



Annual review of performance 2016/17

Nursing and Midwifery Council



About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care¹ 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.

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 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 nursing and midwifery professions in the United Kingdom. Its work includes:

- Setting and maintaining standards of practice and conduct in the professions
- Maintaining a register of qualified professionals (registrants)
- Assuring the quality of education and training for nurses and midwives
- Requiring registrants to keep up their skills up to date through continuing professional development
- Taking action to restrict or remove from practice registrants who are not considered to be fit to practise.

As at 31 March 2017, the NMC was responsible for a register of 690,773 nurse and midwives. Its annual retention fee for registrants is £120.



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 NMC.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 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

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.

- months. We use this to decide the type of performance review we should carry out.
- 1.7 We will recommend that additional review of the regulator's 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) or;
 - We consider that the information we have indicates a concern about the regulator's performance in relation to one or more Standards.
- 1.9 This targeted review will allow us to assess the reasons for the change(s) or concern(s) and the expected or actual impact of the change(s) or concern(s) before we finalise our Performance Review report.
- 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 judgement

- 2.1 During May 2017 we carried out an initial review of the NMC’s performance from 1 April 2016 to 31 March 2017. Our review included an analysis of the following:
- Council papers, performance and committee reports and meeting minutes
 - Policy and guidance documents
 - Statistical performance dataset (see paragraph 2.11 below)
 - Third party feedback
 - A check of the NMC register
 - Information available to us through our review of final fitness to practise decisions under the Section 29 process.⁴
- 2.2 As a result of this assessment, we carried out a targeted review of Standards 2 and 3 of the *Standards of Good Regulation* for Registration and Standards 6 and 9 of the *Standards of Good Regulation* for Fitness to Practise.
- 2.3 We obtained further information from the NMC relating to these Standards, which we considered in detail.
- 2.4 We delayed publication of the performance review report whilst we carried out our Lessons Learned Review into the NMC’s handling of fitness to practise cases concerning midwives at Furness General Hospital.⁵ Some work on the cases had taken place in this reporting period and we decided that we may make findings in our Lessons Learned Review which could affect our view of the NMC’s performance against the Fitness to Practise Standards.
- 2.5 Following publication of the Lessons Learned Review⁶ and a detailed consideration of that report and the information we obtained from the NMC, we decided that the NMC had met 23 out of 24 of the Standards. The reasons for this are set out in the following sections of the report.

Summary of the NMC’s performance

- 2.6 For 2016/17 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.

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 Discussed in detail at 2.16.

⁶ See: www.professionalstandards.org.uk/docs/default-source/publications/nmc-lessons-learned-review-may-2018a0851bf761926971a151ff000072e7a6.pdf?sfvrsn=6177220_0

- Met nine out of 10 of the *Standards of Good Regulation* for Fitness to Practise. The NMC did not meet standard 7.

2.7 The NMC has maintained last year's performance when it met 23 out of 24 of the Standards. However, the NMC's performance against the sixth Standard for Fitness to Practise, which it failed to meet last year, has improved and it has now met this standard. We determined this year that the NMC did not meet the seventh Standard for Fitness to Practise.

Key comparators

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

2.9 We expect to 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.

2.10 Set out below is the comparator data provided by the NMC for the period under review.⁷

2.11

1	The number of registration appeals concluded, where no new information was presented, that were upheld	0 ⁸
2	Median time (in working days) taken to process initial registration applications for <ul style="list-style-type: none"> • UK graduates • EU (non-UK) graduates • International (non-EU) graduates 	1 2 13
3	Time from receipt of initial complaint to the final Investigating Committee/Case Examiner decision <ul style="list-style-type: none"> • Median • Longest case • Shortest case 	51 weeks 401 weeks 7 weeks
4	Time from receipt of initial complaint to final fitness to practise hearing <ul style="list-style-type: none"> • Median 	87 weeks

⁷ The period under review is 1 April 2016 to 31 March 2017.

⁸ The NMC reports that there were no appeals where no new information has been provided, including information provided orally at the appeal hearing stage. The NMC advised that there were two appeals upheld during the period where no new *written* information was provided.

	<ul style="list-style-type: none"> • Longest case • Shortest case 	<p>395 weeks</p> <p>25 weeks</p>
5	Median time to an interim order decision from receipt of complaint	26 days
6	Outcomes of the Authority's appeals against final fitness to practise decisions <ul style="list-style-type: none"> • Dismissed • Upheld and outcome substituted • Upheld and case remitted to regulator for re-hearing • Settled by consent • Withdrawn 	<p>0</p> <p>1</p> <p>1</p> <p>8</p> <p>0</p>
7	Number of data breaches reported to the Information Commissioner	0
8	Number of successful judicial review applications	0

Other developments in 2016/17: the decision to regulate nursing associates

- 2.12 At its meeting in January 2017 the NMC's Council agreed to the request from the Secretary of State for Health to be the regulator for the new role of nursing associates. Plans to create the role were announced by the Government in late 2015.
- 2.13 The role is designed to bridge the gap between health care assistants and registered nurses. It is intended that this will be a stand-alone role as well as a new route to becoming a registered nurse.
- 2.14 Taking on the regulation of the role will require changes to the NMC's legislation and may also involve changes to existing guidance and standards for registrants and employers. The NMC reports that it has begun a two-year programme of work to ensure that it is ready to begin registering nursing associates in early 2019.
- 2.15 In the interim, Health Education England has been running nursing associate pilots at 35 test sites across England. The first nursing associates are expected to complete their training and start work in 2019.

Independent lessons learned review of the NMC's handling of concerns about midwives at Furness General Hospital

- 2.16 On 17 February 2017 the Department of Health wrote on behalf of the Secretary of State to the Authority to ask whether the Authority would be willing to exercise its discretion under section 26 of the Health Care Professions Act 2002 and carry out an independent 'lessons learned' review into the NMC's handling of fitness to practise cases concerning midwives at

the Furness General Hospital. The NMC welcomed the review, stating that it considered that the Authority was best placed to conduct it.

- 2.17 Terms of reference for the review were published in May 2017 and the review formally commenced on 15 June 2017, following the conclusion of the last of the relevant cases.
- 2.18 Concerns around the midwifery unit at Furness General Hospital arose in 2008 and the NMC first received complaints about it in 2009. The review was, therefore, largely looking at matters which took place well before the period that is the subject of this report. The NMC's processes have changed significantly in that time and it is important to stress that this report deals simply with our view of the NMC's performance in 2016/17, by which time the bulk of the work on these cases had been completed.
- 2.19 However, some work on the cases did take place in this reporting period. In particular, decisions were taken about a number of cases both by the NMC team and by Fitness to Practise panels and there was significant correspondence between the NMC and some complainants in respect of information held by the NMC. These matters are clearly relevant to the Fitness to Practise Standards. We therefore delayed publication of this performance review so that we could take into account findings from the Lessons Learned Review.
- 2.20 We are pleased that, on the evidence that we examined for the purposes of this report, the NMC has met 23 out of 24 of the *Standards of Good Regulation*. However, we should stress that we did not undertake an audit of the NMC's processes this year, as this was not judged to be necessary on the evidence available and because we were assured by the targeted audit we carried out in our review of the NMC's performance in 2015/16.

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 last revised its Code, setting out professional standards of practice and behaviour for nurses and midwives, in March 2015. We have not seen any evidence that this needs further revision.
- 3.3 The NMC reports that it will be working to develop standards of proficiency and practice for the new nursing associate role over the coming year. An early working draft of the standards of proficiency will be developed so that those who will complete their nursing associate training before the final standards are in place can work towards readiness to meet the NMC's likely

expectations. The final standards are scheduled to be approved in October 2018. We will monitor the progress of this piece of work.

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

- 3.4 The NMC publishes online guidance supplementary to the Code on issues including the professional duty of candour, the use of social media, and raising concerns at work. This guidance is supported by case studies to assist understanding of their practical application.

