. A consultation on this change took place between January and March 2015.

[8] The presentation of text in an accessible, easy to understand format.
[9] Assistive technology that adds text-to-speech functionality to websites.

Pre-registration standards

4.3 This year the NMC has instigated the development of new standards of pre-registration nursing education. The NMC held a series of events at which the views of stakeholders were sought on this issue. The NMC reported to its Council that there was a consensus among those consulted that changes in the health and care environment had produced new challenges for nurses that must be reflected in updated pre-registration standards. There was agreement that future registered nurse proficiencies should be separate from the requirements of education institutions and training environments.

4.4 A programme of work was subsequently approved to develop the revised nursing proficiencies by 2018. The NMC has undertaken to start work on new pre-registration midwifery proficiencies in late 2016-17. The work will be carried out within a new Education, Standards and Policy directorate.

Post-registration standards

4.5 We received third-party feedback from two organisations expressing the view that the NMC's post-registration standards of education and practice programmes were outdated and required review. Some standards have not been revised for a number of years (those for specialist education and practice, for instance, were first published in 2001). However, all standards have been amended to refer to the new Code, which came into effect in 2015. We will monitor action taken to update post-registration standards in the future.

4.6 On balance, we have concluded that this Standard is met.

Standard 2: 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

Monitoring reviews

4.7 The NMC commissions an external contractor to carry out the operational delivery of quality assurance of education for nurses and midwives. Monitoring visits are undertaken to assess whether approved education institutions (AEIs) are complying with standards set by the NMC in their delivery of academic programmes. Monitoring visits took place at 17 out of 77 AEIs between January and March 2015.

4.8 The same external contractor is commissioned by the NMC to undertake the delivery of quality assurance of supervision of midwives. Monitoring visits are undertaken to assess whether Local Supervising Authorities (LSAs) are complying with the NMC's Midwives Rules and Standards[10] in their work. This year four out of the ten LSAs were reviewed, with visits taking place between December 2014 and March 2015.

[10] See https://www.nmc.org.uk/globalassets/sitedocuments/standards/nmc-midwives-rules-and-standards.pdf

4.9 Each year the NMC produces an annual report on its quality assurance activity in respect of both AEIs and LSAs for the previous year.

4.10 AEIs and LSAs were selected using a risk-based model. A small number of programmes are also selected on a rolling programme when there has not been any review over previous years.

4.11 During monitoring visits reviewers meet with students, mentors and practice teachers, employers and patients.

4.12 Good practice identified through the quality assurance process is shared with other AEIs/LSAs and published in the annual quality assurance report. The NMC asks AEIs and LSAs subject to monitoring reviews to evaluate the process and uses this information to make improvements to it.

Approval of new educational programmes

4.13 The NMC approved 92 programmes in the last reporting year. Most of those required conditions and/or recommendations to be met before approval. Approval was withheld from 10 proposed new programmes[11].

Plans for 2016/17

4.14 The NMC has commissioned an independent review of its education quality assurance function, which commenced in May 2016. We will monitor the progress of this work and report on it in our performance review report next year.

4.15 In light of confirmation from the government that statutory supervision for midwives will be removed from the legislation, the NMC ceased conducting routine monitoring reviews of LSAs from 1 April 2015 and discontinued risk based monitoring visits of LSAs from 1 April 2016. In August 2015 the NMC updated its quality assurance framework, emphasising the responsibility of LSAs to report by exception on any changes to their ability to meet the NMC's standards. It remains open to the NMC to undertake an extraordinary review in the event that significant concerns were raised about an LSA.

4.16 We have concluded that this Standard is met.

Standard 3: Action is taken if the quality assurance process identifies concerns about education and training establishments

Concerns identified through risk-based monitoring reviews

4.17 A number of concerns about AEIs were identified through the risk-based monitoring process this year. The reduction in the notice given prior to a

[11] See p9 of the NMC's *Quality assurance of education and local supervising authorities. Annual report 2014-15*. Available at: https://www.nmc.org.uk/globalassets/sitedocuments/midwifery-lsa-reports/nmc-qa-of-education-and-local-supervising-authorities---annual-report-2014-2015.pdf?_t_id=1B2M2Y8AsgTpgAmY7PhCfg%3d%3d&_t_q=education+report+&_t_tags=language%3aen%2csiteid%3ad6891695-0234-463b-bf74-1bfb02644b38&_t_ip=80.71.18.141&_t_hit.id=NMC_Web_Models_Media_DocumentFile/_d17b1ee4-4831-4f09-ad0c-b09ecf833563&_t_hit.pos=1

monitoring visit from around nine months to six weeks was thought by the NMC to have led to an increase in identified failures to meet standards.

4.18 The NMC told us that when an AEI fails to meet its standards during a monitoring review visit, an action plan is agreed against a set timeline and the AEI will provide evidence for the actions required. If this evidence is not provided on time or does not provide sufficient assurance, the NMC will take further action, the nature of which will depend on the severity of the risks of the non-compliance with its standards and any resulting patient safety risks. The NMC may determine that a follow up review is necessary to review progress against action plans in place. In the most serious cases, the NMC has the power to remove programme approval.

4.19 In its annual report on quality assurance for 2014/15 (published in September 2015), the NMC used its findings from monitoring reviews to highlight key risks to public protection and the student learning environment, to the processes and internal governance of AEIs and LSAs, and to compliance with the midwives rules and standards.

Extraordinary activity

4.20 In July 2015 the NMC undertook a joint extraordinary review of education programmes and midwifery supervision in North Wales. The review identified serious concerns about the quality of the nursing and midwifery education programmes and the LSA function in North Wales. The NMC published reports detailing the review's findings in October 2015. The reports on the LSA and the AEI are available on the NMC website and set out clearly which standards are not met. Recommendations are made for improvement and areas for future monitoring are specified.

4.21 In our performance review report for 2014/15 we highlighted the NMC's work in carrying out an extraordinary review into concerns raised about midwifery practice in Guernsey in October 2014. The NMC revisited Guernsey in February 2015 to review pre-registration nursing education and progress made by the LSA since the extraordinary review. The reports note improvement over the last year across the issues of concern.

4.22 We have therefore concluded that this Standard is met.

Standard 4: Information on approved programmes and the approval process is publicly available

4.23 Information on approved nursing and midwifery programmes and the approval process is available on the NMC website. A search function enables visitors to search for courses by country, educational institution, and qualification.

4.24 We have therefore concluded that this Standard remains met.

5. Registration

5.1 The NMC has met all of the *Standards of Good Regulation* for Registration in 2015/16. Examples of how it has demonstrated this are indicated below each individual Standard.

Standard 1: Only those who meet the regulator's requirements are registered

5.2 We note that guidance in respect of fraudulent and incorrect entry is available on the NMC website. The guidance is aimed at decision-makers considering allegations of this nature. It helpfully sets out the legislative basis for taking action against those suspected of fraudulent or incorrect entry to the NMC's register.

5.3 We did not identify any evidence that the NMC has added to its register anyone who did not meet its requirements for registration.

5.4 We concluded that this Standard continues to be met.

Standard 2: The registration process, including the management of appeals, is fair, based on the regulator's standards, efficient, transparent, secure, and continuously improving

Online registration

5.5 The number of registered nurses and midwives who have signed up to NMC Online continued to grow this year. By the end of March 2016, 87 per cent of registrants had signed up to the service. The NMC is aiming for a 95 per cent take-up by December 2016. As noted in our performance review report last year, we welcome the introduction of online registration as a means to improve customer service.

Registration appeals

5.6 The NMC concluded 53 registration 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).

5.7 In quarters three and four of this year, a total of 44 appeals were received and 54 were concluded. Data provided to the NMC's Council recorded that, as of February 2016, there were a total of 43 outstanding appeals, of which 41 were received between one to six months previously, one had been received six to 12 months previously and another had been received 12 to 18 months previously. The NMC aims to conclude all registration appeals within six months.

Processing applications for registration and customer service

5.8 The NMC's key performance indicator (KPI) of processing 90 per cent of EU and overseas registration applications within 70 days of receipt was consistently exceeded between April and November 2015. However, performance worsened significantly from December 2015 to February 2016,

with as few as 53 per cent of applications being processed within 70 days at one point.

5.9 In registration performance and risk reports provided to its Council the NMC explained that this dip in performance was the result of a significant increase in EU applications prior to the introduction of language testing. The NMC noted that it had allocated additional resource in anticipation of this, but that the increase had exceeded its expectations. Temporary relocation of the registration team due to building maintenance issues was cited by the NMC as another contributing factor. The proportion of applications processed within 70 days of receipt in March 2016 was 64 per cent. The NMC's new KPI for 2016/17 is to process 90 per cent of EU and overseas registration applications within 68 days of receipt.

