professional standards authority

Annual review of performance 2017/18

Nursing and Midwifery Council

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care 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.[1] We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

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

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

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About the NMC

The Nursing and Midwifery Council (the NMC) regulates the nursing and midwifery professions in the United Kingdom. From July 2018, the NMC also became the regulator in law for nursing associates in England. Its work includes:

- Setting and maintaining standards of practice and conduct
- Maintaining a register of qualified professionals (registrants)
- Assuring the quality of education and training for nurses, midwives and nursing associates
- Requiring registrants to keep 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 2018, the NMC was responsible for a register of 690,278 nurses 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	**8/10**

1. The annual performance review

1.1 We oversee the nine health and care professional regulatory organisations in the UK, including the NMC.[2] 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

[2] 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 When considering information relating to the regulator's timeliness, we consider carefully the data we see, and what it tells us about the regulator's performance over time. In addition to taking a judgement on the data itself, we look at:

- any trends that we can identify suggesting whether performance is improving or deteriorating
- how the performance compares with other regulators, bearing in mind the different environments and caseloads affecting the work of those regulators
- the regulator's own key performance indicators or service standards which they set for themselves.

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

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

1.9 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.

1.10 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.

1.11 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 and June 2018, we carried out an initial review of the NMC's performance from 1 April 2017 to 31 March 2018. Our review included an analysis of the following:

- Council papers, performance and committee reports and meeting minutes
- Policy and guidance documents
- Statistical performance dataset
- Third party feedback
- Quarterly checks of the NMC register
- Lessons Learned Review (LLR) into the NMC's handling of concerns about midwives' fitness to practise at the Furness General Hospital[3]
- 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 Standard 2 of the *Standards of Good Regulation* for Education and Training, Standards 2 and 3 of the *Standards of Good Regulation* for Registration and Standards 3, 5, 7 and 8 of the *Standards of Good Regulation* for Fitness to Practise.

2.3 We obtained further information from the NMC relating to these Standards and conducted an audit of some fitness to practise cases. As a result of a detailed consideration of this further information and our audit findings, we decided that the NMC had not met Standards 5 and 7 of the *Standards of Good Regulation* for Fitness to Practise. The reasons for this are set out in the following sections of the report.

Summary of the NMC's performance

2.4 For 2017/18 we have concluded that the NMC:

- Met all of the *Standards of Good Regulation* for Guidance and Standards
- Met all of the *Standards of Good Regulation* for Education and Training
- Met all of the *Standards of Good Regulation* for Registration
- Met eight of the ten *Standards of Good Regulation* for Fitness to Practise. The NMC did not meet Standards 5 and 7.

[3] Professional Standards Authority (May 2018). *Lessons Learned Review into the NMC's handling of concerns about midwives' fitness to practise at the Furness General Hospital*. Available at www.professionalstandards.org.uk/docs/default-source/publications/nmc-lessons-learned-review-may-2018a0851bf761926971a151ff000072e7a6.pdf?sfvrsn=6177220_0.

[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).

2.5 Last year, in the light of our LLR, we determined that the NMC did not meet the seventh Standard for Fitness to Practise. This year, a number of concerns, including findings from an audit we carried out meant that, in addition to the seventh Standard for Fitness to Practise, the NMC did not meet the fifth Standard for Fitness to Practise. We recognise, however, that the NMC accepts the issues of concern that we have identified and is working to address them. We support its work and will monitor progress.

Independent LLR of the NMC's handling of concerns about midwives at General Furness Hospital

2.6 In 2017, in response to a request from the Department of Health,[5] we carried out an independent 'lessons learned' review (LLR) of the NMC's handling of fitness to practise cases concerning midwives at the Furness General Hospital. We published our LLR in May 2018. We identified a number of concerns about the way in which the NMC dealt with the cases and the families which, in our 2016/17 performance review report, we considered were ongoing and applied beyond the relatively small number of cases that we looked at as part of that review. We were also concerned about its approach to transparency. We identified a number of points which we felt the NMC should address.

2.7 In response, the NMC committed to addressing the learning we identified in our LLR and put in place a significant programme of work. The NMC has focused on two key priorities: improving how it engages with and listens to patients and families and being open and transparent. The NMC's work so far has included setting up a new Public Support Service (PSS) with the aim of ensuring that patients, carers and the public are supported to participate effectively in the fitness to practise process and their evidence is taken properly into account. The NMC has committed to engaging with the public to inform its work and reports that a group of patients and carers has been established to inform the work of the PSS.

2.8 The NMC has also committed to working with its employees to embed its values and behaviours to treat everyone with respect, compassion and empathy. It is introducing a new approach to complaints and enquiries and the creation of a new team is scheduled to be completed by April 2019.

2.9 We recognise the commitment and work of the NMC to address the lessons we identified in our LLR. The work appears to be aimed to address our concerns and we will look at its impact in future performance reviews.

3. Guidance and Standards

3.1 The NMC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2017/18. Examples of how it has demonstrated this are indicated below each individual Standard.

[5] Now the Department of Health and Social Care.

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

3.2 The NMC's primary focus in this reporting period continued to be on the development of new standards of proficiency and education for registered nurses and midwives.

3.3 The NMC also continued work to develop standards of proficiency and education for the new nursing associate role, which are aligned to those for registered nurses. The NMC developed an early working draft of the standards of proficiency so that those who started their nursing associate training before the final standards were in place had an indication of the NMC's likely expectations and could work towards these.

3.4 We received feedback from one organisation that the Specialist Community Public Health Nurse (SCPHN) standards date back to 2004 and do not reflect current practice. These standards prepare health visitors and school nurses (among others) for practice. SCPHN programmes can only be undertaken by individuals who are already on the NMC register as a nurse or midwife.

3.5 The NMC responded that it had been clear that the review of the SCPHN standards are within the scope of its education programme of change. It informed us it was important however that it started with updating the pre-registration standards first. The NMC told us it has commissioned an independent evaluation of the SCPHN standards, which will inform the direction of its work. Whilst it is concerning that the SCPHN standards might not be up to date, the NMC is undertaking a five-year education programme of change and will review the SCPHN standards of proficiency once its pre-registration standards are updated. We will monitor the progress of this work.

3.6 The NMC published an updated version of the Code, setting out professional standards of practice and behaviour for registrants, on 10 October 2018. The Code now covers nursing associates. The NMC has also now published its new standards of proficiency for nurses and nursing associates, although we note these developments are outside the period under review.

3.7 We are satisfied that this Standard is met.

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

3.8 The NMC publishes online guidance supplementary to the Code on issues including conflicts of interest, responding to unexpected incidents or emergencies and, enabling professionalism in everyday practice. Some of the guidance is supported by case studies to help users understand its practical application. We are satisfied that this Standard is met.

Standard 3: In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and

international regulation and learning from other areas of the regulator's work

3.9 On 1 November 2017, the NMC revised its requirements for demonstrating English language competence for those who trained outside the UK. The NMC considered English language tests and evidence accepted by other healthcare regulators across the world. The NMC held a targeted consultation on the changes in September 2017 to take account of the views of representatives from key stakeholder organisations across the UK. This is discussed in more detail under the first Standard for Registration.

3.10 We received feedback from one organisation who commended the NMC on the work it is undertaking on the requirements for English language competence. We are satisfied that this Standard is met.