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

- 3.5 Although the NMC did not issue new guidance in the period under review, we note that existing guidance has been developed with reference to the views and experiences of a wide range of stakeholders.
- 3.6 The NMC worked with other healthcare regulators to develop a joint statement on avoiding, managing and declaring conflicts of interests. This was published in August 2017 and outlined how health professionals were expected to manage conflicts of interest and to formally declare them when they arise.

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

- 3.7 The NMC has not made any changes to the way in which it publishes its guidance and standards in the period under review.
- 3.8 The NMC continues to publish the Code and supporting guidance on its website. Welsh versions of the documents are available. The website was last redesigned in April 2015 to make content more accessible for people with differing needs.

4. Education and Training

- 4.1 The NMC has met all of the *Standards of Good Regulation* for Education and Training during 2016/17. 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

- 4.2 The NMC undertook extensive work during this review period to develop new standards in education. Updates on the progress of the work are provided at NMC Council meetings. There are also pages dedicated to this area of work on the NMC's website and an education newsletter is available to interested parties.

Standards of proficiency for the future graduate registered nurse

- 4.3 The new standards of proficiency for the future graduate registered nurse will separate the requirements for individuals and those for institutions. A set of competencies for nursing students to achieve at the point of entry to the register will be created and the education requirements that underpin the competencies will be moved into a new education framework.
- 4.4 A formal consultation on the new nursing standards was launched on 13 June 2017 and closed on 12 September 2017. Respondents were given the option of responding to the full consultation document or completing a short survey on the proposals. An Easy Read version of the survey designed to be accessible to people with learning disabilities was also available.
- 4.5 The final standards are scheduled to be published in early 2018, for adoption by September 2019, and with an option for approved education institutions to take up early adoption from September 2018.
- 4.6 We received positive feedback from two third party organisations about the work of the NMC in developing these standards. The NMC's UK-wide engagement with stakeholders in undertaking the work was highlighted in particular.

Standards of proficiency for the future graduate registered midwife

- 4.7 The development of competencies for the future graduate midwife is running a year behind that of the nursing standards. The NMC reports that this is to allow it to maintain its focus on the legislative changes to the way in which midwives are supervised and regulated,⁹ which came into force in April 2017.
- 4.8 In September 2016, the NMC's Council approved the following proposed timeline for the work, commencing in late 2016:
- 2016/2017: develop an evidence base and early engagement with midwifery stakeholders alongside work on the education framework.
 - 2017/2018: draft a set of new standards with input from midwifery education stakeholders.

⁹ From 1 April 2017 statutory midwifery supervision provisions were removed from the NMC's governing legislation and the statutory Midwifery Committee was removed from the its governance structures.

- Spring 2018: formal consultation on the new midwifery standards.
- Early 2019: publish the new midwifery standards.
- September 2019: 'early adoption' of new midwifery standards and new education framework in place.
- September 2020: deadline for adoption of new midwifery standards.

4.9 In September 2017 the NMC's Council approved a new timeline which includes a consultation on new standards in early 2019, and full adoption of the new standards in September 2020, with no provision for 'early adoption'.

4.10 The NMC reports that it plans to undertake an extensive programme of engagement to obtain the views of new and experienced midwives, educators, students, women and their families.

Reviews of other standards

4.11 The length of time since some post-registration standards had last been reviewed was highlighted in our Performance Review report for 2015/16.

4.12 The NMC reports that it is reviewing post-registration education and practice standards in order to ensure alignment with its new approach to standards of proficiency and the new education framework.

4.13 As part of this work, the NMC is updating its Standards of Proficiency for Nurse and Midwife Prescribers, taking into account the principles behind the Royal Pharmaceutical Society's new single competency framework for all prescribers and engaging with the General Pharmaceutical Council.

4.14 The consultation on the new standards for prescribers was run alongside that on the new standards of proficiency for the future graduate registered nurse and closed on 12 September 2017. The draft standards, and a copy of the Royal Pharmaceutical Society's competency framework for prescribers, were available on the NMC's website.

4.15 Following the introduction of revalidation, the NMC will also review its current return to practice standards.

Conclusion

4.16 The NMC's work to develop new standards for education and training has progressed in line with proposed timelines for activity over the period under review. The work has involved extensive engagement with stakeholders, which has been welcomed by organisations responding to our call for feedback this year.

4.17 The NMC has stated its intention to ensure that the introduction of new standards will mean that nurses and midwives have the right knowledge, skills and professional attributes when they join the register, so that they can deliver safe and effective care throughout their careers.

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

- 4.18 Each year the NMC produces an annual report on its quality assurance (QA) activity in respect of both approved education institutions (AEIs) and midwifery local supervising authorities (LSAs) for the previous year.
- 4.19 The reporting year covered in the last report, published in November 2016, was from 1 September 2015 to 31 August 2016 for AEIs (the academic year) and from 1 April 2015 to 31 March 2016 for LSAs.
- 4.20 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. Legislative changes removing the requirement for statutory supervision of midwives came into effect in April 2017. The LSAs were replaced with new models of midwifery supervision in each of the four countries of the UK and the NMC no longer has a role in quality assuring midwifery supervision. The final reporting information on this aspect of the NMC's work is set out below.

Approval of AEIs and education programmes

- 4.21 The NMC's annual report recorded that there were 79 AEIs in the UK. It stated that a number of applications had been received from new providers seeking to become AEIs for the first time and that this appeared to be linked to the discontinuance of bursaries for pre-registration nursing and midwifery students in England.
- 4.22 From 1 September 2015 to 31 August 2016 two new providers were approved to become AEIs and 93 programmes were approved, bringing the total number of approved programmes to 925.
- 4.23 The annual report described changes made to improve the efficiency of the approval process, including requiring AEIs to demonstrate the readiness of their curriculum documentation before an approval event is confirmed and setting minimum timeframes between the approval event date and the programme start date.

AEI self-assessment and monitoring

- 4.24 Each year all AEIs are required to undertake a self-assessment and complete a declaration on their current ability to meet the NMC's standards. In 2015/16:
- Four AEIs were selected for monitoring based on their self-assessments, of which three were found to be non-compliant with one or more of the NMC's standards.
 - 16 AEIs were selected for monitoring based on identified risk, of which 12 were found to have failed to meet one or more of the standards.
 - Notable practice identified through monitoring work included AEIs enabling better support networks for pre-registration students and the creation of a new role to complement link teachers and practice education facilitators.
- 4.25 When an AEI fails to meet the NMC's 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.

Quality assurance of local supervising authorities (LSAs)

- 4.26 In July 2016 all LSAs were required to submit a self-assessment and a declaration on their ability to meet the Midwives Rules and Standards (2012). Following a risk-based selection, the NMC conducted monitoring visits to two LSAs. Concerns were identified during both visits and the LSAs were required to formulate action plans to address them.

Independent review of education quality assurance

- 4.27 Work on an independent review of the NMC's education QA model and process is underway. The new QA model will apply to both nursing and midwifery programmes.
- 4.28 The NMC reports that external consultants have been commissioned to undertake an independent review of the possible options for the future model. The review will include a comparator analysis of alternative QA frameworks and engagement with key external stakeholders.
- 4.29 We received feedback from one third party organisation that engagement opportunities for stakeholders in the QA review had thus far been more limited than those to engage in the NMC's work to develop new education standards. However, it should be noted that this work is at an earlier stage than the standards work. The NMC has told us that it intends to share options and timelines for this work with all stakeholders in the near future.

Education framework

- 4.30 The NMC has undertaken work to develop a new education framework over this review period. The framework will set out a single set of requirements for becoming an approved provider of nursing and midwifery education. These will include programme requirements, and requirements relating to selecting, supporting and assessing students.
- 4.31 A formal public consultation on the new education framework was opened alongside other consultations on future nurse standards and standards for prescribers. The consultation closed on 12 September 2017. It is planned that the framework will be published and adopted by early 2018.