5.10 The NMC's performance against its secondary KPI target for processing 99 per cent of UK applications within 30 days also dipped from 100 per cent in October 2015 to 91 per cent in December 2015 but by March 2016 was back at 99 per cent. The NMC reported to Council at the January 2016 meeting that this dip was a data distortion resulting from a large number of complex cases carried over from peak months (September/October).

5.11 The NMC carries out a registration customer service survey throughout the year and reports results to its Council at each Council meeting. Satisfaction levels among those customers responding to the survey were consistently high throughout the year.

5.12 The NMC also reports on the proportion of all telephone calls to the registration contact centre which are abandoned before being answered. The cumulative average of abandoned calls in 2014/15 was 11.5 per cent. In 2015/16 this increased to 13.62 per cent, though this has fluctuated over the year. From May to August 2015 13 per cent of calls were abandoned per month. In September and October 2015 (the peak time for initial registration applications due to the academic timetable), this rose to 18 per cent. In November and December 2015 only 6.2 per cent of calls were abandoned, but in January and February 2016, this rose again to 19 per cent.

5.13 The NMC reported to its Council in November 2015 its intention to commission a review of the call centre, particularly in relation to resourcing, forecasting and technology, partly in response to inconsistent performance on abandoned calls. In March 2016 the NMC reported to its Council that the high abandonment rate in the first months of 2016 had been caused by increased calls about changes to the readmission process, calls relating to EU applications (which had increased significantly in the period) and operational challenges resulting from temporary staff relocation due to building maintenance issues.

5.14 It is clear that the higher than anticipated increase in registration enquiries and applications from EEA trained nurses and midwives this year prior to the introduction of language testing had a negative impact on performance in this area.

5.15 This appears to have been exacerbated by building maintenance problems that resulted in temporary relocation of the registration team. At the NMC Council meeting in March 2016 it was agreed that the risk associated with the

maintenance of the building in question would be incorporated into the NMC's corporate risk register and should therefore be closely monitored in the future.

5.16 The NMC has reported fluctuations in processing times and customer service performance to its Council, has provided information about the reasons for them and has taken action to improve performance from a low point at the outset of 2016. It is also noted in the NMC's corporate risk register 2015/16 that detailed forecasting tools were being developed as of March 2016 for all operational areas in registration to assist more effective planning and resourcing for demand.

5.17 As such, we reached the conclusion that these matters do not support a finding that this Standard is not met this year. We will monitor the outcomes of the NMC's improvement work, its review of the registration contact centre, and any actions taken in response to the findings of that review over the coming year.

5.18 We also intend to look more closely over the coming year at how all the regulators manage registration resources and whether this may impact on fairness to particular groups of applicants.

5.19 We have therefore concluded, on balance, that this Standard is met is met.

Standard 3: Through the regulator's registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions of their practice

5.20 Last year we noted that the NMC had taken further steps to improve the integrity of its register. However, we expressed concern about 12 registration errors which the NMC told us that it had identified through its internal checks. We were particularly concerned that the nature of the incidents reported could have implications for public protection, as well as casting doubt on the integrity of the register. Given these concerns we concluded that the NMC had not met this Standard in 2014/15.

5.21 This year, as in previous years, we conducted a check of a sample of 20 entries on the NMC register. The registrant PIN numbers[12] checked were randomly selected, but all belonged to registrants who had been subject to a final fitness to practise decision in the relevant period. While this sample represents a very small proportion of the NMC's total register, we are nevertheless pleased to report that for the third consecutive year we identified no errors or inaccuracies.

5.22 However, one error was identified through the routine work undertaken as part of our Section 29 process. A registrant who was subject to a substantive conditions of practice order was made subject to an interim suspension order in relation to an allegation which was handled by the NMC as a separate matter. The interim suspension order had come into effect on 11 February 2015. At a review hearing on 8 January 2016 the substantive order was varied from a suspension order to a conditions of practice order. That order came into effect on the expiration of the existing order on 13 January 2016.

[12] Every registrant is issued a personal identification number upon successful registration with the NMC.

5.23 On 10 February 2016 the register was found to be displaying the substantive conditions of practice order and not the interim suspension, indicating that a lesser substantive sanction than the interim sanction in place had been displaying for a period of four weeks. We informed the NMC of this and it confirmed that the error had been corrected and that the matter would be investigated internally to prevent it reoccurring.

5.24 We considered whether to hold a targeted review of this Standard in light of the history of concerns in this area and the identification of this error on the NMC's register. The error had public protection implications and it had been displayed for a period of four weeks, giving rise to concern that the NMC's internal processes may be insufficiently robust to prevent inaccurate information about registrants being provided to employers and the public.

5.25 We noted the history of concerns in relation to the sufficiency of action taken by the NMC to improve the integrity of its register but decided that, whilst unsatisfactory, the identification of a single error is in itself insufficient basis upon which to reach a decision that this Standard is not met at this time. We will, however, monitor performance in this area closely over the coming year.

5.26 On balance, we have therefore concluded that this Standard is met.

Standard 4: Employers are aware of the importance of checking a health professional's registration. Patients, service users and members of the public can find and check a health professional's registration

5.27 The registration search function is clearly visible on the front page of the NMC website and information is provided about what register search results mean.

5.28 Guidance for employers is available on the NMC website which sets out their responsibilities in recruiting, managing and supporting nurses and midwives.

5.29 We have therefore concluded that the NMC has continued to meet this Standard.

Standard 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

5.30 The Nursing and Midwifery Order 2001 makes the illegal use of the protected titles 'registered nurse' and 'midwife', an offence.

5.31 The NMC continues to operate an employer confirmation service, enabling employers to search for multiple PIN numbers simultaneously and to obtain information additional to that provided on the public register.

5.32 We concluded that this Standard continues to be met.

Standard 6: Through the regulator's continuing professional development/revalidation systems, registrants maintain the standards required to stay fit to practise

5.33 Revalidation for nurses and midwives was introduced this year. The first group of nurses and midwives completed the revalidation process in April 2016. It is planned that all registrants will have revalidated within the next three years.

The model of revalidation implemented

5.34 To revalidate, nurses and midwives are required to have undertaken 450 practice hours over the past three years (or 900 hours if renewing as both a nurse and a midwife) and 35 hours of continuing professional development (CPD) activity, including 20 hours of participatory learning. CPD activity must be described with reference to the part of the Code most relevant to it.

5.35 Registrants must also have obtained five pieces of practice-related feedback and must have prepared five written reflective accounts in the past three years. Reflective accounts must contain a description of how they relate to the Code and must be the subject of a reflective discussion with another NMC registrant.

5.36 Registrants must provide a health and character declaration and must declare that they have, or will have when practising, appropriate cover under an indemnity arrangement.

5.37 Compliance with all of the above requirements must be demonstrated to an appropriate confirmer, whose details will be shared with the NMC.

5.38 Each year the NMC will select a sample of nurses and midwives to provide further information about their application for verification purposes. Nurses and midwives will be selected for verification at random, taking into account two risk factors that have been identified:

- not having an NMC registrant line manager (which may indicate professional isolation)
- Not having a regular appraisal (which may indicate a lack of organisational infrastructure).

The NMC's *Policy for the revalidation of nurses and midwives* indicates that the sample of nurses and midwives who have been selected for verification will be based upon a representative sample of the nursing and midwifery population and the risk factors that have been identified.

Testing the process

5.39 Revalidation pilots took place from January 2015 to June 2015. Nineteen organisations and a total of 2,134 registrants participated. Organisations were selected to include nurses and midwives in a variety of settings and scopes of practice but it was acknowledged that the individual participants were not statistically representative of the NMC register overall.

5.40 Learning from the pilots was captured through an online survey and qualitative research undertaken by an external organisation.

5.41 In our 2014/15 performance report we expressed concern over a lack of information about the cost and benefits of revalidation. This year the NMC commissioned an external organisation to undertake research into readiness for revalidation in the health and care system and among organisations employing registrants, and to carry out a cost benefit analysis of the revalidation model.

5.42 A revalidation pilot key findings report was presented to the NMC Council at its meeting on 8 October 2015 summarising the findings of this work and the resulting changes made to the proposed process. The reports from both external organisations commissioned to undertake this work are available on the NMC website.

5.43 The NMC's internal revalidation programme board undertook work to review the NMC's readiness for the introduction of revalidation. The review took into account the NMC's regulatory, business system and operational readiness. The programme board's decision, and the evidence underpinning it, were independently assessed, and ultimately supported, by an external consultant.

5.44 Programme Boards were also set up in each of the four UK countries to oversee the introduction of revalidation and provide assurance on their readiness to offer sufficient support for revalidation to be implemented effectively across the UK.

Assessment of risk

5.45 Throughout the year the NMC has monitored the risks associated with the introduction of revalidation and documented mitigating actions in its corporate risk register.