Standard 4: The standards and guidance are published in accessible formats. Registrants, potential registrants, employers, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed

3.11 The NMC continues to publish the Code and supporting guidance on its website. Welsh versions of the documents are available. Easy read versions of supporting documentation are available.

3.12 The NMC website contains a leaflet for patients and the public about what to expect from a nurse or midwife, how to raise concerns about nurses and midwives, and how it deals with concerns.

3.13 We noted under the second Standard for Guidance and Standards that the NMC has now published the new standards of proficiency for registered nursing associates and those for nurses. These developments are outside the period under review and we will consider these in next year's performance review. We are satisfied that this Standard is met.

4. Education and Training

4.1 As we set out in Section 2, we considered that more information was required in relation to the NMC's performance against Standard 2 and carried out a targeted review. The reasons for this, and what we found as a result, are set out under the relevant Standard below. Following the review, we concluded that this Standard was met and therefore the NMC has met all the *Standards of Good Regulation* for Education and Training in 2017/18.

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 a significant amount of work during the period under review to progress its development of new standards in education for nurses, midwives and nursing associates. The NMC continues to provide updates on the progress of its work on dedicated pages on its website.

Standards of proficiency for registered nurses

4.3 The new standards of proficiency for registered nurses separate the requirements for individuals from those for institutions. A set of proficiencies for nursing students to achieve at the point of entry to the register have been created.

4.4 The education standards that underpin nurse and midwife proficiencies have been moved into a new education framework, which covers both pre- and post-registration education and training. An NMC-appointed independent expert led this work with the support of a group of representatives from different stages and settings of nursing careers.

4.5 The NMC held a formal consultation on the new standards of proficiency for registered nurses between June and September 2017. The NMC refined the standards based on the consultation feedback.

4.6 The NMC's Council approved the final standards of proficiency on 28 March 2018 with a view to all approved education institutions (AEI) adopting the new standards by September 2020. The new standards came into effect on 28 January 2019.

Standards of proficiency for registered midwives

4.7 The development of standards of proficiency for registered midwives 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,[6] which came into force in April 2017.

4.8 In September 2017 the NMC's Council approved a new timeline which includes a consultation on the new standards in early 2019.[7] Full adoption of the new standards is envisaged for September 2021.

4.9 The NMC has now concluded the engagement and research gathering phase of the project, which it reports involved extensive engagement across the UK to obtain the views of new and experienced midwives, educators, students, women and their families via workshops, focus groups, webinars and meetings. The evidence and engagement activity will inform the development of the draft proficiencies and programme requirements, ready for consultation in February 2019.

[6] From 1 April 2017 statutory midwifery supervision provisions were removed from the NMC's governing legislation and the statutory Midwifery Committee was removed from its governance structures.
[7] The consultation was previously due to be held in Spring 2018 with provision for 'early adoption' from September 2019.

Education framework

4.10 The education requirements that underpin nurse and midwife proficiencies have been moved into a new standards framework that covers both pre- and post-registration training and education. The new standards framework provides training and education standards for all learning. There are also new requirements for supervision and assessment, which the NMC says are simpler and should encourage innovation and flexibility whilst assuring quality. A separate document sets out programme standards for AEIs to meet to enable them to support the standards of proficiency for registered nurses.

4.11 The NMC formally consulted on the new education framework and nurse programme standards between June and September 2017. The NMC reports that it used the consultation responses to refine the standards.

4.12 The NMC's Council approved the new standards framework for education, standards for student assessment and supervision and standards for pre-registration nursing programmes in March 2018. The new standards came into effect in January 2019 and all AEIs will have adopted the new standards by September 2020.

Standards of proficiency for registered nursing associates

4.13 The NMC has continued work to develop standards of proficiency and education for the new nursing associate role. An early working draft of the proficiencies and a skills annexe was made available on the NMC website so that those who started their training before the final standards were in place could work towards readiness to meet the NMC's expectations.

4.14 Health Education England (HEE) has been running nursing associate training at 35 test sites across England. The nursing associates in those pilots are expected to complete their training and start work in early 2019.

4.15 The NMC has developed an assurance approach for programmes that started before its standards came into effect. Changes to NMC legislation give it the power to assess whether a non-NMC approved qualification is comparable to an approved one. The NMC has worked with HEE on a process of quality assurance for the programmes HEE is overseeing, so that the NMC has a basis on which to assess comparability with approved routes to registration.

4.16 The NMC will also consider whether there is a process by which it can ensure a similar level of assurance about apprenticeships. If the NMC thinks a qualification is not comparable there will still be a route to registration via a test of competence.

Review of post-registration standards

4.17 The length of time since some post-registration standards have last been reviewed by the NMC was highlighted in our performance review report for 2015/16.

4.18 As part of its education strategic programme, the NMC is reviewing all the other related post-registration education and practice standards in order to ensure alignment with its new approach to standards of proficiency and

education for registered nurses and midwives. In this reporting period, a review of the NMC prescribing standards and standards for medicines management was completed.

4.19 The NMC proposed to adopt the Royal Pharmaceutical Society's (RPS's) *Prescribing Competency Framework* as its new standards of proficiency for nurse and midwife prescribers. The NMC also proposed to withdraw its standards for medicine management, and to enable registrants to obtain a prescribing qualification post-registration earlier in their career.

4.20 The NMC held a consultation on the changes between June and September 2017. This followed pre-consultation engagement with nurses, midwives, educators, students, employers, other regulators and the public from across the four UK countries. The NMC used the responses to finalise the proposals.

4.21 In March 2018, the NMC's Council approved the adoption of the RPS's *Prescribing Competency Framework* as the new standards of proficiency for nurse and midwife prescribers; approved new standards for prescribing programmes for nurses and midwives; and approved the withdrawal of the current standards for medicines management. The NMC's Council also agreed that the NMC will support initiatives in the development of cross professional guidance by the RPS and others. Registrants can now enter a prescribing programme that permits nurses and midwives to prescribe from a limited formulary immediately following registration and apply to enter a prescribing programme after one year of registration to become an independent/supplementary prescriber. The changes came into effect on 28 January 2019 and all AEIs will adopt the new requirements for prescribing programmes by September 2020.

Conclusion

4.22 The NMC has continued work to develop new standards for education and training for nurses, midwives and nursing associates, which are linked to its standards of proficiency for registrants, in line with its timeline. The NMC has considered the views of nurses, midwives, nursing associates, educators, students, employers, other regulators and the public from across the four UK countries, to ensure that it meets its aim to produce education standards that enable registrants to deliver modern and safe care. We are satisfied that this Standard is met. We will continue to monitor the progress of this work.

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

4.23 This Standard was considered as part of the targeted review this year.

4.24 We wanted further information about the NMC's quality assurance process, including proposed changes to how it approves education programmes.

4.25 Each year the NMC produces an annual report on its quality assurance activity in respect of AEIs. The report we reviewed covered the academic year from 1 September 2016 to 31 August 2017.

Approval of AEIs and education programmes

4.26 The NMC's annual report recorded that there were 80 AEIs across the UK, including one new educational institution that successfully achieved AEI status during the reporting period. Seventy-seven AEIs are approved to run pre-registration nursing programmes, and 52 AEIs are approved to run pre-registration midwifery programmes. Four AEIs were approved to deliver pre-registration nursing education for the first time.