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

Exceptional reporting

- 4.32 It is noted in the NMC's most recent education QA annual report that changes to the NMC's QA framework have led to an increase in the number

of exceptional reports received from AEIs of potential concerns over their compliance with the NMC's standards. In 2015/16, 58 exceptional reports were received – around 50 per cent more than in 2014/15.

- 4.33 The report stated that in response to these, the NMC communicated proportionately with AEIs to ensure actions were in place to control risks to compliance. The information was also used in the risk-based approach to selection of AEIs for monitoring activity.
- 4.34 The NMC received 10 exceptional reports from LSAs in 2015/16, one of which resulted in an extraordinary review and follow-up visit.

Targeted review of an education programme

- 4.35 In response to whistleblowing allegations about a pre-registration nursing programme and after follow-up discussions with the AEI, the NMC conducted a targeted review of one AEI's pre-registration nursing and nurse and midwife prescribing programmes. Non-compliance with the NMC's standards was identified during the review. The NMC reported that it will follow up on actions required during the 2016/17 academic year.

Follow up visits

- 4.36 Follow up visits were conducted in North Wales and Guernsey to monitor progress made against action plans put in place as a result of past extraordinary reviews. In both cases all standards were found to be met. Reports on the visits were published on the NMC's website.

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

- 4.37 Information on approved nursing and midwifery education programmes and the approval process is available on the NMC website.
- 4.38 The NMC reports that it has updated its processes for institutions wishing to become AEIs and has published updated guidance on its website.
- 4.39 A search function on the website enables visitors to search for courses by country, educational institution, and qualification.

5. Registration

- 5.1 As we set out in Section 2, we considered that more information was required in relation to the NMC's performance against Standards 2 and 3 and carried out a targeted review. The reasons for this, and what we found as a result, are set out under the relevant Standards below. Following the review we concluded that both these Standards were met and therefore the NMC has met all of the *Standards of Good Regulation* for Registration in 2016/17.

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

- 5.2 We have not seen any information which suggests the NMC has added anyone to its register who has not met the registration requirements.
- 5.3 The NMC has made some changes to its requirements for registration in this review period.

English language requirements

- 5.4 English language competency requirements for applicants trained in EU countries have been introduced. From 19 July 2016, all applications from EU-trained applicants have been required to demonstrate English language competency.
- 5.5 In addition, in June 2016, the NMC amended English language test requirements for all applicants trained outside the UK.
- 5.6 The changes were designed to increase the flexibility for applicants, while still ensuring that the appropriate standard of English language is achieved. Under the previous system, applicants had to achieve the International English Language Testing (IELTS) Academic Test Level 7 in reading, writing, speaking and listening in a single sitting. A Level 7 in all areas is still required, but this can now be achieved over two sittings of the tests. Both tests must be within six months of each other and no single score must be below 6.5 in any of the areas across both tests.
- 5.7 In response to concerns raised that the IELTS testing arrangements remain too stringent, the NMC reported in July 2017 that it had undertaken an initial 'stocktake' of the current arrangements and found no compelling evidence that the IELTS was not fit for purpose or that the level of competency required was set too high. The matter remains under review.

Indemnity requirements

- 5.8 In January 2017, the NMC announced its decision that the indemnity scheme used by some independent midwives who are members of the organisation Independent Midwives UK (IMUK) was inappropriate in that it was not able to call upon sufficient financial resources to meet the costs of a successful claim for damages for a range of situations, including rare cases of catastrophic injury. The decision meant that independent midwives who were indemnified by the scheme were no longer permitted to practise until alternative cover was obtained.
- 5.9 We note that this decision is currently subject to judicial review and that a hearing is scheduled for October 2017. We will consider this issue in the light of the outcome of those proceedings in the next performance review.
- 5.10 We have concluded that the NMC continues to review its requirements for registration and to amend its processes accordingly.

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

- 5.11 This Standard was considered as part of the targeted review this year.
- 5.12 We noted an increase in the number of registration appeals received by the NMC in recent years which was not in proportion to changes in the overall number of applications received. The proportion of those registration appeals received that were upheld had also increased.
- 5.13 In addition, we received concerns from some individuals and third party organisations about registrants lapsing unintentionally from the NMC’s register and the time taken to get back on to the register following a change to the NMC’s policy. We therefore decided to seek further information about the NMC’s registration appeals and annual renewals processes through our targeted review.

Registration appeals

- 5.14 Last year was the first in which our new Performance Review process was implemented. Due to the changes to the timing of the annual review cycle we requested data for only quarters three and four of 2015/16 from the NMC, except where the dataset measure was an annual figure. As such, we did not have data for the full year on the number of registration appeals received by the NMC. We noticed that the total number of appeals this year was significantly higher than that in 2013/14 and 2014/15, although the number of new applications had not greatly increased.
- 5.15 There was also an increase in the proportion of concluded registration appeals that were upheld.
- 5.16 We requested annual data for 2015/16 so that a comparison could be made. Comparative annual data from 2013/14 to 2016/17 is set out in the table below:

	2013/14	2014/15	2015/16	2016/17
Number of new registration applications received	28,959	28,517	30,157	28,932
Number of registration appeals:				
<i>Received</i>	51	64	109	105
<i>Concluded</i>	49	53	104	97
Of those appeals concluded, the				

number of appeals:				
<i>Upheld</i>	16 ¹⁰	20 (38%)	63 (61%)	49 (50%)
<i>Rejected</i>	23	13 (25%)	16 (15%)	30 (31%)
<i>Withdrawn</i>	4	20 (38%)	25 (24%)	18 (19%)

- 5.17 The comparison above shows that, while the current trend in both the number of appeals received and the number of those that are upheld is a decrease, there was a large increase between 2014/15 and 2015/16. However, the number of appeals as a proportion of all applications received remains very low, at less than 0.5 per cent each year.
- 5.18 Last year, we reported on the timeliness with which the NMC was concluding registration appeals. This year, data provided on request by the NMC confirmed that performance is broadly similar to that of last year. The NMC aims to conclude all registration appeals within six months.
- 5.19 At the time of responding to our targeted questions, the NMC told us that there were currently three outstanding appeals between six and 12 months, and one further appeal which had been received over 12 months ago. The NMC provided explanations of the reasons for the delay in those appeals and showed that the cases were being monitored by the relevant team. In each case, the original appeal hearing had been scheduled within six months of receipt of the notice of appeal, in line with the NMC's process.
- 5.20 We requested information from the NMC to assist our understanding of the way in which it manages its registration appeals process and captures learning from individual appeals to update and improve the process. The NMC provided copies of relevant internal guidance which set out clearly the process followed on receipt of an appeal and the timeframes for each stage.
- 5.21 The guidance also set out a process for withdrawing appeals that are likely to succeed. If new information is received in support of an appeal and the NMC lawyer reviewing the appeal considers that it might result in the Registrar reaching a different decision, the appellant will be asked whether they wish to withdraw the appeal to allow the Registrar to reconsider the application, rather than proceeding to an appeal hearing. If the appellant decides to withdraw their appeal, the Registrar will consider the original application, together with the new written information, and reach a decision. If the Registrar refuses the application for a second time, the NMC will make every effort to ensure that the appeal hearing takes place as originally scheduled.
- 5.22 This may account for the number of appeals which are made and subsequently withdrawn (between 19 and 38 per cent of those concluded each year in the past three years).
- 5.23 We consider that this is a pragmatic approach and is consistent with the fairness of the process.

¹⁰ Percentages are not provided for this year because the number of outcomes provided was less than the number of appeals concluded.