Stakeholder engagement and communication

5.46 The NMC reported to its Council throughout the year on its work with the Department of Health around revalidation priorities and legislation and with all four UK governments and the four-country programme boards around readiness and delivery.

5.47 In readiness for the first wave of revalidation in April 2016 the NMC undertook a programme of communication and engagement with a number of stakeholders. This included direct communications with registrants by email and letter, providing revalidation training days and external speaking engagements across the UK, and hosting regional summits aimed at primary care and independent sector employers.

5.48 We received positive feedback from third party organisations in relation to the quality of the NMC's stakeholder engagement and communication regarding revalidation. It is apparent that respondents felt that the views of their organisations had been heard and that the NMC had made changes in response to them.

The revalidation microsite

5.49 The revalidation microsite was launched in January 2016. It contains guidance on how to revalidate and a number of resources and materials to support nurses and midwives in revalidating such as examples of completed

forms, videos and case studies. There are specific areas of the microsite containing information for confirmers and employers. Training materials, posters and leaflets are also available for employers to use.

5.50 Additional guidance is also available for registrants with dual registration[13].

5.51 We received positive feedback from third party organisations about the quality of the microsite.

The first wave of revalidation in April 2016

5.52 In May 2016 the NMC reported that 90.48 per cent (14,362) of the 15,873 registrants due to revalidate in April 2016 had successfully renewed their registration through revalidation. It was also noted that 1,401 registrants had left the register, but that this was in line with the number of registrants the NMC would normally expect to leave the register in any given April, rather than evidence of a negative response to revalidation.

5.53 It was also reported that, while the majority of the 15,873 registrants due to revalidate in April had completed the process, a small number of applications (106) had been granted an extension or were subject to additional checks by the NMC.

Future evaluation of revalidation

5.54 The NMC intends to undertake three main evaluation activities in relation to the introduction of revalidation:

- Early monitoring of the process and any feedback from the outset to assist in identifying and resolving any urgent issues.
- Regular data reporting, including numbers of registrants completing the process, any impact on registration patterns and available equality and diversity data.
- Formal evaluation of the impact of revalidation over a three year period against the primary regulatory objective of public protection.

5.55 In our 2014/15 report we expressed concern over the NMC's intention to adopt a 'one size fits all' model of revalidation, rather than one tailored to the risks associated to different registrant groups. The NMC has continued to implement a model that does not differentiate between registrant groups. We understand the reasons for this and note that the impact of revalidation on all registrants will be formally assessed by the NMC. We would expect that any problems experienced by particular registrant groups should be identified through that process. We will monitor this issue and look forward to the NMC sharing with us the findings of its evaluative work.

5.56 We have concluded that this Standard is met.

[13] Where a registrant is registered on more than one part of the NMC's register, for instance as both a nurse and a midwife.

6. Fitness to Practise

6.1 The NMC has met nine of the *Standards of Good Regulation* for Fitness to Practise in 2015/16. Examples of how it has demonstrated this are indicated below each individual Standard.

Standard 1: Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant

6.2 Information for potential complainants is available on the NMC website. This includes guidance as to the type of concerns that can be investigated by the NMC and information about other organisations which might be able to assist with matters which are not within the NMC's remit.

6.3 In June 2015 the NMC updated its guidance for registrants on raising concerns. Information on whistleblowing and its implications for fitness to practise referrals is provided on the NMC website.

6.4 The NMC updated its advice and information for employers of nurses and midwives in January 2016. The guidance provides information about the fitness to practise process and the relevant considerations for employers when making referrals.

6.5 The NMC has worked to improve the quality of referrals received from employers this year by working more closely with them through the development of its Employer Link Service. One aspect of the work of the service is the provision of advice to employers on NMC referral thresholds. The service has a dedicated email address and telephone advice line, the details of which are provided on the NMC website.

6.6 In March 2016 the NMC produced preliminary consideration of allegations guidance which details the process followed by the NMC upon receipt of a referral. A link to the guidance is provided on the section of the NMC website dedicated to informing visitors about the fitness to practise referral process.

6.7 We have therefore concluded that this Standard is met.

Standard 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

6.8 The number of occasions a case has been referred to another investigating body/regulator by the NMC was 41 in quarter 3 of this year and 39 in quarter 4.

6.9 The NMC seeks information from registrants' employers as part of its investigation process. Where the NMC receives a complaint and determines that the concerns raised do not on their own appear to justify investigation, the NMC will write to the registrant's employers, show them the referral and ask for details of any local investigations that they have undertaken. The NMC will also ask the employer to confirm that they have no concerns about the registrant that might require action by the NMC. If an employer does have

concerns, these will be considered to determine whether they meet the threshold for investigation.

6.10 The NMC currently has memoranda of understanding, setting out how information will be shared, with: the Disclosure and Barring service; the Trust Development Authority; the Scottish Public Services Ombudsman; Care Council for Wales; the Association of Chief Police Officers, the Crown Prosecution Service; the General Medical Council; the Health and Social Services Department of Jersey; the Care Quality Commission; Health Inspectorate Wales; and NHS Education for Scotland.

6.11 We received feedback from a third-party organisation for the purposes of this performance review which highlighted in particular the effectiveness of its memorandum of understanding with the NMC. The same organisation also commented on the effectiveness of its joint working protocol with the NMC which provides practical guidance to staff in each organisation on how the relationship works on an operational level.

6.12 We have concluded that this Standard is met.

Standard 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

6.13 In March 2015 case examiners replaced the Investigating Committee (IC) as the preliminary decision-makers for fitness to practise cases where the type of case is misconduct, lack of competency, health or criminal. The case examiners do not consider cases regarding fraudulent entry, as these are still decided by the IC.

6.14 Another development this year relevant to the NMC's performance against this Standard was the introduction of its power to review no case to answer decisions under Rule 7(a) of its Fitness to Practise Rules 2004 (as amended)[14].

6.15 We undertook a targeted review of this Standard because this was the first full year in which case examiners had been in place and in which the NMC had been exercising its new power of review under Rule 7(a) and we needed more information to be able to make an assessment as to the effectiveness of these new processes.

Case examiners

6.16 The NMC has produced guidance for use by case examiners when considering whether there is a case to answer following an investigation into fitness to practise allegations. Case examiner decisions must be unanimous. If the case examiners are unable to agree, the Registrar must refer the matter to a panel of the IC for consideration.

[14] See: https://www.nmc.org.uk/globalassets/sitedocuments/legislation/legislation-updated/nmc-fitness-to-practise-rules-consolidated-text-effective-from-2016.01.19.pdf

6.17 Case examiners considered 3,449 cases between 1 April 2015 and 31 March 2016. No cases were referred to the IC because case examiners were unable to agree a unanimous decision.

6.18 The NMC has told us that case examiners do not consider cases together in the way that a panel would. Rather, the first case examiner considers the case and drafts a decision. The second case examiner then considers the case and reviews the draft decision. This may lead to a discussion and to the reasons being amended with the agreement of both case examiners. The NMC reported that the process is designed to ensure that both case examiners consider the evidence and come to a decision without work being duplicated unnecessarily.

6.19 In order to assure itself of the quality of case examiner decisions, the NMC assesses a sample of them against a consistent set of criteria. Learning from that assessment is discussed with individual case examiners and through a monthly quality meeting with the case examiner group.

6.20 In our targeted audit we reviewed a total of 50 cases in which a decision had been made by the case examiners. In 30 cases the decision was that there was no case to answer and the case was therefore closed at that stage. In the remaining 20 cases the case examiners determined that there was a case to answer and the case progressed to the next stage in the fitness to practise process.

6.21 In a small number of cases we identified concerns in relation to the quality of the investigation undertaken and/or the charges that were brought in the matter. However, we considered that these concerns did not give rise to any wider concern about the way in which the case examiner process had been implemented over this year or its overall effectiveness. Nor did we identify any instances of the guidance governing the processes not being followed by NMC staff.

6.22 In the course of our targeted audit we noted that discussions between case examiners in reaching their decision, and any resulting amendments to the decision drafted by the first case examiner, are not recorded on the NMC's case management system. The NMC may wish to consider amending its system to record this information in the future. This would provide greater transparency and would assist the NMC to better understand the process by which a decision was reached should any concerns arise about an individual case.

The power to review no case to answer decisions

6.23 Reviews of no case to answer decisions are undertaken by the Registrar[15].

6.24 Upon review, the Registrar may determine: to uphold the no case to answer decision; to substitute the no case to answer decision with a case to answer decision; or to refer the decision back to the case examiners for reconsideration.

[15] In practice one of the NMC's assistant registrars usually takes the decision on behalf of the NMC's Registrar. Where we have referred to "the Registrar" in this report we are referring to the decisions taken by either the Registrar or one of the assistant registrars unless otherwise specified.