4.27 The NMC approved or re-approved 105 programmes, bringing the total number of approved programmes to 923.

AEI self-assessment and monitoring

4.28 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 its annual report, the NMC recorded that of the 77 AEIs approved to run pre-registration programmes:

- three AEIs were selected for monitoring based on their self-assessments, of which two of them were found to be non-compliant with one or more of the NMC's standards
- 17 AEIs were selected for monitoring based on identified risk, of which five were found to have failed to meet one or more of the NMC's standards
- notable practice identified through monitoring work included AEIs widening service user and carer involvement and expanding access to resources and disability support for students.

4.29 All non-compliant AEIs were required to take timely action to provide assurance in the form of an action plan with an agreed timeframe, which the NMC monitored for completion.

4.30 The NMC reports that it held a self-assessment workshop in April 2017 that was attended by representatives of AEIs from the four countries, as well as other key education stakeholders. The workshop explored improving the approach to self-assessment and the NMC reports it has made several changes to its self-assessment process for 2017-2018 as a result.

Education programmes

4.31 To run pre- or post-registration NMC-approved programmes, AEIs must demonstrate their capability to meet the NMC's standards for the programme. The process involves two main steps: the submission of documentation for scrutiny, and an approval event during which quality assurance reviewers discuss the evidence and speak to a range of AEI staff, students and service users. Programme approval lasts for six years, after which re-approval is required.

4.32 The NMC assigns conditions of approval where evidence of non-compliance is found, which, if not satisfactorily addressed, prevents the programme from running. The NMC may also issue recommendations, which are of an advisory nature and provide information on how to strengthen compliance with the NMC's standards. Once the required standards have been met, the programme will be recommended for approval.

4.33 We noticed that there had been a high proportion of programmes that required conditions before approval or re-approval in the reporting period 1 September 2016-31 August 2017. Seventy-five out of 105 programmes (71.4 per cent) required conditions (with or without recommendations) before approval or re-approval was granted. The NMC told us that 69 out of 75 (92 per cent) of those related to re-approvals.

4.34 We asked the NMC to provide us with information to enable us to understand the types of conditions issued to programmes prior to re-approval in the reporting period, considering re-approval occurs only once every six years. The NMC provided a table showing the types and corresponding number of conditions issued to programmes before re-approval in this reporting period. The NMC highlighted that many of the conditions issued were process-related issues or issues in documentation and that it is moving away from a process-related approach in its new quality assurance model to an outcomes-based one.

4.35 Having reviewed information provided by the NMC about the conditions imposed, we agree that many of the conditions appear to be process-related or relate to issues in documentation. We also note, for example, that the NMC's new standards for pre-registration nursing programmes set out what AEIs and their practice partners must achieve but do not set out the ways in which it must be achieved. The NMC informed us that no programme can be re-approved until the conditions have been met in full.

4.36 We consider that the high proportion of programmes that required conditions before re-approval is not of significant concern taking into account the nature of the conditions issued, the requirement for them to be met before approval and the NMC's move to an outcomes-focused approach to quality assurance.

4.37 In its annual report the NMC reported that it granted extensions to programme re-approvals to AEIs where requested due to the new revised education standards being implemented. The NMC reports that without this, many more programmes would have required re-approval both prior to and after the implementation of the NMC's new education standards, resulting in duplication and an expenditure of resource. The NMC's new education standards were not due to be effective until January 2019 with the latest date for implementation September 2020. We wanted to understand how the NMC managed the risk of non-compliance with programme standards when it considered requests for extensions, particularly considering the final date for approval under the new education standards is some time away.

4.38 The NMC informed us that the high-level process for deciding whether to grant extensions to programme re-approval is outlined in its quality assurance framework. AEIs that requested extensions for programme re-approval in this reporting period were required to provide a rationale in each

individual case and were either granted an extension of up to one year or denied an extension, in line with the established process.

4.39 The NMC informed us that this year it augmented this process with an internal quality assurance scrutiny group (IQASG) to provide oversight and consistency to extension decisions. AEIs must continue to engage with annual reporting and report by exception new risks, which are then monitored by the NMC.

4.40 We consider the NMC's approach to be a proportionate response to requests for extensions to programme re-approval, particularly whilst AEIs are preparing to meet the new education standards.

Independent review of education quality assurance

4.41 The NMC's Council approved a new risk-based education quality assurance framework on 28 March 2018, which will be fully implemented from September 2019. The new quality assurance model will apply to all education programmes.

4.42 The NMC is removing programme re-approvals as part of its new quality assurance process. Programme approval will be indefinite and last until the NMC either publishes new standards or withdraws approval due to serious concerns about a programme.

4.43 The NMC says that this new approach to programme approvals should lead to a reduction in the overall number of quality assurance visits and will enable it to use resources where the greatest risk is present. It will continue to monitor AEIs and their approved programmes to ensure that NMC standards continue to be met once approval has been granted through its major modification notification process, annual self-assessment (which it will continue to refine) and other ongoing monitoring (including thematic reviews).

4.44 We requested information from the NMC to help us understand in more detail how it plans to manage the risks of non-compliance with its programme standards when programme re-approvals are removed from the quality assurance process.

4.45 The NMC informed us that over the next two years all programmes will undergo a new gateway approach to approval and any conditions identified must be met before a programme will be approved under the new model.

4.46 The NMC explained that the risks of non-compliance with programme requirements will be mitigated under the new quality assurance approach in the following ways:

- major modification to an approved programme – following notification from an AEI, the NMC would carry out a documentary review and potentially a visit to ensure the modified programme meets its standards
- enhanced scrutiny – new providers and new programmes will undergo a period of enhanced scrutiny from approval until the first cohort are registered with the NMC

- annual self-reporting – this will continue, and thematic reviews will be introduced to enable the NMC to look in more detail at sector wide challenges in specific areas.

4.47 The NMC's Council also agreed that the NMC undertake further work to scope out developing an NMC student survey. The NMC reports that this survey would form a key part of the intelligence gathering required to operate the risk-based approach to quality assurance.

4.48 At the Council meeting on 28 March 2018, the NMC set out a list of factors which may influence its assessment of risk under its new quality assurance approach and we wanted to understand the rationale and evidence base for the criteria.

4.49 The NMC reports that initially its risk criteria will be limited to those factors it knows to be influential in relation to programme quality. In the short term, between September 2018 and September 2020 all existing and new providers will be required to seek approval against the new standards and framework. The NMC says that this provides assurance that the standards are being met whilst the risk-based model is being refined and provides a baseline of information to inform the model. It explained that its medium to longer term goal is to develop the sophistication of the model to allow predictive approaches.

4.50 We also wanted to understand how the NMC will proactively obtain external information to feed into its new risk-based approach to quality assurance when programme re-approvals are removed.

4.51 The NMC informed us that it will do so through:

- enhanced technological solutions – to maximise the use of data already in existence through its monitoring processes and other higher education quality assurance activity (which will be piloted before being implemented)
- Memoranda of Understanding (MoUs)
- potential student survey – so that students as users can provide their feedback on their programme, institution and practice learning environment.