- 5.24 We also asked the NMC for further information about the appeals upheld in 2016/17 where no new written information had been provided. Initially the NMC had informed us that there were seven such cases this year, the hearings for which were all held in the first quarter. On review, the NMC subsequently informed us that it had changed its criteria during the year when calculating this measure and that when the new criteria were applied to the full year, there were only two cases upheld where no new written information was provided.
- 5.25 In both cases, oral evidence was provided at the appeal hearing in relation to the circumstances leading to a past criminal conviction. In each case the oral evidence persuaded the appeal panel to overturn the original decision to reject the application.
- 5.26 The NMC told us that all appeal determinations are reviewed by a lawyer to identify any learning. Based on the review, the lawyer will make recommendations for change which might relate to the work of the team handling the appeals process, the NMC staff presenting the appeal to the appeal panel, or to the panel itself. Where learning relates to the decision or reasons of the panel, the case may be referred to the NMC's Decision Review Group, which also considers learning from fitness to practise panel hearings. The NMC told us that it began formally recording reviews of registration appeals and recommended further actions from May 2017.

Annual renewal of registration

- 5.27 In November 2015, the NMC changed its process for annual renewal of registration. The change meant that if a registrant failed to pay their annual registration fee on time, they would be removed from the register and would need to submit a completely new registration application to be readmitted. Previously, there had been a period during which the registrant could regain access to the register quickly without submitting a full new application, on payment of the outstanding registration fee. The NMC website states that it can take up to six weeks to process the new registration application in those circumstances.
- 5.28 This year we received a number of concerns from individuals and third party organisations about the number of registrants lapsing unintentionally following this change and the time taken to get back on to the register following a lapse. Some of those raising concerns referred to an error on the part of the NMC in September 2016, whereby a second and final email reminder to registrants to pay their renewal fee was not sent. The error was not detected until the end of September, by which time a number of registrants were reported to have unintentionally lapsed from the register. The NMC confirmed that these reminders were automated from November 2016.
- 5.29 In order to assess the fairness and efficiency of the process, we requested more information from the NMC on the impact of the error in September 2016 and more widely, the actions taken by the NMC to limit the number of registrants unintentionally lapsing as far as possible since the change to its process in November 2015.

5.30 The NMC provided data on the number of registrants whose registration lapsed, the number applying for readmission and the median length of time take to process completed applications¹¹ for readmission in each month of the review period:

Month	Number lapsed	Number applying for readmission	Median days to process readmission applications
April 2016	1,400	507	19
May 2016	1,059	428	9
June 2016	881	339	21
July 2016	1,514	306	7
August 2016	1,111	247	4
September 2016	2,030	273	5
October 2016	958	1,813	7
November 2016	1,709	828	28
December 2016	1,284	374	14
January 2017	897	431	11
February 2017	897	324	6
March 2017	1,420	306	3
Total	15,160	6,176	Annual median: 7

5.31 The data provided shows that a higher number of registrants lapsed in September 2016 than in any other month in the review period. That month 2,030 registrants lapsed whereas the next highest monthly total was 1,709 in

¹¹ This measure refers to the time taken by the NMC to process completed applications only, and therefore does not include the time taken by the registrant following a lapse to complete a full new application for registration and obtain all supporting evidence required.

November 2016. It can also be seen that there was a significant increase in the number of registrants applying for readmission to the register in October 2016 (1,813, compared to a high of 828 in any other month in the period).

- 5.32 The median time taken to process applications for readmission rose in November 2017 to 28 days, which would seem to correspond with the spike in such applications the previous month.
- 5.33 However, in the absence of any more sophisticated data, it is difficult to reach a conclusion on the impact of the NMC's failure to send registrants a second reminder to renew their registration in September 2016. The available data does not show which of the individuals applying for readmission had only very recently lapsed, which could be an indicator that lapsing was unintentional. Furthermore, we note that September is the NMC's busiest month for annual renewals, in line with the UK academic calendar, which could account for some of the higher figures described.
- 5.34 The NMC confirmed that it does monitor and review the number of registrants who lapse and that, as part of its continuous improvement programme, mechanisms are being developed to monitor also the number of registrants who lapse and then subsequently apply for readmission.
- 5.35 The NMC provided information on the paper and email notices¹² it sends to registrants in relation to revalidation and annual retention of registration. The NMC told us that, with the support of bodies representing registrants, it had produced information and a short animation reminding registrants of the importance of not letting their registration lapse. It has also produced posters for employers to help remind registrants to renew their registration and pay their annual fee to the NMC. These resources are available on the NMC's website.

Processing of registration applications

- 5.36 Last year we noted a dip in the NMC's performance in processing EU/EEA and other international applications for registration from December 2015 to February 2016. The NMC's key performance indicator (KPI) at that time was to process 90 per cent of those applications within 70 days of receipt, but at one point only 53 per cent of applications were meeting that target. We took into account the NMC's explanation that this dip in performance was the result of a significant increase in EU applications prior to the introduction of language testing as well as a temporary relocation of the registration team due to building maintenance issues.
- 5.37 This year the NMC has set a new KPI of 90 per cent of EU/EEA and other international applications to be processed within 68 days. Only 61 per cent of applications were processed within that time in April 2016, but the target was exceeded in each subsequent month to March 2017.
- 5.38 It was noted in the Council papers for the meeting in July 2016 in relation to processing EU/EEA and other international applications that individual team members now took ownership of the cases they were assessing and that a

¹² Paper notices are sent only to those few remaining registrants yet to sign up to online registration.

new management structure had enabled managers to allocate work and focus on tackling the oldest cases first. Where applications were not complete when received by the NMC and the applicant had failed to submit all the information required, the applicant was given a single named contact to further improve customer service.

- 5.39 We noted last year a less significant dip in performance against the KPI for processing UK applications in December 2015 which had improved by February 2016. The KPI, which remains unchanged this year, is to process 95 per cent of UK applications within 10 days and 99 per cent within 30 days.
- 5.40 This year the 10-day KPI has been met in every month from April 2016 to March 2017 except May and June 2016, but the rate of applications processed within 10 days never dropped below 94 per cent. The 30-day KPI was only met in five of the 12 months,¹³ but again, the lowest proportion of applications meeting the KPI in any month (97 per cent) was not significantly lower than the target. In March 2017, the year average of both measures met the NMC's KPI.

Customer service

- 5.41 Last year we noted that satisfaction levels among those customers responding to the NMC's registration customer service survey were consistently high throughout the year. However, we also highlighted the fluctuation in the proportion of calls to the call centre that had been abandoned across the year, with a peak in January to February 2016 of 19 per cent of calls.
- 5.42 This year the rate of abandonment of calls was 7 per cent or below in every month except April 2016 (14 per cent) and October 2016 (18 per cent).
- 5.43 Customer satisfaction levels decreased in September and October 2016, with the proportion of respondents rating their experience as 'good' or 'very good' dropping to 59 per cent and the proportion reporting that their query had been resolved dropping to 63 per cent. This appears to have been linked to the NMC's failure to send out a second annual registration renewal reminder email in September 2016, in addition to a number of IT issues encountered at the beginning of October which meant that staff could not access systems and some customers could not get through to the call centre.
- 5.44 The NMC reported that the combination of these two issues meant that the call centre struggled with demand for the first week in October and, although performance recovered, there was an impact on the overall October call centre performance on proportion of calls answered.
- 5.45 In our report last year we noted the NMC's intention to commission a review of its registration call centre, particularly in relation to resourcing, forecasting and technology. The NMC told us that improvement work had taken place in the call centre, which was reflected in its improved performance this year. Larger scale improvement work was reported to have been overtaken by the

¹³ August, September and October 2016; February and March 2017.

decision of the NMC's Council to commence a Transformation Programme which will involve the development of a new Contact Centre.