6.25 A no case to answer decision can only be overturned upon review if it is determined by the Registrar to be materially flawed or if the Registrar considers that new information has come to light which, if known at the relevant time, would have led to a different decision. It is also necessary for the Registrar to be satisfied that it is in the public interest to overturn the decision.

6.26 Under the process, anyone can request a review in respect of a no case to answer decision relating to one or more factual charges, even if a case to answer was found in respect of other charges in the case. There is a time limit of one year in which to request a review from the date of the original decision, though exceptions can be made at the Registrar's discretion, with reference to set criteria.

6.27 Parties to the case must be informed of any decision to review a finding of no case to answer, any new information pertinent to the review, and the outcome of the review.

6.28 The NMC has produced guidance for use by staff when deciding whether to refer a no case to answer decision for review by the Registrar. Guidance has also been produced for the use of the Registrar when reviewing the decisions.

6.29 This year the NMC received 90 requests for a review under Rule 7(a), of which 53 had been concluded at the time of the NMC's response to us. External applicants made 65 of those requests, while the remaining 25 were internal requests made by NMC staff.

6.30 Of the 53 concluded cases, the Registrar determined not to commence a review in 37 because the request did not meet the review criteria. The Registrar undertook a review in 16 cases. In two cases the decision was upheld. In nine cases the decision was substituted with a case to answer decision and five cases were referred back to the case examiners for a fresh decision.

6.31 We enquired about the basis upon which the Registrar, if of the view that a fresh decision is required upon review, makes the choice of whether to substitute it or to refer it back to case examiners for reconsideration.

6.32 The NMC told us that the factors the Registrar might take into account include:

- Whether the reason for their review (the flaw or the new information) requires a wholesale re-examination of the evidence, or relates to a narrower issue of interpretation on which the Registrar is able to take a decision;
- The allegation itself, and in particular whether specialist clinical knowledge of a registrant case examiner is required in assessing the case;
- Delay to the progress of the case, the interests of the nurse or midwife in that regard, and the wider public interest in concluding cases expeditiously.

6.33 We consider it reasonable to take into account these factors in reaching a decision on review under Rule 7(a). However, this information is not included in the current guidance that the NMC has published for this process. For greater transparency and to assist the public's understanding of the review process, we consider that this information should be added to the guidance in the future.

6.34 In our targeted audit we reviewed all seven cases in which a decision had been made upon review under Rule 7(a) this year and which had subsequently been closed in the relevant period. Once more, we identified no concerns in relation to the way in which the NMC had implemented the new process or the way in which the process was functioning through our review of those cases.

6.35 There is no formal mechanism through which the Registrar's decisions under Rule 7(a) are quality assured. The NMC has told us that quality assurance is built in to the process, through its legal team's review of each case and drafting of the advice that informs the decision, as well as the training and guidance provided to decision-makers. The NMC noted that feedback points can be raised by, and with, individual decision-makers.

6.36 The implications of the power to review for the way in which fitness to practise allegations are handled are significant, particularly in light of the power of the decision-maker to substitute a no case to answer decision without referring it back to case examiners. We therefore consider that there should be a more formal and consistently applied mechanism for quality assuring these decisions and ensuring their consistency. This would serve to identify and assist learning from any problems that might arise in the way in which the power to review is exercised in practice.

6.37 However, as noted above, we have seen no evidence of any such concerns in the sample of cases reviewed in our targeted audit. As such, while we consider that the introduction of a quality assurance process for these decisions would be good practice, we are not of the view that its absence is in itself sufficient to suggest that the power to review process is inherently flawed such that this Standard may not be met.

6.38 We have therefore concluded that this Standard continues to be met.

Standard 4: All fitness to practise complaints are reviewed on receipt and serious cases are prioritised and where appropriate referred to an interim orders panel

Risk assessment and imposing interim orders

6.39 The NMC has consistently performed better than its KPI of imposing 80 per cent of interim orders within 28 days of opening a case. The median time from receipt of referral to the imposition of an interim order at the NMC was 26 days in quarter 3 and 25 days in quarter 4.

Interim order extension applications

6.40 In previous performance reviews we have expressed concern in relation to the number of interim order extension applications made by the NMC to the

relevant court. In 2013/14 the NMC made 619 applications. In 2014/15 this reduced to 457 applications. This year 342 applications were made. Although this figure remains high, we are pleased to note the sizeable decrease in the number of applications for extension since 2013.

6.41 We considered whether further information was required to determine whether this Standard was met, particularly given the inadequacies identified during our 2014 audit in relation to continual risk-assessment throughout the lifetime of a case. However, we took the view that there was no current evidence to suggest that this Standard was not met. The panel was reassured in particular by the NMC's strong performance against its key performance indicator (KPI) to impose interim orders within 28 days of receipt of a complaint.

6.42 We have therefore concluded that this Standard continues to be met.

Standard 5: The fitness to practise process is transparent, fair, and proportionate and focused on public protection

6.43 In our performance review report last year we determined that the NMC continued to perform inconsistently against this Standard. This was because of our concerns about:

- The NMC's handling of voluntary removal cases reviewed in our 2014 audit
- Our appeal of three final decisions in which we had concerns over the use of the consensual panel determination process
- An incident whereby the NMC incorrectly informed the media that a registrant had been found guilty of misconduct during a final fitness to practise hearing before the panel had delivered its decision at the hearing.

6.44 This year we decided to undertake a targeted review of performance against this Standard for the following reasons.

6.45 First, through our review of fitness to practise decisions under the section 29 process, we had identified concerns regarding the NMC's failure to provide panels at final fitness to practise hearings with representations made by registrants in five cases (two of which were linked), seemingly as a result of administrative errors. We wanted to understand how these errors occurred, how this was investigated by the NMC, and what action had been taken to prevent their repetition.

6.46 Secondly, in the context of our history of concerns about the way in which the NMC has managed the voluntary removal process since its introduction in 2013, we considered that more information was needed about how this had been managed in the past year.

6.47 Thirdly, the Authority has appealed two final fitness to practise decisions this year in cases disposed of via consensual panel determinations. Similar concerns arose in those cases to those we have expressed in previous performance review reports.

Failures to put registrant's representations before decision makers

6.48 The NMC provided an explanation in each of the cases identified where a registrant's representations were not put before a panel in error. The NMC told us that it has issued updated information for staff on correctly managing linked cases because problems in this area had led to the error being made in three of the five cases. Upon investigation, the NMC determined that the other two cases did not necessitate any further changes to its processes.

This issue has significant implications for the fairness of the fitness to practise process. However, our concerns relate to a small number of cases and in all of them the NMC has now taken action to rectify the error (which in one case was the fault of an external organisation) and has altered its process to address an identified deficiency. We will monitor this issue closely to identify whether any repetition of such errors occurs over the next year.

The voluntary removal process

Our audit findings

6.49 In our targeted audit of fitness to practise cases we reviewed 15 cases in which an application for voluntary removal had been granted and eight cases where the application had been refused but the case had been closed by another means in the relevant period.

6.50 The following section relates to our findings regarding the NMC's management of the voluntary removal process in the cases we reviewed. Our findings in relation to decisions on voluntary removal applications, and the reasons provided for the decisions, are discussed separately under Standard 8 of the *Standards of Good Regulation* for Fitness to Practise.

6.51 In our last performance review report we noted that the NMC's revised voluntary removal process, set out in updated guidance, had brought about some improvements. However, there remained concerns over the way in which cases under both the old and the new guidance had been managed. These were discussed in detail in our 2014 audit report.

6.52 We are pleased to report that some significant areas of concern that were highlighted in our last audit and performance review reports were not observed in the cases reviewed this year. These include:

- The NMC's handling of cases involving both health and misconduct/conviction allegations
- The nature of the NMC's contact with the registrant in pursuing voluntary removal and evidence that it had provided advice as to what to say in order to ensure that an application is granted
- The NMC's decision to grant voluntary removal applications where, in our view, the misconduct was serious.

6.53 However, we did identify some concerns this year which were similar to those identified in previous years.

6.54 First, we were concerned by the quality of the assessment in voluntary removal recommendations of the seriousness of the misconduct and/or of the

public interest in a small number of cases. However, in most cases reviewed we found the recommendations to be comprehensive and of good quality. It should also be noted that, where we did identify concerns, we did not consider that the decision (reached on the basis of the recommendation) was inappropriate.

6.55 We also identified some ongoing concerns in relation to the clarity over admissions made by registrants. Full admissions to all charges and to current impairment are a pre-requisite of disposal by this means under the current process. It should be noted that the NMC disagreed that there was any lack of clarity over admissions in these cases. Moreover, we saw no evidence that any party to the cases subsequently raised a concern over the charges admitted.