4.52 We consider that the removal of programme re-approval visits brings with it a loss of information gathered as part of those visits, in particular direct feedback from trainees, service users and AEI staff.[8] A student survey might help address the loss of this feedback from students, but this is not a certainty. The NMC will need to consider how it will obtain sufficient feedback (in terms of quality and quantity) from those parties as part of its new approach to quality assurance. This is not an issue for this reporting period,

[8] Approval of programmes includes initial approval, re-approval, and approval of programme modifications. The process involves two main steps, the submission of documentation for scrutiny and a joint higher education institution/NMC approval event during which quality assurance reviewers discuss the evidence and speak to a range of AEI staff, students and service users. See: www.nmc.org.uk/globalassets/sitedocuments/qualityassurance/qamonitoringreports/qareports/qa-nursing-midwifery-education-2016-17.pdf.

however, as the NMC will begin approving all AEIs and programmes under its new standards from October 2018 for the next two years.

Conclusion

4.53 Whilst we consider the proportion of programmes requiring conditions before re-approval to be high, we note that those conditions appear to be process or document related and the NMC requires all conditions to be met before approval is granted.

4.54 The NMC has explained how it considers requests for extensions for re-approvals from AEIs, and the measures it has in place, such as the IQASG, to ensure consistent and robust decisions. In the context of a six-year re-approval process and the forthcoming removal of the re-approval process, an extension of one year does not appear excessive and the NMC will continue to monitor compliance with its standards through other means.

4.55 The NMC appears to have considered how the risks of AEIs being non-compliant with programme standards will be mitigated under the new quality assurance approach when approval will be indefinite. Other regulators take a risk-based approach to the quality assurance of education and we have no objection to this approach in principle. From the information available to us, the NMC appears to have in place a proportionate quality assurance process and is developing and refining a new risk-based approach, which we will keep under review. One area that the NMC may need to be mindful of in its new approach to quality assurance is how it obtains and takes account of the views of AEI staff, service users and students. With the removal of re-approval events, the NMC will need to ensure it has strong and robust avenues to allow the voices of those groups to be heard, as they will no doubt have valuable information to provide.

4.56 There is sufficient evidence to demonstrate that this Standard is met but we will continue to closely monitor this work.

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

Exceptional reporting

4.57 It is noted in the NMC's most recent quality assurance annual report that changes to the NMC's quality assurance framework have continued to lead to an increase in the number of exceptional reports received from AEIs of potential concerns over their compliance with the NMC's standards. In this reporting period, 89 exceptional reports were received, compared to 58 in the last reporting period, which is around a 53 per cent increase. This pattern fits with the last reporting period, in which the NMC reported a 50 per cent increase following the introduction of the changes.

4.58 Most of the exceptional reports have related to issues in practice environments. The NMC required AEIs to provide evidence of actions taken, where appropriate, to control or mitigate any identified risks to the training and education standards.

Targeted review of an education programme

4.59 The NMC did not carry out any targeted reviews in the reporting period. However, it noted in its annual report that a follow-up of the review of one AEI from the previous year was carried out in March 2017, at which all standards were found to be met.

4.60 In June 2017, the NMC asked all AEIs approved to run pre-registration midwifery programmes to provide information about their teaching, learning and assessment in relation to foetal monitoring and foetal heart rate interpretation. The current standards of proficiency for registered midwives lack detail in this area. The responses received reflected a varied approach in delivery and assessment of these topics, and the NMC reports the information and analysis will inform and shape the development of the new standards of proficiency for registered midwives.

Extraordinary review

4.61 The NMC did not carry out any new extraordinary reviews during the 2016-2017 academic year, however a follow-up of the previous year's visit to Bangor University as part of the wider review of education in north Wales took place in February 2017, where all standards were found to be met. Bangor University has completed a phased reintroduction of student midwives to placements that had been withdrawn. The reports from the review are available on the NMC website.

Conclusion

4.62 We have seen evidence that the NMC continues to have measures in place to take action where concerns are identified about training programmes. Therefore, we are satisfied that this Standard is met.

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

4.63 Information on approved nursing and midwifery education programmes and the approval process is available on the NMC website.

4.64 The NMC website contains specific pages for those applying for AEI status and programme approval. The NMC reports that it has made additional information available on its website, including an AEI status and programme approval flow chart. The NMC website also contains a dedicated webpage for those applying to deliver a nursing degree apprenticeship programme.

4.65 A search function on the website enables visitors to search for courses by country, educational institution, and qualification. We are satisfied that this Standard is met.

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 2017/18.

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 its registration requirements.

5.3 The NMC has made some changes to its requirements for registration in this review period.

English language requirements

5.4 The NMC requires all applicants trained outside the UK to demonstrate competency in the English language. The NMC previously accepted the International English Language Testing (IELTS) Academic Test at a minimum achievement of Level 7. In response to concerns raised that the IELTS testing arrangements created an unnecessary barrier to registration, the NMC reported in July 2017 that it had undertaken an initial 'stocktake' of the current arrangements. It said it found no compelling evidence that the IELTS was not fit for purpose or that the level of competency required was set too high. It indicated that the matter remained under review however.

5.5 On 1 November 2017, following further review and targeted consultation, the NMC introduced changes to the English language competency requirements for applicants trained outside the UK. The changes allowed applicants who qualified outside the UK to demonstrate English language competency by taking the Occupational English Test (OET) and achieving a grade B or higher in all four fields of speaking, listening, reading and writing.

5.6 The NMC has also aligned English language competency requirements for those who qualified outside the European Economic Area (EEA) and European Union (EU). These applicants can now demonstrate English language competency by:

- providing evidence of having completed a recent pre-registration nursing or midwifery qualification which was taught and examined in English; or
- demonstrating registration and practice of at least one year in a country where English is the first and native language and an English language assessment was required for registration.

5.7 The changes were designed to increase the flexibility for applicants, while still ensuring that the appropriate standard of English language is achieved.

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 The decision was subject to judicial review in December 2017 and upheld. In reaching a decision, the court found that the NMC's decision was lawful, fair and proportionate and that it was right to treat the protection of the public as its overarching concern. While the risk of a high value claim was low, the risk was real, and the nature of the risk was very severe.

Conclusion

5.10 Based on the evidence we have seen, we are satisfied that this Standard is met.

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

5.11 This Standard was considered as part of the targeted review this year.

Apprenticeships

5.12 Professional education for health and care is changing and includes new and diverse models of education programme delivery, including apprenticeships. The creation of nursing degree apprenticeships was announced by the Government in 2016 and approved for delivery by the Institute for Apprenticeships (IfA) from 9 May 2017.[9]

5.13 We noted that there is a distinction between the completion of the nursing degree, required for NMC registration, and the subsequent end-point assessment (EPA), required for completion of the apprenticeship.[10] We could not find any published information about whether NMC registration is dependent on successful completion of the EPA for those individuals doing nursing degree apprenticeships. We were concerned about the transparency of the process and that, if this was the case, it would constitute an additional and potentially unfair hurdle to registration for nursing degree apprentices.

5.14 We therefore decided to seek further information about the NMC's registration process for those who complete a nursing degree apprenticeship, and the information the NMC has published about this.

5.15 The NMC informed us that registration with the NMC is not dependent on successful completion of the EPA and directed us to information it publishes about what it expects of educational institutions.

5.16 The information the NMC makes publicly available about apprenticeships does not make it clear that registration with the NMC is not dependent upon completion of the EPA. We consider that this impacts on the transparency of the process and has the potential to cause confusion.