Conclusion

- 5.46 The information provided by the NMC in response to our targeted review has assisted our understanding of how its registration appeals process is managed and the way in which learning from appeals is identified and used to update and improve it.
- 5.47 There was a notable increase in the number of appeals received in 2015/16, followed by a slight decrease this year. However, these figures relate to a very small proportion of the total registration applications received each year by the NMC. The NMC continues to monitor the timeliness with which registration appeals are concluded and performance on that measure has remained stable this year.
- 5.48 The data provided on registrants lapsing then subsequently applying for readmission, and the NMC's potential contribution to the increased numbers through its error in September 2016, is inconclusive. We therefore welcome the NMC's plans to capture more sophisticated data in the future, which should enable it to better assess the number of registrants unintentionally lapsing in any given month. However, we consider that it is the responsibility of registrants to ensure that they remain on the register by paying fees on time. The failure to send a renewal reminder to registrants in September 2016 should not be repeated, as the process is now automated. The NMC has worked with bodies representing registrants and has taken action to limit the number of registrants unintentionally lapsing their registration as far as possible. We concluded that this matter should be monitored by the NMC, but that it was not a cause for significant concern.
- 5.49 The NMC's improved performance in processing applications for registration is a positive development and the NMC continues to report on processing times and customer satisfaction measures at each NMC Council meeting.
- 5.50 For these reasons, we have concluded that the Standard continues to be 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

- 5.51 As in previous years, we conducted a check of a sample of entries on the NMC register. This year we checked 30 entries. The registrant entries checked were randomly selected, but all related 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 fourth consecutive year we identified no errors or inaccuracies.
- 5.52 However, as was the case last year, one error was identified through the routine work undertaken as part of our Section 29 process. In contrast to the error described in our report last year, this error had already been identified

and resolved by the NMC by the time it came to our attention. The error involved a registrant who had been made subject to a caution order, and who had subsequently omitted to pay her annual registration fee, remaining on the NMC's published register despite not having fulfilled that requirement of ongoing registration. We noted that this error arose out of an unusual set of circumstances.

- 5.53 In reviewing the circumstances of the error, we noted what appeared to be differences in the way in which the NMC publishes fitness to practise outcomes on the published register accessible on its website. We wanted to understand the NMC's processes for publishing different types of fitness to practise outcomes and to ensure that the guidance provided on its website to the public accurately reflects those processes. Based on the information provided, we were satisfied that the NMC's approach to publishing fitness to practise outcomes is consistent.
- 5.54 The NMC provided information on the timeframes for updating its register with interim and final fitness to practise outcomes. It was explained that the published register is updated once every 24 hours to incorporate all the changes made the previous day to the NMC's registration system.
- 5.55 When reviewing recent decisions on the NMC's website we noted two examples of fitness to practise decisions that were not updated within the timeframes provided. The NMC confirmed that in both cases the register had been updated one day outside of the timeframe.
- 5.56 The NMC provided further information about the way in which compliance with timeframes for updating the register with fitness to practise outcomes was monitored. All updates to the register are subject to checks, including a review of the register and the NMC's case management system, to ensure that information recorded is correct. The results of checks are recorded and an error log is reviewed weekly to inform performance management and staff training. Daily missing outcome and reconciliation reports are run to further ensure that the data is complete and that registration and fitness to practise systems are consistent. The NMC told us that staff from the Fitness to Practise and Registration teams met regularly to review the assurance processes in place to ensure that they are fit for purpose and remain aligned.

Conclusion

- 5.57 The NMC has provided information to demonstrate that there is a clear process in place to ensure that fitness to practise outcomes are published on the NMC's register within agreed timeframes. We note that in the two cases where we identified a delay to the register being updated, the delay was of one working day only.
- 5.58 We concluded that the single register error described above, and the short delay identified in two cases, were not of sufficient concern to support a finding that this Standard is not met. Therefore, this Standard continues to be 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

- 5.59 The registration search function is clearly visible on the front page of the NMC website. Employers may search multiple entries at once.
- 5.60 The NMC continues to provide guidance for employers on its website which sets out their responsibilities in recruiting, managing and supporting nurses and midwives.
- 5.61 Opportunities for engagement with employers on regulatory matters have increased through the development the NMC's Employer Link Service. The NMC reports that the service has now met with every NHS Trust and Health Board across the four countries.

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

- 5.62 We have not identified any changes to the NMC's approach to managing this risk.
- 5.63 The Nursing and Midwifery Order 2001 makes the illegal use of the protected titles 'registered nurse' and 'midwife,' an offence.
- 5.64 The NMC's website sets out the legal requirement for all nurses and midwives practising in the UK to be on the NMC's register. Applications for readmission to the register from nurses and midwives who are found to have been working unregistered after allowing their registration to lapse will be referred to the Registrar's Advisory Group and may be refused.

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

- 5.65 This was the first year of the implementation of revalidation for nurses and midwives.

Outcomes and evaluation of revalidation

- 5.66 The NMC has published quarterly revalidation reports detailing the numbers of nurses and midwives revalidating and lapsing by country and registration type. The reports include data for each of the four UK countries separately and for those registrants not practising in the UK.
- 5.67 The first annual report on revalidation was published by the NMC on 12 July 2017. In addition to the summary data on rates of revalidation, the report includes sections on employment, practice and work settings, the impact of revalidation on groups with protected characteristics, and the verification process.
- 5.68 Revalidation rates have been similar across the four countries, ranging from 93 to 94 per cent. However, among those registrants practising outside the

UK, the revalidation rate was just 59 per cent. At the Council meeting in July 2017 the NMC confirmed that, while lower revalidation rates among this group were to be expected, some registrants practising outside the UK had reported difficulties in finding an appropriate reflective discussion partner for revalidation. The NMC confirmed that consideration would be given to whether additional support could be offered to this group.

- 5.69 There was no material difference in revalidation rates for nurses (92 per cent) and midwives (91 per cent).
- 5.70 The NMC reports that the rate of registrants allowing their registration to lapse was 5-6 per cent across the UK and that this is in line with rates in previous years.
- 5.71 The NMC commissioned Ipsos MORI Social Research Institute to conduct a wide-ranging longitudinal evaluation of revalidation over its first three years.
- 5.72 The evaluation began in 2016 with surveys of registrants who had revalidated and of those yet to revalidate, and qualitative interviews with registrants, confirmers and reflective discussion partners.
- 5.73 An interim report on the findings of the evaluation over the first year of revalidation was published on 12 July 2017. It stated that there was no evidence to suggest substantial problems with revalidation were being experienced by any one group of registrants, though the survey of registrants had highlighted differences in how some groups experience revalidation. Factors that might contribute to this included the level of support provided to registrants by employers, registrants' access to and time to undertake continual professional development activities, and the ease with which registrants could find a reflective discussion partner.
- 5.74 While there did not appear to be any significant shift in the numbers of registrants lapsing in the first year of revalidation, there had been an apparent decrease in the rate of renewal amongst older registrants (aged 56 or over). It was noted that the potential impact of this on the NMC register, particularly if registrants under 60 were choosing to retire rather than revalidate or were citing an inability to meet the requirements of revalidation, requires further exploration.
- 5.75 It was also noted that the revalidation rate was lower for registrants who reported having a disability or long-term health condition (84 per cent) than for those who did not (95 per cent). However, the interim report stated that there was no evidence to suggest that registrants in this group found meeting the requirements of revalidation substantially more difficult than registrants overall. The interim report concluded that this did not, therefore, suggest any significant issue for further exploration. The NMC may wish to keep this issue under review in its assessment of revalidation in the coming years.
- 5.76 In terms of outcomes of revalidation, the interim report stated that there was evidence of incremental changes in the behaviours of those registrants who had revalidated. It was suggested that these changes had the potential to contribute to the development of a culture of sharing, reflection and improvement across the sector. Initial survey findings also suggested that

revalidation may play a role in delivering attitudinal change towards key elements of the NMC's Code.

- 5.77 The interim report made a number of suggestions for the ongoing development of the revalidation process. These included:
- maintaining the level of communications activities with those registrants who have yet to revalidate to ensure they have a similarly positive experience to those revalidating in the first year of the process
 - focusing updates to existing guidance and supporting materials on the areas of the register in which registrants may be more isolated (and may therefore have greater concerns about revalidating), and also on those materials that are specific to feedback and reflective practice
 - sharing details of planned communications to registrants with stakeholder organisations to aid transparency and assist stakeholders with coordinating their own communications
 - communicating to stakeholders details of the NMC's ongoing work to explore potential issues experienced by those lapsing from the register
 - continuing to undertake work to check that verification is successfully identifying potential cases of fraud or other issues and communicating to stakeholders and registrants details of the robustness of the process.