6.56 As a wider point, we consider that potential for confusion over charges admitted could be avoided if the voluntary removal application form were to be tailored to individual registrants, with the charges in the case set out for the registrant to confirm admissions or denials. This would more closely resemble the process in place for the 'standard directions form' which the NMC sends to every registrant where a decision has been reached that there is a case to answer.

6.57 Finally, this year, as was the case in previous years, we identified a concern about the way in which the NMC had approached contacting the maker of the allegation for their views on disposal by voluntary removal. The NMC's Education, Registration and Registration Appeals Rules 2004 require the Registrar to provide the maker of the allegation (if any) with a reasonable opportunity to comment on a voluntary removal application before determining whether or not to grant it[16]. The Rules also require the Registrar to have regard to any comments received.

6.58 In considering these findings, we concluded that our concerns over the way in which the NMC is managing the voluntary removal process arising from our targeted audit are not as significant as those highlighted in previous years. In contrast to our 2013 and 2014 audit findings, none of the concerns identified this year were so serious as to give rise to a conclusion that the approach adopted by the NMC would not maintain public confidence in regulation if it were adopted more generally.

Internal quality assurance of voluntary removal decisions

6.59 We asked the NMC about the way in which it quality assures voluntary removal decisions. The NMC told us that training and guidance is provided for decision-makers and that quality assurance is built into the stages of the process, in that a case officer drafts the recommendation, a case manager approves the recommendation and then the Registrar reaches a decision based upon the recommendation. The NMC noted that feedback points can

[16] Rule 14 (2B). See: https://www.nmc.org.uk/globalassets/sitedocuments/legislation/legislation-updated/nmc-education-registration-and-registration-appeals-rules-consolidated-text-effective-from-2016.01.19.pdf

be raised by, and with, decision-makers and that a record is kept of instances where the Registrar disagrees with the advice provided.

6.60 We consider that the power held by the Registrar in reaching decisions on voluntary removal applications has significant implications for fairness and transparency in the disposal of fitness to practise allegations. As noted in our conclusions regarding the NMC's new power to review no case to answer decisions, we consider that these important decisions should be subject to a more formal and consistently applied mechanism for quality assurance. This would allow the NMC to monitor the consistency of decisions and assist ongoing learning for decision-makers.

The consensual panel determination process

Our appeals of cases resolved by consensual panel determination

6.61 In our last performance review report we highlighted our appeal of three final decisions in which we had concerns over the use of the consensual panel determination process. Specifically, we noted that all three cases involved dishonesty and that we did not consider this had been appropriately investigated and/or charged by the NMC. We also had concerns about the quality of the provisional agreements[17] in those cases and whether they included all relevant information to enable the final fitness to practise panel to make a fully informed decision.

This year we appealed two cases resolved by consensual panel determination. In both cases we had concerns about the way in which the NMC had managed the case in addition to our concerns about the panel's final decision.

In one case it was considered that the factual summary provided to the panel in the provisional agreement did not contain sufficient information about the nature and circumstances of the misconduct alleged or about the registrant's motivation. The matter was resolved by consent and the case was remitted for a fresh hearing by a differently constituted panel.

6.62 In the second case it was considered that the impact of the NMC's failure to allege that the misconduct was dishonest and to bring specific charges, meant that the panel did not have the full facts in front of it in assessing the seriousness of the misconduct. The appeal was allowed, the decision quashed, and the case was remitted for a fresh hearing by a differently constituted panel.

6.63 We accept that these decisions are a small proportion of those resolved by consensual panel determination in the relevant period.[18] However, it is a cause for concern that these cases involve similar concerns to those

[17] The provisional agreement is a document drafted by the NMC and then agreed between the parties. It sets out the charges in the matter, the factual background to the allegations, the grounds for a finding of current impairment and the proposed sanction agreed between the parties. This document is provided to the panel at the hearing.

[18] The NMC informed us that 82 cases were disposed of by consensual panel determinations between 1 April 2015 and 31 March 2016.

appealed last year, namely the level of information provided to panels and the handling of dishonesty allegations.

Our audit findings

6.64 This is the first year in which we have audited cases that progressed to a final disposal at a hearing or meeting. We reviewed 15 cases in which a consensual panel determination provisional agreement had been agreed by a panel and five cases in which the agreement was rejected.

6.65 The following section relates to our findings regarding the NMC's management of the process in the cases we reviewed. Our findings which relate to the decisions in cases where consensual panel determinations were considered, and the reasons provided for the decisions, are discussed separately under Standard 8 of the *Standards of Good Regulation* for Fitness to Practise.

6.66 We identified two instances[19] of the NMC failing to follow its own guidance as to the timing of beginning the process of resolution by consensual panel determination. The guidance states that the NMC '*will only consider resolving a case by consent where a proper assessment has been made of the nature, scope and viability of the allegation. This means either that…case examiners have considered the allegation and found that there is a case to answer; or… the allegation concerns a criminal conviction and has been referred directly to the Conduct and Competence Committee (CCC); or…the allegation has been referred directly to the Health Committee (HC).*'. In both cases a provisional agreement was finalised prior to the case examiners' consideration of the case. The lack of information provided to the case examiners over and above that contained in the provisional agreement was also a cause for concern in each case.

6.67 In a small number of cases we had concerns that the NMC had not adequately considered and/or made clear to the panel at the final hearing the timing of admissions made by the registrant and the registrant's sincerity in making those admissions. We note that the NMC did not agree with all of our findings in this regard.

6.68 We consider that the timing and circumstances of admissions may be relevant in considering the extent of the registrant's insight and therefore that this information should be shared with decision-makers in full. This is particularly important when (as is often the case at the NMC) registrants do not attend hearings at which consensual panel determinations are considered and therefore do not give any evidence in person.

6.69 We had concerns in some cases reviewed in relation to the NMC's approach to seeking comment from the maker of the allegation on the proposed consensual panel determination. Specifically, we were concerned to note in some cases that the maker of the allegation had been given too little time in which to respond or that discussions between the NMC and the maker of the allegation were not recorded appropriately. Unlike in the case of voluntary

[19] One of these cases was reviewed as part of the sample of cases where a review of a no case to answer decision had taken place. It was not one of the 20 cases in the sample of consensual panel determinations cases.

removal, there is no requirement in the NMC's legislation that in these cases the views of the maker of the allegation be sought and taken into account. However, the NMC's published guidance does state that this will happen in all cases excepting those where the referrer is a police force referring a conviction or caution, and neither the force nor its personnel have had a significant and ongoing involvement in the NMC case.

6.70 We also noted that the standard wording of requests for comment from the maker of the allegation state that the NMC is particularly interested to hear if the maker of the allegation supports the proposal, as this was a relevant factor for the panel to consider. We are of the view that comments either way are relevant and that no greater emphasis should be placed on receiving those that are supportive.

6.71 We had concerns about the sufficiency of information provided to panels in some of the cases reviewed. The NMC agreed with our findings in some cases but disagreed in others and considered that the level of information provided was appropriate. It is important to note that in each case we did not consider that the information that was lacking caused the panel to reach an inappropriate decision.

6.72 Finally, we noted that the NMC had advised the registrant in one case (via their representative) as to what issues to cover in their reflective statement that was provided to the panel. It is the NMC's position that it was not inappropriate for it to specify what the NMC, and more importantly the panel, would expect to see. While we do not consider that this single case is a cause for significant concern, we think that care needs to be taken over what assistance the registrant is given. The reflective statement is presented to the panel as a document produced by the registrant demonstrating what they have learnt from their misconduct, the extent to which they understand the gravity of it, their remorse and their regret. It is often used by the panel in mitigation when considering sanction. It is therefore important that careful consideration is given to what level of direction should be given to registrants regarding the content of such statements.

The NMC's guidance on consensual panel determinations

6.73 In the course of the targeted review we requested copies of relevant process documentation from the NMC. One of the documents provided was internal guidance for lawyers on consensual panel determinations. We had some reservations over the section of the guidance which set out the NMC lawyers' role in engaging registrants in the process. This indicated that the NMC's approach is to actively encourage pursuing resolution by consensual panel determination in almost all cases in the first instance. The guidance states that a consensual panel determination can only be agreed if the nurse or midwife admits facts and impairment, but then proceeds to instruct staff to pursue it as a means of disposal as early as possible, regardless of whether there has been any response from the registrant to the allegations or if a response has been received which does not admit any or all facts and impairment.

6.74 We consider that the approach set out in this internal guidance document has the potential to call into question the validity of admissions made in order to

facilitate disposal via this means. In this context we consider it vital that all discussions between the regulator and the registrant concerning consensual disposal and in particular in relation to admissions and the process of agreeing a proposed sanction, are appropriately documented so that it can be demonstrated that the process is both transparent and consistent.

Conclusion on performance against this Standard

6.75 In conclusion, we are satisfied that the NMC has taken appropriate action to address its failures to put registrants' representation before decision-makers, though we will monitor this issue closely to identify whether there is any repetition of such errors over the next year.