[9] See: /www.instituteforapprenticeships.org/apprenticeship-standards/registered-nurse-degree-nmc-2010/.
[10] See: /www.instituteforapprenticeships.org/media/1214/registered_nurse.pdf.

5.17 We have not received any concerns about the information available to the public in relation to this issue and the potential impact of this lack of information is currently low as only a small number of individuals have started the nursing degree apprenticeship so far.[11] The NMC has confirmed that it is updating information available on its website, considering the additional apprenticeship standards being developed in line with its standards.[12]

Processing of registration applications

5.18 The NMC reported that it has begun to automate its registration processes. We were advised by the NMC that this automated process was introduced for UK registrants at the beginning of 2017 and has subsequently been introduced for EU/EEA graduates.

5.19 The NMC says that this has reduced the length of time it takes to process complete registration applications and also reduced the length of time from the point it receives information uploaded by universities to the point an individual is added to the register.

5.20 The chart below shows the median times it has taken the NMC to process complete registration applications each year from 2014/15. The figures for 2017/18 represent a significant decrease in time across all categories of registrants. This is consistent with the NMC's account of the impact of its process change.

Median time (working days) to process initial registration applications	2014/15	2015/16	2016/17	2017/18
UK graduates	2	2	1	0
EU (non-UK) graduates	9	10	13	0
International (non-EU) graduates	1	10	2	1

5.21 The NMC has key performance indicators (KPI) which consider the length of time it takes it to process registration applications from receipt.[13] The NMC has a KPI of processing 95 per cent of UK applications within 10 days and 99 per cent within 30 days. This year the 10-day KPI has been met in every month from April 2017 to March 2018, except November 2017 when it dipped

[11] Reports in the media say that there had only been 20 starts on nursing degree apprenticeships by the end of January 2018. See: https://feweek.co.uk/2018/06/05/urgent-levy-reform-demanded-for-nursing-degree-apprenticeships/.

[12] The nursing associate apprenticeship was approved for delivery by IfA from 20 November 2017. Skills for Health and HEE are working with midwifery leaders in the NHS and in Higher Education to create a Midwifery Apprenticeship, due to take the first students in 2019. See: www.instituteforapprenticeships.org/apprenticeship-standards/nursing-associate/ and www.rcm.org.uk/learning-and-career/apprenticeships.

[13] This is calculated differently from the median figures in the table above (which measures the processing of *complete* applications) and appears to measure from *receipt* of the application to completion.

to 90.8 per cent. The 30-day KPI was met in every month from April 2017 to March 2018, except for May, June and November 2017 but the lowest proportion of applications meeting the KPI in any month (97.8 per cent) was not significantly lower than the target.

5.22 The NMC has reduced its KPI of processing 90 per cent of EU/EEA and other international applications within 60 days instead of the previous target of 68 days. Only 85 per cent of applications were processed within that time in April 2017, but the target was exceeded in each subsequent month to March 2018 with a year to date average of 98.5 per cent.

5.23 Two organisations have raised concerns about the length of time it takes for overseas nurses to join the register, with one saying this is most problematic for EU nurses. One organisation said that its findings to date indicate that the current overseas processes impede nurses' registration. The NMC has begun a programme to review the process for applicants who wish to join the register from outside the UK to ensure that it can assess applicants against the NMC's new standards for nurses, midwives and nursing associates. It also intends to streamline the registration process and consider the evidence requirements for English language competence. The NMC reports that short term improvements will be implemented quickly, but other changes may require consultation and legislative change.

5.24 Whilst the median timescales data and the NMC's performance against its KPIs do not indicate significant concern about its processing of registration applications, we welcome the work the NMC is doing to improve and streamline its processes. We will monitor this work.

Registration appeals

5.25 The total number of appeals against refusals to the register has continued to increase this year and is significantly higher than in 2013/14 and 2014/15, although the number of new applications for registration has decreased. We considered the increase in appeals as part of a targeted review in 2016/17. Following that, we decided that the underlying increase was not a concern because the proportion of appeals at 0.5 per cent was very low, though we noted a high proportion of appeals were upheld. This year the proportion of appeals that were upheld has decreased and the proportion of appeals remains at less than 0.5 per cent. We therefore decided this year that the increase in appeals was not of significant concern. Comparative annual data from 2013/14 to 2017/18 is set out in the table below:

	2013/14	2014/15	2015/16	2016/17	2017/18
Registration applications received	28,959	28,517	30,157	28,932	25,459
Registration appeals received	51	64	109	105	122
Registration appeals concluded	49	53	104	97	94

Outcomes of concluded appeals					
Upheld	16[14]	20 (38%)	63 (61%)	49 (50%)	40[15] (43%)
Rejected	23	13 (25%)	16 (15%)	30 (31%)	42 (45%)
Withdrawn	4	20 (38%)	25 (24%)	18 (19%)	12 (13%)

5.26 This year the difference in the number of appeals received and concluded has increased, with 28 appeals outstanding, compared with eight in 2016/17, five in 2015/16 and 11 in 2014/15. We were concerned that this might indicate delays and a growing backlog of registration appeals. The table below shows a breakdown of appeals received and concluded in each quarter for 2017/18:

Number of registration appeals, 2017/18:	Q1	Q2	Q3	Q4
Received	21	36	26	39
Concluded	20	22	34	18

5.27 We noted however that 39 appeals had been received in quarter four of 2017/18 with 18 concluded, which accounted for 21 of the outstanding appeals. We therefore concluded that the outstanding appeals were likely to be due to a spike in the number of appeals received in that quarter. A similar spike in quarter two of 2017/18 appears to have been addressed in the main in quarter three. We therefore decided that the NMC appears to be able to manage the volumes appropriately.

5.28 The data received from the NMC for quarter one and two for 2018/19 indicates that the number of outstanding appeals has been significantly reduced. The NMC received 43 registration appeals and concluded 59 across the first two quarters of 2018/19.

5.29 We note that no appeals where no new information had been provided were upheld in 2017/18. This is an improvement in the quality of the original decisions compared with last year when two were upheld.

Customer service

5.30 The NMC reports on the proportion of all telephone calls to the registration contact centre which are abandoned before being answered. Last year the rate of abandonment of calls was 7 per cent or lower in every month except October 2016 (18 per cent). The percentage of abandoned calls this year has been generally consistent, staying under 10 per cent. However, there was a

[14] Percentages are not provided for this year because the number of outcomes provided was less than the number of appeals concluded.
[15] The figure of 40 includes 10 appeals that were conceded by the NMC.

noticeable increase in the percentage of calls abandoned between July to September 2017, with a high of 17 per cent in August 2017.

5.31 The NMC reported that, during August, call volumes increased by 25 per cent with calls taking on average 10 seconds longer to resolve. At the same time the NMC had greater than planned-for staff absences and a 25 per cent increase in emails linked to its move to online automation. The NMC reports that the increased workload and the resourcing issues when taken together resulted in longer wait times and therefore a higher abandonment rate.

5.32 An action plan was developed to address these issues. The plan included temporary recruitment, further cross-training of other staff and improved analysis of calls and emails to help the NMC identify and reduce unnecessary contact so that it could focus on the most important contact. The plan appears to have been effective and call abandoned rates have remained below 10 per cent from October 2017.