Feedback we have received on revalidation

- 5.78 We received positive feedback from a third party organisation in relation to its extensive collaboration with the NMC in work to implement revalidation and to support registrants to revalidate.
- 5.79 The organisation praised the NMC's revalidation website and resources and stated that the NMC had responded proactively to feedback from stakeholders and registrants to improve them.
- 5.80 The organisation also welcomed the NMC's plans for the long-term evaluation of revalidation and the opportunity to be interviewed as part of that process.

Conclusion

- 5.81 Initial findings and evaluation of the process indicate that revalidation has been successfully implemented in its first year and the NMC continues to monitor its effectiveness and impact on different registrant groups.

6. Fitness to Practise

- 6.1 As we set out in Section 2, we considered that more information was required in relation to the NMC's performance against Standards 6 and 9 and carried out a targeted review. The reasons for this, and what we found as a result, are set out under the relevant Standards below. Following the review, we concluded that both these Standards were met. Following consideration of our Lessons Learned Review we determined that Standard 7 was not met.

The reasons for this are set out under the relevant Standard below. Therefore the NMC has met nine out of 10 of the *Standards of Good Regulation* for Fitness to Practise in 2016/17.

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

- 6.2 On its website, the NMC continues to offer comprehensive information for registrants and other healthcare workers, employers and members of the public explaining the type of concern that the NMC can handle (and where other concerns might be better directed), how to make a referral, and what action the NMC will take in respect of referrals received.
- 6.3 The Employer Link Service continues to offer services to employers including support to enable them to determine whether to make a referral, advice on the information to include in referrals, and training on fitness to practise thresholds. The NMC reports that the service received around 2000 calls in 2016/17 and that approval ratings from users were high.

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

- 6.4 The number of occasions a fitness to practise concern was referred to another investigating body or regulator by the NMC was 52 in quarter one; 22 in quarter two; 24 in quarter three and 33 in quarter four, a total of 131 in the review period.
- 6.5 The NMC's website lists memoranda of understanding, setting out how information will be shared, with: Healthcare Improvement Scotland; the Disclosure and Barring service; the Scottish Public Services Ombudsman; Care Council for Wales; the Health and Social Services Department of Jersey; the Care Quality Commission; Health Inspectorate Wales; NHS Education for Scotland; and the Care Inspectorate.
- 6.6 We received one report from a third party in relation to a concern it had about the NMC's level of information sharing on fitness to practise matters.
- 6.7 The NMC subsequently met with the organisation in question in order to better understand its concerns and told us that it will review its memorandum of understanding with the organisation and take steps to ensure that NMC staff understand the importance of sharing appropriate information with it.
- 6.8 With the exception of the report referred to above, which the NMC has taken steps to rectify, the available evidence indicates that the NMC is sharing information on fitness to practise frequently and appropriately.

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

- 6.9 This Standard was found to have been met last year following a targeted review of performance in this area.
- 6.10 There have been no changes to the NMC's processes for determining whether there is a case to answer in respect of fitness to practise allegations in this review period.
- 6.11 However, significant changes were implemented in July 2017 via an Order under Section 60 of the Health Act 1999, including:
- Giving the Investigating Committee (IC) and case examiners additional powers to make decisions in relation to agreeing undertakings, issuing warnings and giving advice to registrants
 - Extending the powers under Rule 7(a) of the NMC's Fitness to Practise Rules 2004 (as amended)¹⁴ to encompass review of a recommendation of undertakings, a decision that undertakings should no longer apply, and the issuing of advice and warnings.
- 6.12 We will review the initial impact of those changes in the next performance review cycle.

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

- 6.13 This year we have not seen evidence of any concern in relation to the NMC's risk assessment and prioritisation of fitness to practise cases.
- 6.14 The median time taken to an interim order committee decision from receipt of a complaint has decreased from 28 days in 2015/16 to 26 days this year.
- 6.15 The number of interim order extension applications made by the NMC to the relevant court steadily decreased year on year from 619 in 2013/14 to 342 in 2015/16. This year the figure has increased to 407.
- 6.16 As was the case last year, there is no current evidence to suggest that this Standard is not met. The time taken by the NMC to impose interim orders has improved slightly and although the number of extension applications has increased, it has not reached the level over which we expressed concern in previous years. We will continue to keep this under review.

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

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

Failures to provide panels with representations from registrants

- 6.17 Last year we highlighted 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) as a result of administrative errors.
- 6.18 This year similar failings have been identified in four cases. We accept that this is a very small proportion of the NMC's caseload. However, we remain of the view that this issue has significant implications for the fairness of the fitness to practise process. We recommend that the NMC reviews the circumstances leading to these errors and makes any necessary changes to its processes to prevent their repetition.

Voluntary removal (VR)¹⁵

- 6.19 Last year we identified some concerns in our targeted audit in cases disposed of by VR, but we noted that these were not as prevalent or as significant as those identified in previous years. We also observed some improvement in the quality of VR recommendations.
- 6.20 We expressed the view that VR decisions should be subject to a more formal and consistently applied mechanism for quality assurance to allow the NMC to monitor the consistency of decisions and assist ongoing learning for decision-makers.
- 6.21 At its May 2017 Council meeting, the NMC reported that it had strengthened its quality assurance frameworks to include assessment of VR cases. We will review the changes made as part of the performance review next year.
- 6.22 This year we have seen no evidence of any further concerns in relation to the way in which the NMC manages the VR process, though it should be noted that those decisions are not subject to routine review under our Section 29 process unless the VR application is made during a final fitness to practise hearing.

Consensual panel determinations (CPD)¹⁶

- 6.23 Last year we highlighted in our report that the Authority had appealed two CPD cases in that review period and that these featured similar concerns to those identified in previous appeals, namely the level of information provided to panels and the handling of dishonesty allegations.

¹⁵ 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.

¹⁶ The consensual panel determination process 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 or to require a full hearing to be held.

- 6.24 In the targeted audit undertaken as part of our review last year, we identified a number of concerns in relation to the way in which the NMC managed the CPD process. We concluded that our concerns may indicate that the NMC's CPD process is insufficiently transparent. However, we took into account that none of the CPD cases audited suggested that the decision ultimately reached by the panel was not in the public interest.
- 6.25 This year we identified further concerns about the way in which the NMC had managed CPD cases through our review of all final fitness to practise decisions. These included: failures to provide panels with sufficient information in CPD provisional agreements; an omission to contact the referrer for their view of the CPD, contrary to the NMC's own guidance; and concerns in relation to the mitigating and aggravating factors listed in CPD provisional agreements.
- 6.26 We appealed one case which had been resolved by CPD. We considered that the NMC had failed to provide the panel with all the available evidence. As a result, the panel was not in a position to carry out an effective assessment of the basis of the impairment and of which sanction was necessary to protect the public. The appeal was allowed and the sanction imposed was substituted for a more restrictive order.
- 6.27 In all other CPD cases in which we identified concerns, we were satisfied that the decision was not insufficient to protect the public.

Concerns in cases not disposed of consensually

- 6.28 We also identified concerns in cases that were not disposed of via CPD or VR that are relevant to performance against this Standard.
- 6.29 These included: further failures to provide sufficient information to panels; concerns over the NMC's approach to offering no evidence; administrative errors pertinent to the fairness of the process; and concerns over the quality of the NMC's investigation and/or case preparation.