6.76 Although we identified some concerns in our targeted audit in cases disposed of by voluntary removal, we are pleased to note that these were not as prevalent or as significant as those identified in previous years. We also observed some improvement in the quality of voluntary removal recommendations. While there remains room for improvement in the management of some of the cases reviewed, we have concluded that the concerns identified are not sufficiently significant to support a finding that this Standard is not met.

6.77 We have some concerns. For example, the consensual panel determination decisions we appealed this year were in cases involving similar concerns to those appealed last year.

6.78 Furthermore, while we accept that the sample of cases reviewed in which a consensual panel determination was considered was relatively small, we have concluded that our concerns in relation to some of those cases may indicate that the NMC's consensual panel determination process is insufficiently transparent.

6.79 In considering the extent to which these concerns should influence our judgment of the NMC's performance against this Standard, we have borne in mind that none of the consensual panel determination cases audited suggested that the decision ultimately reached by the panel was not in the public interest.

6.80 Furthermore, we are conscious that disposal of fitness to practise cases by means of consensual panel determinations and other such methods is a relatively new process for the regulators. There remains a lack of clarity over the best approach should be in such cases in order to uphold the transparency, fairness and proportionality of the fitness to practise process. This is an area of the regulators' work which we intend to consider further over the coming year.

6.81 Taking these factors into account we have concluded, on balance, that this Standard is met this year.

Standard 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 and service users. Where necessary the regulator protects the public by means of interim orders

6.82 Last year we determined that this Standard was met in view of the significant progress the NMC had made in reducing its median timeframes for case progression throughout the fitness to practise process and in reducing the number of 'older' cases left to be concluded.

6.83 However, we expressed our continued concern in some areas.

6.84 We were particularly concerned by the rate of adjournments of final fitness to practise hearings. We noted that the NMC continued to collect and analyse data about the causes of adjournments and had introduced a number of initiatives aimed at reducing the adjournment rate.

6.85 We also noted an increase in the median time taken from receipt of an initial complaint to an IC decision on whether there is a case to answer. We recommended that the NMC kept its timescales for concluding the initial stage of its fitness to practise process under review, and particularly that it analysed the impact on overall timeliness of the introduction of case examiners.

6.86 This year, we undertook a targeted review of performance against this Standard. In our initial assessment of the NMC's performance we noted that the median time taken from receipt of an initial fitness to practise complaint to a final decision by the IC or case examiners on whether there is a case to answer had increased this year. We noted that case examiners were introduced with the aim of improving the efficiency of the initial stages of the fitness to practise process and wanted to examine how the impact of the introduction of case examiners on the timeliness of case progression was being monitored, where delays were occurring, and how these were managed. We also wanted to know whether any interim orders had expired prior to the fitness to practise proceedings being concluded.

6.87 The NMC confirmed at an early stage in the performance review process that no interim orders had expired prior to the conclusion of fitness to practise proceedings. We welcome this improvement in an area of performance that has a direct impact on public protection.

6.88 Our findings in relation to other areas of performance relevant to this Standard are discussed below.

Adjournments of final fitness to practise hearings

6.89 In our last performance review report we noted that during 2014/15 the rate of adjournments of final fitness to practise hearings was 24 per cent (a slight increase on 22 per cent in 2013/14). We noted also that the NMC had informed us that 19 per cent of these cases were part-heard due to lack of time (as opposed to being adjourned on application by the NMC or by the registrant). This usually means that the charges will have been considered and witness evidence heard before the adjournment, but the panel will not

have completed its decision-making. We expressed particular concern over the NMC's reported practice of deliberately scheduling some cases to run part-heard, for example to accommodate the availability of witnesses or where cases are complex and include many allegations. We considered that interruptions to panels' considerations caused by this could adversely impact on the quality of the final decisions made.

6.90 This year performance in this area has not improved. According to data published in the NMC's performance and risk reports in its Council papers, between April 2015 and March 2016 an average of 19 per cent of hearings ran part-heard due to lack of time per month and an average of 6 per cent of hearings were adjourned, either on application of the registrant or of the NMC. The proportion of hearings running part-heard in each individual month varied significantly, from 13 per cent in August 2015 to a high of 29 per cent in September 2015.

6.91 The NMC confirmed that this data does not include those hearings which were intentionally scheduled to run part-heard. The NMC noted that in any case this only accounted for a very small number of hearings each year.

6.92 We recognise that there are often legitimate reasons for adjourning a final fitness to practise hearing. However, it is of concern that the rate of adjournments, which we described as unacceptably high in our performance review report for 2013/14, and which further increased in 2014/15, has not improved this year and that there has been no improvement in the proportion of cases running part-heard. It would appear that the initiatives introduced by the NMC to reduce adjournments have not as yet been effective.

Timeliness of fitness to practise case progression

The impact of the introduction of case examiners on the time taken to progress a case from referral to a case to answer decision

6.93 The median time taken from receipt of an initial complaint to a final decision by the IC or case examiners on whether there is a case to answer was 39 weeks in 2013/14. This increased to 45.5 weeks in 2014/15. The median time increased again in both quarter 3 (50 weeks) and quarter 4 (55 weeks) this year.

6.94 The NMC has told us that the timeliness of case examiners' decisions upon expiry of the notice period (within which the registrant has an opportunity to formally respond to the allegations) has improved over the course of the year. The NMC reports that its internal quality sampling indicates that case examiners finalised their decision within seven working days of the end of the notice period in 87 per cent of cases this year. The NMC has told us that it is taking steps to improve this further by better managing the allocation of cases.

6.95 However, the timeliness of investigations prior to the case examiner decision remains a concern. In our targeted audit we identified concerns in around a third of the 100 cases we reviewed relating to the timeliness of case progression from receipt of a complaint to a final case examiner/IC decision. In half of those cases where we had concerns we identified unexplained

periods of inactivity during the investigation or delays in assigning a case to a case investigation case officer. It should be noted, however, that in some of those cases a case to answer decision was reached within the NMC's internal performance target of 12 months.

6.96 We accept that the NMC is managing a large caseload and that resources need to be allocated with a view to prioritising some cases, which can mean that there are periods of less activity in others. However, we reviewed a number of cases in which periods of inactivity were identified and which did not reach the 12 month internal performance target, suggesting that this was not the result of planned management of the overall caseload.

6.97 The NMC told us that a period of exceptionally high staff turnover in its investigations teams impacted negatively on its work to reduce the number of older cases at this stage of the process.

6.98 The NMC also described a number of steps it has taken to improve timeliness of case progression prior to a case examiner decision, including improving its case review process to ensure that managers and investigators are alert to delays in case progression, appointing a Rule 7(a) Coordinator to improve the efficiency of that process, and assigning an investigation lawyer to each investigation team to improve timeliness of legal advice.

6.99 However, the NMC has also told us that, while it continues to work towards a shorter internal performance target for cases in investigations, it will be focusing on progressing older cases and expects that the median age of cases at this stage of the process will continue to increase in the short term.

Timeliness of case progression throughout the fitness to practise process

6.100 Last year we highlighted the NMC's improved performance against its KPI to progress 90 per cent of cases through the adjudication stage to the first day of a final fitness to practise hearing (or meeting) within six months of being referred from the IC. This year the NMC changed how it measures performance; instead of setting separate investigation and adjudication KPIs, the NMC aimed to conclude cases within 15 months of receipt. By 'concluded' it is meant that the case has either been:

- investigated by the screening team and closed
- closed with no case to answer by the IC or case examiners
- closed by voluntary removal
- concluded at an adjudication hearing or meeting.

6.101 We welcome the NMC's move to measure performance in terms of final disposal of a case rather than time taken to reach the first day of a hearing/meeting, particularly in light of our ongoing concerns about the high rate of hearings running part-heard.

6.102 No specific target was set for the proportion of all cases that should be concluded within 15 months, but it was agreed that this should not fall below 65 per cent, the level that was being achieved at the time the new KPI was agreed.

6.103 The NMC consistently exceeded this minimum goal. The proportion of cases concluded within 15 months was 70 per cent or higher in every month in the relevant period. Between November 2015 and March 2016 the proportion of cases meeting the target was consistent at 78 per cent.

6.104 Another positive development noted this year is that the median time taken from a final IC/case examiner decision to the final disposal of the case was 26 weeks. This is an improvement on previous years (34.5 weeks in 2014/15 and 44 weeks in 2013/14).

6.105 Last year we noted that the time taken from receipt of a complaint to a final disposal of a case had decreased since 2013/14 from 97 weeks to 81.2 weeks. This year performance has worsened slightly to 83 weeks, but this remains a shorter median timeframe than that achieved by some regulators with smaller caseloads.

6.106 However, on the basis of the data available this year, we are concerned about some measures of timeliness in case progression.