5.33 In terms of customer satisfaction levels, the percentage of respondents rating their experience as 'good' or 'very good' year to date (February 2018) is 75.8 per cent, and the percentage of those who felt the NMC had answered their query is 70.9 per cent. Last year the figures stood at 76.1 per cent and 76.9 per cent respectively. Customer dissatisfaction stands at 15.5 per cent. Whilst this represents a small decrease in customer satisfaction from last year, the NMC has committed to considering why customers are reporting dissatisfaction, and actions being taken to reduce this were planned to be reported to Council in May 2018. The NMC says that it also continues to analyse survey data to consider the actions it can take to improve the experience for service users. We will keep this under review.

5.34 We reported in last year's report that the NMC planned to develop a new contact centre. This commitment no longer stands and the NMC reported that it is refocusing change on its fitness to practise processes to reduce the number of cases which result in a hearing.

Conclusion

5.35 The NMC has made it clear to us that registration for those doing nurse degree apprenticeships does not require successful completion of the EPA, but only the degree assessment. The information made publicly available by the NMC does not make this clear. We welcome the NMC's plans to update the information on its website. We have not received any concerns about the information available to the public in relation to this issue and the potential impact of this lack of information is currently low as only a small number of individuals have started the nursing degree apprenticeship so far.

5.36 The NMC's drive to reduce its processing times for EU/EEA and other international applications to 90 per cent within 60 days instead of the previous target of 68 days is a positive development and has been generally exceeded. We will monitor the NMC's progress with its review of its overseas registration processes.

5.37 The NMC continues to report on call processing times and customer satisfaction measures at each NMC Council meeting and we welcome the

NMC's commitment to considering why some customers are reporting dissatisfaction.

5.38 We note the NMC's dataset figures for the first half of 2018/19 indicating a reduction in outstanding registration appeals.

5.39 For the reasons above, we are satisfied that this Standard is met.

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

5.40 This Standard was considered as part of the targeted review this year.

5.41 As in previous years, we conducted a check of samples of entries on the NMC register. This year we checked 120 entries, 30 for each quarter over the period of review. The registrant entries checked were randomly selected from registrants who had been subject to a final fitness to practise decision in the relevant period.

5.42 In our check for quarter four, we identified inconsistencies with the NMC's register search results when searching by name. We consider this problematic as it means that information about registrants is not always easily available unless the user has the registrant's Personal Identification Number (PIN), which we consider the public is less likely to have. The results are also potentially misleading to users and this may mean that accurate information about registrants' registration status is not easily accessed by the public, including whether a registrant has restrictions. Many of the registrants we obtained no results for when conducting a search using their name had conditions, were suspended or had been struck off. A review of the NMC's guidance *'how to use Search the register'* does not provide any information prompting users to contact the NMC if the register search returns no results where they expected to see some, and neither does the results page of a search.

5.43 The NMC informed us it had tested various scenarios and believes that the difficulty may have arisen because of blank spaces before, after or in between surnames and forenames. It has modified the system so that it will ignore additional spaces.

5.44 It is of some concern that the NMC register may be of such sensitivity that results are not returned because of extra spaces or because names are not searched exactly as they are recorded on the register. When members of the public search for a registrant, they may not know precisely how the registrant's name is recorded. The NMC has informed us that it is currently undertaking a substantial work programme to modernise its technology and in the next two years it will review its register, including the search functionality.

5.45 We also identified one error as part of our checks. The error involved a registrant who had been made subject to a caution order. When we checked the register, it stated that the registrant had no restrictions on his practice. We raised this matter with the NMC who restored the caution order to the register. The NMC advised that a member of staff had inadvertently removed

the sanction when updating the register when a further case against this registrant was closed with no further action.

5.46 Last year the NMC provided information about the way in which fitness to practise outcomes on the register are 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.

5.47 It is of concern that the NMC's checks did not identify this error. We recognise however that this error arose in relation to a registrant subject to multiple distinct fitness to practise cases, which is not the norm. This is an isolated incident and in the last four years we identified no other errors or inaccuracies through our register checks. The NMC told us that it has reviewed its processes for updating the register to ensure that adequate safeguards are in place to quickly detect and correct discrepancies should they occur in future.

Conclusion

5.48 The variation in register results when searching by registrant name raises some concerns. We consider that the register search function appears not to be as accessible as it might be, based on the NMC's response regarding the sensitivity of search criteria and the lack of guidance provided to those using the register when an entry is not found.

5.49 We have however only looked at a small sample of a very large register and note that, while it is concerning that there has been difficulty in finding some names, we identified no issues when searching the register using registrants' PIN numbers. It is of concern that the NMC's checks did not identify the omission of the caution order. However, this apparently isolated error arose in relation to a registrant subject to multiple distinct fitness to practise cases, which is not the norm, the NMC has processes in place to check the accuracy of the register and the NMC is reviewing its processes. We decided that overall the concerns identified are not so significant to mean that the Standard is not met. Therefore, we are satisfied that this Standard is met.

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

5.50 The registration search function is clearly visible on the front page of the NMC website and is available for everyone to use. Employers may search multiple entries at once. The NMC provides a glossary of terms it uses on the register to describe the registration status of a nurse, midwife and, as of 28 January 2019, a nursing associate.

5.51 The NMC continues to provide guidance for employers on its website which sets out their responsibilities in recruiting, managing and supporting nurses and midwives. This includes information about how to use and when to check the NMC register and details about the employer confirmations service. The information has been updated to include reference to nursing associates and we will consider this as part of next year's performance review.

5.52 The NMC's Employer Link Service (ELS) continues to meet with NHS Trusts and Health Boards across the four countries and has also met with some of the largest independent sector employers. We are satisfied that this Standard is met.

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

5.53 We have not identified any changes to the NMC's approach to managing this risk in the reporting period.

5.54 The Nursing and Midwifery Order 2001 makes the illegal use of the protected titles 'registered nurse' and 'midwife' an offence. 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. Nurses and midwives who apply for readmission to the register and are found to have been working unregistered after allowing their registration to lapse may have a fitness to practise investigation opened against them or may be referred to the Registrar's Advisory Group and their application may be refused.

5.55 The NMC continues to operate an employer confirmation service, enabling employers to search for multiple PIN numbers simultaneously to check that an individual is registered and able to use a protected title.

5.56 Amendments to the Nursing and Midwifery Order 2001 make illegal use of the now protected title 'nursing associate' an offence. The NMC website sets out the legal requirement for all nursing associates practising in England to be on the NMC's register. These changes fall outside the period of review and we will consider them as part of next year's performance review.

5.57 We are satisfied that this Standard is met.

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

Outcomes and evaluation of revalidation

5.58 The NMC commissioned an independent evaluation of revalidation over its first three years. The evaluation began in 2016 with surveys of registrants

who had revalidated and of those yet to revalidate, and qualitative interviews with registrants, confirmers[16] and reflective discussion partners.[17]

5.59 An interim report on the findings over the first year of revalidation was published on 12 July 2017 and we reported on this in our 2016/17 performance review. 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 and that revalidation may play a role in delivering attitudinal change towards key elements of the NMC's Code.

5.60 The interim report stated that there was no evidence to suggest substantial problems with revalidation were being experienced by any one group of registrants, though NMC analysis of renewal rates by groups did find some differences:

- There had been an apparent decrease in the rate of renewal amongst older registrants (aged 56 or over)
- 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.