Conclusion

- 6.30 There are ongoing concerns in relation to the NMC's management of some fitness to practise cases. Some of the concerns identified this year are similar to those we have highlighted in previous years.
- 6.31 However, we recognise that our concerns relate to only a very small proportion of the NMC's overall caseload. On balance, we concluded that the concerns identified this year were not so serious or prevalent as to require a finding that this Standard is no longer met.
- 6.32 Significant changes to the NMC's fitness to practise processes were introduced in July 2017. This will necessitate detailed scrutiny of the way in which the NMC is managing fitness to practise cases in future performance reviews.

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

- 6.33 This Standard was considered as part of our targeted review this year.
- 6.34 The Standard was found to be not met in the performance review last year, as a result of concerns over: continued high adjournment and part-heard rates of final fitness to practise hearings; an increase in the median time from receipt of a case to a case to answer decision; an increase in the NMC’s caseload of older cases; and evidence from our audit of periods of inactivity in investigating cases. We were concerned that a backlog of cases awaiting conclusion may be developing.
- 6.35 This year the data provided by the NMC for our quarterly and annual dataset, as well as performance data published by the NMC, indicated some positive developments in timeliness in fitness to practise. However, some data which was highlighted in our last Performance Review report was no longer routinely published by the NMC.
- 6.36 We decided to seek further information through a targeted review of this Standard to enable us to better understand the data available and to draw meaningful comparisons with the NMC’s performance in previous years. We also wanted to understand the NMC’s approach to balancing the need to close older cases (including those subject to third party investigations) and managing its caseload at the earlier stages of the fitness to practise process.

Adjournments of final fitness to practise hearings

- 6.37 There has been an improvement in the proportion of all final fitness to practise hearings running part-heard this year, while the proportion of hearings being adjourned has remained stable:

	Adjourned	Part-heard
2013/14	22%	
2014/15	5%	19%
2015/16	6%	19%
2016/17	6%	14%

- 6.38 The NMC also provides data as part of our dataset on the proportion of *first* substantive hearings (excluding hearings that resume following an adjournment) that conclude within their original hearing day allocation. This rose from 72 per cent last year to 87 per cent this year.

Timeliness of fitness to practise case progression

- 6.39 The NMC has significantly reduced its caseload of older cases this year.
- 6.40 Comparative data for 2015/16 and 2016/17 is set out below:

Number of cases:	2015/16 year end	2016/17 year end	Change
>52 weeks old	1,437	1,170	- 267
>104 weeks old	281	294	+13
>156 weeks old	48	71	+23
Total >52 weeks old	1,766	1,535	- 231

- 6.41 There has been a significant reduction in the number of cases over 52 weeks held by the NMC, from 1,437 last year to 1,170 this year. The numbers of cases older than 104 weeks and 156 weeks have only increased by 13 and 23 respectively, indicating that the reduction in cases over 52 weeks has not just been achieved by cases passing the threshold into the next age category. The overall caseload over 52 weeks has reduced this year by 231 cases.
- 6.42 We were concerned last year that the median time taken from the NMC receiving a case to the IC or case examiners reaching a case to answer decision had steadily increased in recent years. We had data last year for only the second two quarters of the year, but noted that the median had risen from 39 weeks in 2013/14 to 45 weeks in 2014/15 and that it was 50 weeks in Q3 and 55 weeks in Q4 last year.
- 6.43 Performance on this measure has improved slightly this year to an annual median of 51 weeks. While this remains high by comparison to most of the other regulators, it should be noted that, unlike some of those regulators, the NMC conducts a significant proportion of the full investigation prior to the case to answer decision and so might be expected to take longer than others to reach this stage. We note that the NMC's performance at the adjudication stage (the median time in weeks from a case to answer decision to a final hearing) has been consistently strong over the last two years, at 26 weeks. This is lower than most of the other regulators.
- 6.44 The NMC informed us that its current target timescale for progressing cases to a case to answer decision was 52 weeks, but that this would be reduced to 39 weeks by December 2017.
- 6.45 The NMC's median time taken from receipt of a case to a final hearing has increased slightly from 83 weeks last year to 87 weeks this year. However, this remains low by comparison to other similarly sized regulators.

Balancing the fitness to practise caseload

- 6.46 We asked the NMC to describe its current approach to balancing the need to conclude older cases with the need to progress cases received more recently.
- 6.47 The NMC reported that it prioritises all cases over nine months old by setting aside two case investigation teams to focus solely on them and bring them to a conclusion as quickly as possible. Cases less than nine months old are managed by the remaining five investigation teams, who concentrate on concluding them wherever possible before they reach nine months' old. The NMC told us that this allocation of resources was based on careful analysis of its caseload data and team capacity.
- 6.48 We requested information about the proportion of the NMC's adjudication caseload that was (or had been) subject to third party investigations,¹⁷ which can cause delays to case progression. We also asked the NMC to describe its current approach to managing such cases to limit delay.
- 6.49 The data¹⁸ provided by the NMC is set out in the table below:

Age of case	Non third party	Third party
0-65 weeks	324 (90%)	35 (10%)
66-103 weeks	338 (84%)	65 (16%)
104-156 weeks	124 (70%)	52 (30%)
Over 156 weeks	23 (48%)	25 (52%)

- 6.50 From the data provided, it can be seen that the proportion of cases held in adjudication that are or have been subject to third party investigations increases with the age of the case. Among cases aged 0 to 65 weeks, just 10 per cent are third party cases, among cases aged 66 to 103 weeks (the largest group in adjudication), this rises to 16 per cent. Among cases aged 104 to 155 weeks, 30 per cent are third party cases, and among the oldest cases over 156 weeks, this rises to 52 per cent.
- 6.51 The NMC told us that it does not have separate targets for the disposal of cases subject to third party investigations but that these cases are reviewed on a regular basis to ensure that they are not delayed for any longer than is necessary. Third party cases are included in the NMC's overall timeliness measures, including its end to end timescales and the median age of case progression at each stage of the process. The NMC has also confirmed that it will continue to publish timeliness data on cases subject to third party investigations at each stage of the process in its Council papers.
- 6.52 The NMC shared with us its internal operational guidance on managing cases subject to third party investigations. The guidance sets out that all

¹⁷ These might include investigations by the police, a Coroner, NHS counter-fraud and other regulators.

¹⁸ The NMC provided this to us on 14 July 2017 and reflects the position in May 2017.

cases should be investigated without delay and that there must be clear and compelling reasons for a decision to put an investigation on hold. It states that the owner of the case must record why putting an investigation on hold is in the public interest. The guidance acknowledges that in some cases, the third party investigation may mean that it is not possible or practical for the NMC's investigation to proceed in the interim, but that consideration should be given to whether it is possible for the NMC to investigate other aspects of the case while the third party investigation continues.

- 6.53 The guidance states that generally, the NMC's investigation should proceed unless:
- There is a real and significant risk that the NMC's investigation will cause prejudice to the third party investigation;
 - The existence of the third party investigation makes it impractical for the NMC's investigation to continue; or
 - Placing the NMC's investigation on hold until that of the third party is complete is likely to result in significant time and cost savings as a result of reliance on the outcome of the third party investigation.

Conclusion

- 6.54 The available data on timeliness in fitness to practise indicates that the concern expressed in our last performance review that a backlog of cases may be developing has not been borne out.
- 6.55 The proportion of hearings running part-heard has been a concern over a number of years and the reduction this year is to be welcomed.
- 6.56 The NMC has closed a significant number of its older cases, while slightly improving timeliness at the earlier stages of the process, during which the bulk of its investigative work takes place. It is clear that the NMC is monitoring the progression of cases closely and that it has capacity to reallocate resources should timeliness worsen at any stage of the process. We have also seen data for the first quarter of the next performance review period, which confirms that these improvements are currently being sustained.¹⁹
- 6.57 The increase this year in the end to end median timescale for the NMC from 83 to 87 weeks is relatively small given the size of its overall caseload. Performance on that measure should be monitored closely. The NMC reports at each of its Council meetings on performance against its KPI of concluding 80 per cent of cases within 15 months.
- 6.58 It can be seen from the data provided that third party investigations cause delays, but the NMC has a clear policy in place for progressing those cases as quickly as possible.
- 6.59 There are no separate target timescales for conclusion of third party cases. However, the NMC's openness in reporting on the number of cases delayed for this reason and the inclusion of the cases in overall timeliness measures

¹⁹ We will report in detail on performance in 2017/18 in our next Performance Review report.

provides reassurance that it is monitoring progression of these cases appropriately.