6.107 First, as described above, the median time taken from receipt of an initial complaint to a final decision by the IC or case examiners on whether there is a case to answer has increased again this year.

6.108 In addition, the NMC's aged caseload has increased. Our 2013/14 performance review report recorded that the number of outstanding cases that had been received two or more years previously was 376. Last year, in reaching our decision that this Standard was met, we highlighted in particular a significant reduction in this figure to 187. This year at the end of quarter 4 there were 329 cases that were two years old or more. There was also an increase in the number of cases of one year or older (1,437 in quarter 4, compared to 917 in 2014/15). There was only a slight decrease in the number of cases three years or older, from 54 last year to 48 this year.

Progression of cases arising from concerns over the practice of midwives working in the maternity and neonatal services at the University Hospitals of Morecambe Bay NHS Foundation

6.109 Towards the end of the period under review the NMC initiated the first final fitness to practise hearings arising from its investigations into the practice of midwives working at the University Hospitals of Morecambe Bay NHS Foundation Trust.

6.110 The events giving rise to these hearings took place in 2008 and the delay in bringing them to a final conclusion is unacceptable. A number of the cases concerned are ongoing at the time of writing, which limits the extent to which we can comment on them at this time.

6.111 We note that the NMC decided at an early stage in its investigation into these matters to await the outcomes of separate proceedings, including a police investigation, before progressing the fitness to practise cases.

6.112 We recognise that there will be cases where external factors, such as inquests and police or other investigations which are outside the NMC's control, will cause delay. However, the timely progression of cases is an essential element of a good fitness to practise process and has implications

for public protection and public confidence in healthcare regulation as well as the experience of both registrants and complainants. There might have been opportunities for the NMC to consider whether to re-visit these cases at an earlier stage.

Conclusion on performance against this Standard

6.113 While we note some positive developments across particular measures of timeliness in the fitness to practise process, we are concerned by evidence of developing delays to case progression at both its initial and final stages. Continued delays in investigating cases, combined with the NMC's failure to schedule a consistently high proportion of final hearings with sufficient time to enable them to conclude, has the potential to cause a backlog of cases awaiting conclusion. Such delays can lead to a loss of public confidence in the fitness to practise process.

6.114 On balance, we have determined that this Standard is not met.

Standard 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

Guidance for parties to the fitness to practise process

6.115 The NMC publishes guidance documents for parties to fitness to practise proceedings including: customer service standards specific to FTP; advice and information about FTP for employers of nurses and midwives (updated September 2015); guidance for patients on raising concerns about nurses and midwives; guidance for unrepresented registrants at NMC hearings; and witness information leaflets about FTP investigations and hearings.

6.116 This year, we identified concerns relevant to this Standard regarding the accuracy of guidance produced for registrants who have been referred to the Health Committee (HC) and for those referred to the Conduct and Competence Committee (CCC).

6.117 Both the HC and the CCC guidance failed to provide a clear and full explanation of the powers of fitness to practise panels to transfer cases between the HC and the CCC or of the circumstances in which such decisions might be made under the NMC's fitness to practise Rules.

6.118 Both documents contained out of date and incomplete information about the Authority's power to appeal final fitness to practise decisions. The legal test applied had not been updated since the change that came into effect on 31 December 2015.[20] Information on the period of time in which the Authority can appeal different types of decisions was incomplete. Furthermore, in neither document was it explained that the relevant Court has the power to substitute its own decision rather than referring the case back to the NMC upon a successful appeal.

[20] Prior to this date the test applied was whether the decision under review was 'unduly lenient'. The current test is whether the decision is 'insufficient to protect the public'.

6.119 In both the HC and the CCC guidance, no information was provided to registrants under investigation about the NMC's corporate complaints process. Rather, it was stated only that, should they have any concerns, registrants should speak to their case officer or to their case officer's manager.

6.120 We were concerned about these points, particularly about the impact on potentially vulnerable registrants of guidance that implied that a health case might be heard in public.

6.121 The NMC told us that it endeavours to update all fitness to practise guidance every two years in response to internal and external changes and that, when considering the scope of the change, it will assess the impact on existing guidance and then decide the extent of the update required.

6.122 Updated versions of both guidance documents are available on the NMC website, effective from 4 July 2016. All of the concerns raised have been addressed.

Support provided to parties to the process

6.123 The NMC has further developed its witness liaison service this year. The team offers support to all witnesses, including those for the defence, throughout the fitness to practise process. Support is also provided by the witness liaison team to registrants in exceptional circumstances. This may include support at hearings where there are concerns about a registrant's welfare.

6.124 However, we received concerning feedback in relation to the treatment of witnesses to cases against two midwives involved in the care of a mother and her baby who died nine days after his birth at Furness General Hospital in November 2008.

6.125 These were high profile cases, and related to matters that were particularly distressing to the witnesses, the parents of the baby who had died. We consider that the NMC took these factors into account and provided dedicated support to the witnesses through its witness liaison team.

6.126 However, it is clear that the support provided did not prevent the witnesses from having a very negative experience, which added to and exacerbated their distress.

6.127 On the basis of the information received, we consider that there was a failure in communication which meant that matters discussed and agreed with the witnesses prior to their giving evidence were not adequately understood by those in the hearing room. As a result, some matters were not managed with due sensitivity during the hearing, causing the witnesses a great deal of unnecessary additional distress.

Our audit findings

6.128 We identified a number of cases in the course of our targeted audit in which a case examiner decision was reached some weeks after the date upon which the registrant had been advised that this would take place. In these cases, the NMC had written to the registrant advising that their case would be

considered ‘on or shortly after’ the day after the end of the 28 day notice period in which they had an opportunity to formally respond to the allegations. However, in some cases the decision was not reached for four to seven weeks after that date, and no updates were provided to the registrant to explain this delay.

6.129 The NMC acknowledged that this was a concern in the early stages of the implementation of the case examiner process. It described improvements in the timeliness of case examiner decisions (discussed under fitness to practise Standard 6). The NMC also told us that it had recognised that the wording of the formal notice was not managing stakeholders’ expectations appropriately and that this was therefore amended in July 2016 to indicate that case examiners would conclude their decision-making within two months of the date of the notice (or within one month after the end of the notice period).

6.130 In conclusion, we are pleased to note that our concerns over the accuracy of guidance documents for registrants have now been rectified.

6.131 We consider that the NMC identified and took appropriate action to address the issue identified in our targeted audit in relation to the notice provided to parties of forthcoming case examiner decisions. This was done alongside making improvements to the timeliness of the decisions at that stage of the process.

6.132 There is also evidence that the NMC has taken further steps this year to improve the guidance and support that it offers to parties to the fitness to practise process this year. However, it is also clear that some parties continue to find attending at hearings very difficult and we will continue to monitor progress.

6.133 On balance, we have concluded that this Standard is met.

Standard 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

6.134 This year we decided that a targeted review of performance against this Standard was required in order to assess:

- the impact of the introduction of case examiners and the NMC’s power to review under Rule 7(a) on the quality of decisions at the initial stages of the fitness to practise process
- the quality of decisions and reasons reached at later stages of the fitness to practise process, including cases disposed of via voluntary removal and consensual panel determination, in light of our concerns over this area of performance over a number of years.

Initial stages decisions

Case to answer decisions

6.135 In our 2014 audit we identified concerns about whether the correct decision had been taken in a small number of the cases reviewed and about the

adequacy of the reasons in a number of others (while not disagreeing with the decisions taken).

6.136 This year there has been a significant change to the way in which the NMC manages initial fitness to practise decisions with the introduction of case examiners in March 2015. In the cases reviewed we did not have any concerns that an incorrect decision had been made. We had concerns regarding the quality of the reasons provided for decisions in only a small number of cases.

6.137 While the samples of cases audited were small relative to the overall caseload of the NMC, this is nonetheless an encouraging improvement in our findings in relation to the quality of decisions at the initial stages of the fitness to practise process.

Voluntary removal decisions

6.138 We noted in our 2013 audit report (the first in which voluntary removal cases were reviewed following the introduction of the process) that the Registrar did not record their own reasons for decisions on applications, distinct from the voluntary removal recommendation form completed by NMC caseworkers. We expressed concern at that time that as a result there was no evidence to demonstrate that the Registrar had conducted appropriate scrutiny of the applications in making the decision, because no separate rationale was recorded. We described this as poor practice in the exercise of a public body's decision making function and stated our view that this was likely to damage public confidence in the NMC.

6.139 In our 2014 audit report we noted that the NMC had amended its process and guidance and that in newer cases the Registrar's reasons had been recorded within the same document as the voluntary removal recommendation. We expressed concern in relation to one decision, in which the registrar had failed to adequately assess the seriousness of the misconduct. We also considered that any decision to grant an application for voluntary removal during an ongoing fitness to practise investigation requires a careful balancing of the various purposes of fitness to practise that we therefore expected to see proper application of the relevant guidance and thoroughly reasoned voluntary removal decisions which specifically take the public interest into account.