5.61 The first annual report on revalidation (April 2016 to March 2017) was published by the NMC on 12 July 2017 and we reported on this in our 2016/17 performance review. The NMC responded to the interim report and highlighted that:

- Under revalidation, the revalidation rate for some of the oldest age groups (over 65) has dropped further, although these people represent a relatively small proportion of the register as a whole. The challenges of retaining an ageing workforce have been recognised by NHS Employers and nursing unions and the NMC wants to work with them to make sure that revalidation is not an obstacle to older nurses and midwives maintaining their registration
- Overall, those declaring a disability and who told the NMC they had lapsed were less likely to say that they were lapsing because they could not meet the revalidation requirements (3.9 per cent compared with 6.3 per cent of those who did not report a disability)
- The NMC recognises revalidation could be particularly challenging for those in more isolated practice who may not have an employer and it

[16] As part of revalidation, nurses, midwives and nursing associates must demonstrate to an appropriate person that they have met revalidation requirements. This person is called a confirmer.
[17] As part of revalidation, nurses, midwives and nursing associates must have a reflective discussion about their practice with another NMC registrant. This person is called a reflective discussion partner.

wants to work with unions and professional networks to address this where it can

- The independent consultants are currently interviewing a sample of nurses and midwives who have declared they cannot meet NMC requirements to gain a greater understanding of why this was. They will be discussing these findings with NMC stakeholders to see what further action it might take in this area.

5.62 The annual report identified that 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. The NMC reported that, while lower revalidation rates among this group were to be expected, some registrants practising outside the UK had reported difficulties in finding a reflective discussion partner to enable them to meet the requirements. The NMC confirmed that it would consider whether additional support could be offered to this group.

5.63 Verification is a tool the NMC uses to gain assurance that nurses and midwives are complying with the revalidation guidance and meeting the requirements. It asks for more detailed information from registrants and confirmers to ensure compliance. The NMC's own analysis of verification to date has shown a high level of compliance with revalidation requirements. The NMC reports it has found a small number of instances of non-compliance (although the report does not provide numbers or percentages) and has dealt with these appropriately.

5.64 Following on from the first-year report, the NMC's focus will be on improving communications for those in isolated practice, addressing how nurses and midwives collect feedback (particularly from patients and service users), sharing information with systems and other regulators, and the verification of revalidation applications.

5.65 The NMC also publishes 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.

Incorrect information for registrants about revalidation

5.66 An article in the media reported that a pre-recorded message on the NMC's telephone helpline incorrectly stated that registrants' revalidation date was the same as their renewal date, whereas in fact the evidence required for revalidation must be submitted by the first day of the month in which the registrant is due to renew their registration. It was reported that nurses had been potentially put at risk of falling off the register as a result, leaving them unable to work for up to six weeks. While the NMC provided the correct information on its website, nurses who only used the helpline may have mistakenly submitted their applications after the deadline.

5.67 The article does not state when or for what period the recorded message was in place, so it is not possible to check whether there was any dip in revalidation rates for that period and, in any case, those contacting the

telephone line for the information may not have been due to revalidate in the same period. The NMC has corrected the message. We reviewed the NMC's most recent quarterly revalidation report at the time for April to September 2017. We saw no significant dip in rates of revalidation for any period, with rates of revalidation overall varying between 90 per cent and 96 per cent each month. We did not receive any contact from individuals about this error or to say that they had lapsed as a result.

Conclusion

5.68 Whilst the telephone helpline error is cause for concern, the NMC has corrected the message and has other methods of communication to let registrants know the date by which they must revalidate. We have seen no evidence that the error caused registrants to lapse. This isolated error on its own is not sufficient to mean the Standard is not met.

5.69 The information available to us indicates that the NMC's revalidation systems appear to be effectively supporting registrants to maintain the standards required to stay fit to practise. Therefore, we are satisfied that this Standard is met.

5.70 We will continue to monitor the effectiveness of the NMC's revalidation systems through its annual and quarterly reports and will consider next year, in particular, the work the NMC has carried out to make sure that revalidation is not an obstacle to registrants who are older or working in isolated practice maintaining their registration.

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 3, 5, 7 and 8 and carried out a targeted review and an audit of some fitness to practise cases. 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 Standards 3 and 8 were met but Standards 5 and 7 were not met.

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, employers and members of the public explaining the types of concerns that the NMC can handle (and where other concerns might be better directed), how to make a referral, and what action the NMC might take in respect of referrals received. The NMC provides referral forms in different formats and the Welsh language and invites users who need assistance completing the form to get in touch for help.

6.3 The ELS 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.

6.4 The ELS target for the first year of operation was to introduce the service to all NHS/Health and Social Care boards and trusts and 20 of the largest independent sector employers. In terms of the independent sector, the target was exceeded by three. By the end of the year, regulation advisers had met with 98 per cent of NHS trusts and meetings were held with the remaining four during the first quarter of 2017-2018.

6.5 The NMC also reports ELS attended 168 local information and intelligence sharing groups, speaking engagements and other healthcare sector forums which provided the NMC the opportunity to better understand local issues and concerns and contribute to wider discussions around improving patient care at a local level. We have received positive feedback about the development of the ELS. We are satisfied that this Standard is met.

Standard 2: Information about fitness to practise concerns is shared by the regulator with employers/local arbitrators, system and other professional regulators within the relevant legal frameworks

6.6 The NMC's website lists MoUs, setting out how information will be shared, with a range of relevant organisations. In November 2017 the NMC launched a joint working protocol with the Care Quality Commission that will enable both organisations to work more closely together to protect the public through the sharing of data on fitness to practise and public safety concerns.

6.7 We received positive feedback from a third-party organisation about the NMC's engagement as part of its MoU to share intelligence, and feedback from another organisation indicating an improvement in the NMC's efficiency in acting on requests for information. We are satisfied that this Standard is met.

Standard 3: Where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation

6.8 This Standard was considered as part of the targeted review this year.

Changes to the fitness to practise process

6.9 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 (CEs) additional powers to make decisions to agree undertakings, issue warnings and give advice to registrants
- Extending the powers under Rule 7A of the NMC's Fitness to Practise Rules 2004 (as amended) to encompass review of decisions to give undertakings, decisions that undertakings should no longer apply, and the issuing of warnings and advice.

6.10 We decided to review the initial impact of these changes in this performance review. We sought further information from the NMC about how the new powers were working in practice.

6.11 The NMC explained how it prepared the IC and CEs to use their new powers with a programme of training four months prior to the new powers coming into force, which included workshops and case studies.

6.12 The NMC outlined the processes it has in place to assure the quality of decisions to use the new powers. It told us it has reviewed 20 per cent of closed cases, and all decisions to use the new powers are reviewed by the Head of CEs. Learning has been identified and fed back to individuals and the CE group.

6.13 No requests for review of decisions under the new powers of disposal have been made under rule 7A. The numbers of requests for review of no case to answer decisions are broadly in line with 2016/17. While the number of decisions requiring a fresh decision has increased, the numbers are small, and are not so out of line with previous years to warrant concern.