- 6.60 Taking all of the above into account, we have concluded that the NMC has made sufficient improvements this year to meet this Standard.

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

- 6.61 In the 2015/16 performance review, we considered that the NMC, on balance, met this Standard, while noting some concerns about the experience of one family in dealing with the NMC. Since then, we have carried out the *Lessons Learned Review of the NMC's handling of the concerns about midwives' fitness to practise at the Furness General Hospital*.²⁰ While this review largely considered matters which had happened before this review period, we identified a number of concerns about the way in which the NMC dealt with families which are ongoing and apply beyond the relatively small number of cases that we looked at as part of that review.
- 6.62 The concerns are set out at paragraphs 5.35-5.45 of the Lessons Learned Review. The NMC has set up a Public Support Service to address the way in which it deals with members of the public who have concerns about the fitness to practise of nurses and midwives and who make complaints about them. We regard this as a positive move but, since it has yet to be fully operational, it will not be possible to assess whether it makes a difference for some time.
- 6.63 We considered carefully whether our concerns simply applied to a small number of complex cases. We recognised also that the NMC has provided some strong support to witnesses before panels. However, some of the problems that we identified (for example, the approach to informing complainants about decisions and the other points that were identified at 5.44 of the Lessons Learned Review) apply across the board to the NMC's complaints handling and are not restricted to these cases.

Other matters

- 6.64 Last year we identified some inaccuracies in the guidance provided to registrants under investigation and noted that these had subsequently been corrected by the NMC. A further inaccuracy was identified this year in the NMC's guidance on consensual panel determinations. The document incorrectly stated that the charges in a case resolved by consensual panel determination, as in all other cases, will be published prior to the hearing.
- 6.65 This does not accurately reflect the NMC's decision to cease publishing charges in advance of hearings from September 2016.²¹ We highlighted the matter to the NMC.

²⁰ Professional Standards Authority, (May 2018). *Lessons Learned Review, The Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital*. See: www.professionalstandards.org.uk/docs/default-source/publications/nmc-lessons-learned-review-may-2018a0851bf761926971a151ff000072e7a6.pdf?sfvrsn=6177220_0

²¹ This change of policy is discussed in more detail below, under the ninth Standard.

- 6.66 The NMC acknowledged that the guidance was not appropriately updated to reflect the change of policy due to an oversight when conducting the review of the guidance documents likely to be affected by the change.
- 6.67 The NMC noted that, at the time of its response, it held approximately 40 individual guidance documents which existed independently of each other, meaning that each document had to be individually reviewed each time a change of policy is made. The NMC told us that the risk of such an error being repeated in the future would be mitigated by the introduction of a new fully integrated online guidance library in August 2017 which, in its view, should simplify the process for searching and, where necessary, updating existing guidance.
- 6.68 While the issue of the NMC’s guidance did not appear to us to be significant, our findings following the Lessons Learned Review mean that we cannot be satisfied that the NMC meets this Standard.

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

- 6.69 Last year we noted that we had held case meetings regarding, and appealed, fewer of the NMC’s final fitness to practise decisions than was the case in the previous year. This year the proportion of all decisions received which were discussed at case meetings has increased. Although more appeals were lodged this year, the number, as a proportion of all decisions received, was unchanged. In any event, the numbers concerned, as a proportion of the all final decisions, remain very small.

	Number of decisions	Case meetings held	Appeals lodged
2015/16	2,212	14 (0.6%)	6 (0.3%)
2016/17	2,656	12 (0.9%)	8 ²² (0.3%)

- 6.70 In our targeted audit last year, we identified no concerns in relation to decision-making at the initial stages of the fitness to practise process and few in relation to the quality of the case examiners’ reasoning in making those decisions. There has been no evidence of concerns in that area this year.
- 6.71 The number of no case to answer decisions reviewed by the Registrar under Rule 7(a) of the NMC’s Fitness to Practise Rules 2004 (as amended) remains small. Of the seven decisions reviewed by the Registrar this year, the original decision was upheld in five cases. In the other two cases, the Registrar determined that a fresh decision was required.
- 6.72 There were concerns arising from our audit last year over the quality and sufficiency of the Registrar’s decisions in respect of VR applications. These

²² One appeal lodged was subsequently withdrawn. The percentage of appeals lodged remains 0.3%.

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. We were particularly concerned to note that in one case no reasons had been produced by the Registrar, though this appeared to have been an isolated incident.

6.73 We remain of the view that, having regard to the NMC's VR guidance, the Registrar's reasons should contain evidence that all relevant factors have been considered and taken into account.

6.74 The NMC has recruited a senior lawyer to lead on and bring greater consistency to decisions taken in the role of assistant registrar (on behalf of the Registrar), including VR decisions.

6.75 In the absence of any new concerns over the NMC's work in this area, this Standard continues to be 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

6.76 This Standard was considered as part of our targeted review this year.

6.77 In September 2016, the NMC took the decision to stop publishing charges on its website in advance of a final hearing.

6.78 We considered that further information in relation to the basis for this decision was required before a final judgement on performance against this Standard could be reached.

6.79 The NMC shared with us extracts from an audit report from the Information Commissioner's Office (ICO) which advised that there were risks in publishing details of allegations in advance of hearings of possible Data Protection Act breaches. Further, that any disclosure of the type of information contained within allegations prior to a hearing should be based upon very clear reasons due to the potential detrimental impact it may have, particularly in cases where the facts in the case are then found not proved.

6.80 The NMC told us that it subsequently took legal advice on a review of its publication and disclosure policy. It also undertook a benchmarking exercise to review the policies of other regulators before reaching a final decision. That exercise indicated a range of different approaches.

6.81 There have been no other changes to processes or evidence of concerns about the way in which the NMC publishes fitness to practise information and communicates it to stakeholders.

6.82 As noted elsewhere in this report, the NMC's power to issue advice, warnings and undertakings came into effect in July 2017. The NMC has confirmed that it will publish undertakings and warnings issued to registrants on its register. In health cases the register entry will state that a warning or undertakings have been issued, but the content will remain private. Advice will be issued privately to the registrant only, but the referrer will be informed that the case was closed with advice.

6.83 We confirmed in our response to the NMC's consultation on the new powers in fitness to practise that we broadly support this proposed approach to publication.

Conclusion

6.84 In respect of the NMC's decision to change its publication policy, we recognise that there are competing concerns between registrants' right to confidentiality and the need to maintain confidence in the transparency of the fitness to practise process. We also note that there is no clear consensus on how a balance between conflicting interests may best be reached. This may be an area for further consideration for all of the regulators.

6.85 Given the steps that the NMC has taken, we did not feel able to conclude that their decision was unreasonable and have therefore concluded that this Standard continues to be met.

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

6.86 The NMC reports that its policies require all information security incidents, including any loss of personal data, to be reported internally without delay. Incidents are monitored by the NMC's Information Governance and Security Board which is accountable to its Executive Board for ensuring learning is identified to prevent recurrence.

6.87 In 2016/17 there were a total of 114 incidents recorded, of which four were graded as 'critical', 36 as 'moderate', 63 as 'minor' and 11 as 'insignificant'. The NMC reports that none of the four critical incidents were data breaches.

6.88 The NMC maintains and regularly reviews a comprehensive analysis of the information security risks it faces and implements an annual information security work programme, which is mapped to the international information security standard ISO 27001.

6.89 This year, no data breaches were reported to the Information Commissioner's Office by the NMC.

6.90 There is no evidence of any significant change to processes or of any concern in this area.

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