6.140 In our targeted audit this year we identified similar concerns in over half of the voluntary removal cases reviewed in relation to the quality and sufficiency of the reasons provided by the Registrar in determining whether or not to grant a voluntary removal application. These included cases in which there was no assessment in the reasons as to the seriousness of the misconduct and cases in which there was either no assessment or an incomplete assessment of the public interest in the registrar's reasons.

6.141 We were particularly concerned to note that in one case no reasons had been produced by the Registrar. Upon enquiry the NMC confirmed that an assistant registrar was asked to make an urgent decision whilst out of the office and in order to avoid unnecessary delay, they took the approach of agreeing with the recommendation to decline the voluntary removal

application without providing any further reasons. The NMC acknowledged that reasons should have been completed in that case.

6.142 We also noted that, where a party to the case (such as the maker of the allegation) requests a copy of the reasons for the decision, the recommendation is not provided alongside the Registrar's reasons. It is therefore all the more important that reasons are comprehensive and demonstrably take into account the factors highlighted in the NMC's guidance.

6.143 The NMC has expressed the view that, while it accepts that the Registrar's reasons do not always fully explain the rationale for the decision reached on a voluntary removal application, those reasons should be read in the context of the full recommendation. The NMC considers that if the recommendation and reasons are taken together, the rationale for the decision is clear.

6.144 The NMC also told us that it is currently in the process of recruiting a senior lawyer to lead on and bring greater consistency to decisions taken in the role of assistant registrar (on behalf of the Registrar).

6.145 We had regard to the NMC's current guidance on voluntary removal decision making. It states that, in reaching a decision on an application for voluntary removal, the Registrar must have regard to:

- the public interest;
- the interests of the nurse or midwife; and
- any comments received from the maker of the allegation.

6.146 We accept that, in most cases the information omitted from the reasons was present in the voluntary removal recommendations that we reviewed. Indeed, most recommendations were comprehensive and well-reasoned. However, having regard to the NMC's voluntary removal guidance, it is our view that the Registrar's reasons should also contain evidence that these factors have been considered and taken into account.

Final fitness to practise decisions

6.147 In a number of cases reviewed during our targeted audit where a decision had been reached by a panel on a consensual panel determination, we had concerns in relation to the quality of the provisional agreement drafted by the NMC and/or the panel's reasons. However, those concerns were not so significant as to undermine the validity of the decisions.

6.148 This year we have held case meetings regarding, and appealed, fewer of the NMC's final fitness to practise decisions than was the case last year. In 2014/15 we received 2,476 decisions from the NMC, in respect of which we held 23 case meetings (0.9 per cent of the total) and appealed 14 decisions (0.5 per cent). This year we received 2,212 decisions and held 14 case meetings (0.6 per cent) and appealed six decisions (0.3 per cent).

Our concerns on review of decisions in cases involving midwives at the University Hospitals of Morecambe Bay NHS Foundation Trust

6.149 We have referred above to the concerns about some aspects of cases concerning midwives at the University Hospitals of Morecambe Bay NHS Foundation Trust. The cases concerned the role of the midwives in the events leading to the death of a baby shortly after he was born at Furness General Hospital in November 2008. We have looked at three of the decisions and, in each case, ultimately took the view that these were not insufficient to protect the public. In two linked cases, however, we identified some deficiencies in the NMC's management of those cases. We are conscious that other cases are being heard and it would be inappropriate for us to comment on the NMC's full work in respect of this area at this time.

6.150 Having said that, the events and the NMC's role here have been the subject of considerable comment and concern. We have alluded to concerns in two cases in this report. It will be appropriate for the NMC to review the overall management of these cases to identify any learning. We ourselves will continue to monitor them closely.

Conclusion on performance against this Standard

6.151 The NMC has not met this Standard for a number of consecutive years. In reaching these decisions we have consistently highlighted our identification of learning points in and our appeal of a high proportion of final decisions through the section 29 process. We have also cited significant concerns in relation to the quality of decision-making at the initial stages of the fitness to practise process, including decisions reached in respect of voluntary removal applications.

6.152 This year we did not identify any decisions reached by case examiners or by the Registrar in a voluntary removal case that we found to be inappropriate or that did not provide adequate safeguards to the public and the public interest.

6.153 We also found significantly fewer concerns in our targeted audit regarding the quality of the reasons provided for decisions at the initial stages. We consider that this is a positive indicator of the effectiveness of the case examiner process introduced this year.

6.154 The proportion of the NMC's final fitness to practise decisions in respect of which we have held case meetings and which we have appealed, has decreased.

6.155 In reaching a view as to whether or not this Standard is met, we considered carefully what weight to attach to our concerns in relation to the quality of the Registrar's reasons on voluntary removal applications. We note the NMC's position on this issue, though we do not share it. We remain of the view that, where an application for removal from the register is made during an ongoing fitness to practise investigation, it should be demonstrably clear that the decision-maker has applied the relevant guidance and in so doing has considered all relevant factors, including the public interest.

6.156 The NMC's failure to do so in many of the cases reviewed is a cause for concern. We consider that the approach taken is detrimental to the

transparency of the voluntary removal process as a whole and could leave the NMC open to challenges which, if successful, could undermine public confidence in the NMC and the fairness of the fitness to practise process.

6.157 However, on balance, we have concluded that these concerns are not sufficient to determine that this Standard is not met. In reaching this decision we have taken into account the NMC's indication that it will be making changes to the voluntary removal decision-making process as well as the improvements to decision-making we have observed at both the initial and final stages of the fitness to practise process.

6.158 We therefore concluded that this Standard is met.

Standard 9: All fitness to practise decisions, apart from matters relating to the health of a professional, are published and communicated to relevant stakeholders

6.159 This Standard was met in 2014/15.

6.160 Fitness to practise decisions, apart from matters relating to the registrant's health, are published on the NMC website.

6.161 We have received no information to suggest that the NMC is failing to publish or communicate fitness to practise decisions and no such concerns were identified in the course of our check of a sample of entries on the register where there had been a final fitness to practise decision.

6.162 The NMC has told us that it actively participates in the Alliance of UK Health Regulators on Europe (AURE) and shares its principles for sending alerts to regulators in other EU member states of any professional who has been restricted or prohibited from practising, even on a temporary basis, within three calendar days of the decision to do so.[21]

6.163 We have concluded that this Standard continues to be met.

Standard 10: Information about fitness to practise cases is securely retained

6.164 In 2014/15 we concluded that the NMC had not met this Standard. We noted that the number of data breaches that occurred in the NMC's fitness to practise directorate remained high and that we had identified some information security concerns in our 2014 audit of fitness to practise cases closed at the initial stages of the process. We also highlighted a number of actions taken by the NMC to improve information security, including reviewing and amending its processes and providing additional training to staff.

6.165 We requested information from the NMC on the number of data breaches it had reported to the Information Commissioner's Officer (ICO). As with other measures, this year we have the relevant data for quarters 3 and 4 only, during which period no data breaches were reported to the ICO by the NMC.

[21] The alert mechanism was introduced by the revised Mutual Recognition of Professional Qualifications (MRPQ) Directive 2005/36/EC.

6.166 However, in the course of undertaking our targeted audit in relation to performance against other Standards for fitness to practise we identified two cases in which data breaches had occurred. In one of those cases the breach was significant, in that it involved the sending of unredacted patient clinical records to a registrant in error. That incident (which took place in quarter 2) was referred to the ICO by the NMC.

6.167 The NMC identified both data breaches at the time at which they occurred and undertook investigations into them. The NMC has told us that it has subsequently implemented improvements to its processes to prevent these incidents recurring.

Action taken by the NMC to improve information security

6.168 The NMC's annual report and accounts 2014/15 (the most current available at the time of writing) states that it has implemented the majority of high priority recommendations in line with the ISO 27001 framework, which is the international standard for information security management.

6.169 The NMC's corporate risk register at April 2015 identified 11 priority areas for improvement set out in the NMC's information security plan remaining. At 7 March 2016, four priority areas, relating to business continuity planning, had been mitigated and there were seven remaining priority areas for action, to be taken forward in the information security work plan for 2016-17. Progress against the NMC's information security plan is reviewed at a senior level through the Information Governance and Security Board.

6.170 A small number of concerns have been noted in relation to fitness to practise information security at the NMC this year. However, there is evidence to indicate that the NMC has taken appropriate action where these have occurred. Moreover, no data breaches were reported to the ICO in the second half of the period under review.

6.171 It is clear from the publicly available information set out above that risks attached to failures to keep information secure are being continuously monitored by the NMC and that measures are in place to make improvements in this area. In light of this we have concluded that this Standard is met.

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