6.14 The NMC shared its view on the reasons for an increase in cases being closed with no case to answer. It said that this is due to use of the new powers where cases would previously have progressed to a hearing, and an increase in engagement from registrants at the investigative stage of the process. This explanation does not appear unreasonable.

Our audit findings

6.15 Our audit findings (discussed in more detail in relation to the fifth Standard for Fitness to Practise) identified issues of concern with the NMC's signposting in 18 out of the 28 cases we reviewed. Our main concern was that the NMC did not consistently signpost complainants who expressed dissatisfaction with their personal independent payment (PIP) assessment to the Department for Work and Pensions (DWP) for mandatory reconsideration.[18] Nor did the NMC consistently tell complainants to contact the NMC again if any concerns about a registrant's fitness to practise were identified as a result of DWP's consideration. We considered that because our audit sample was limited to complaints about nurses conducting PIP assessments and small as a proportion of the NMC's caseload, the findings could not be extrapolated to apply to general signposting at the NMC.

Conclusion

6.16 Whilst we do not have independent assurance of the quality of case to answer decisions made under the NMC's new processes, the information we do have does not indicate significant concern with the quality of those decisions. The NMC planned to make a full assessment of the processes in September 2018, after one year of operation. We will further review the impact of these changes in the next performance review cycle. We did not consider that the concerns we identified in our audit demonstrated widespread problems in how the NMC signposts people to other relevant organisations. We are satisfied that this Standard is met.

[18] Mandatory reconsideration is a process through which DWP allows claimants to challenge decisions about PIP where: they consider an error has been made or important evidence missed; they disagree with the reasons for the decision; or they want the decision to be looked at again.

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

6.17 This year we have not seen evidence of any significant concern in relation to the NMC's risk assessment and prioritisation of fitness to practise cases.

6.18 The median time taken to an interim order (IO) committee decision from receipt of a complaint has been maintained at 26 days this year. However, we have become aware of some limitations in the data the NMC provides about the time taken to make IO decisions. We understand from our correspondence with the NMC around the implementation of the new dataset, in place from April 2018 onwards, that in calculating this figure, the NMC reports only on new IOs imposed at the screening stage. Cases are generally only held by the screening team for the first weeks from receipt of the concern, meaning that if new IOs imposed at later stages were included in this median measure, the figure would increase.

6.19 In addition, the NMC does not measure the time taken from identification of the need for an IO to the IO decision. This makes it difficult to assess the time it takes the NMC to make an IO decision once its risk assessment has identified a need for action. The NMC informed us it will be able to start providing us with this data within the next 12 to 18 months when it moves to a new case management system.

6.20 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. In 2016/17 the figure increased to 407. This year we are pleased to report a significant decrease in the number of interim order extensions the NMC has made to the relevant court, a total of 285.

6.21 In 12 out of 28 cases reviewed as part of our audit, we had some concerns with the NMC's risk assessments. This included cases where the risk assessments were brief and did not reference or recognise the public interest. However, we did not identify any cases where we considered public protection was clearly at risk, although in two cases we did not agree with the decision reasoning provided.

6.22 We do not consider that the concerns identified are so serious as to affect the achievement of this Standard, taking into account the limitations of the sample size and specific theme. We are therefore satisfied that this Standard is met.

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

6.23 This Standard was considered as part of the targeted review this year. We sought further information from the NMC about several aspects of its fitness to practise process.

Failures to provide panels with representations from registrants

6.24 Last year we highlighted the NMC's failure (as a result of administrative errors) to provide panels at final fitness to practise hearings in four cases with representations made by registrants.

6.25 This year a similar failing has been identified in one case. We accept that this is an isolated incident in this reporting period. 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 this error and makes any necessary changes to its processes to prevent repetition.

Voluntary removal (VR)[19]

6.26 In our 2015/16 performance review 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. At its May 2017 Council meeting, the NMC reported that it had strengthened its quality assurance frameworks to include assessment of VR cases.

6.27 The NMC outlined its new approach to the quality assurance of VR cases. A scrutiny and quality team arrange a review of a mix of five rejected and accepted VR decisions from different decision makers each quarter. The review considers the recommendations made to decision makers by case co-ordinators and the decision itself against an assessment framework. Feedback is sent to individual case co-ordinators, their managers and decision makers and trends are shared with all. The NMC has reviewed 14 per cent of all VR decisions in this reporting period.

6.28 We consider that the NMC appears to have introduced a formal and consistently applied mechanism for the quality assurance of VR decisions to allow it to monitor the consistency of decisions and assist ongoing learning for decision-makers.

Approach of fitness to practise committees to registrants who have, in effect, retired or no longer want to practise

6.29 We noted as part of our Section 29 work inconsistent approaches by panels at fitness to practise committee reviews of sanctions imposed on registrants who had retired or expressed the intention to retire or cease practising. Those registrants were usually unable to demonstrate the remediation to persuade the panel that they were fit to practise unrestricted. The registrants wished to leave the register but could only do so if no restrictive sanction was in place. Panels took different approaches: some simply continued the original sanction, others decided the registrant was no longer impaired and others found the registrant was impaired but took no further action. The

[19] 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.

inconsistency arose out of a recent court decision[20] which appeared to suggest that it was appropriate for panels to take action which would allow the registrant to lapse from the register in appropriate cases. We wanted information to understand the NMC's approach to these types of cases and how it manages the risk of these individuals deciding to return to the register.

6.30 The NMC described its policy approach to those registrants. The approach appears to be in line with recent case law in that the panel is invited to find impairment, outline the sanction that would have been appropriate if the registrant was still practising, but then make a finding of no further action to allow the registrant to lapse. If the nurse or midwife applies for restoration to the register this finding would be considered by the decision maker.

6.31 We are satisfied that the NMC has an appropriate policy in place and we have already seen evidence of the NMC applying the approach it has outlined consistently in the first quarter of 2018/19 through our Section 29 work. We are also assured that the NMC has a mechanism to deal with registrants who change their minds and apply to be readmitted to the register. Whilst the approach of the NMC was inconsistent in the 2017/18 reporting period, the case law was in flux, and there is evidence that the NMC has now resolved this.

6.32 We note however that as the NMC's published guidance is designed for all audiences, it does not address some of the questions a registrant subject to an extant sanction but intending to or having ceased practising may have.[21] We would recommend that the NMC considers addressing this to ensure the process is transparent.

Approach to evidence gathering

6.33 Through our Section 29 work we identified cases where we consider the NMC had not obtained important evidence prior to the final fitness to practise committee hearing or not presented it at the hearing. This included important documents such as medical records, expert evidence and relevant policy documents. We issued learning points to the NMC about this in a number of cases we reviewed.

6.34 The NMC has described the processes it has in place for preparing and reviewing cases to ensure that they are 'hearing ready'. The process includes an evidence formalisation stage for investigators, a detailed review by a lawyer once a case is referred to the fitness to practise committee and subsequent regular reviews of the charges, evidence required and responses from the registrant. The detailed and final checks are carried out by a lawyer who should have adequate skills to assess the sufficiency of the charges and the evidence to support those charges.

6.35 We recognise that the NMC has considered and taken action in response to our learning points. However, as noted above, we have identified a number of cases where we were not satisfied that the NMC has obtained important

[20] General Optical Council v Clarke [2018] EWCA Civ 1463

[21] See: www.nmc.org.uk/ftp-library/reviews/substantive-order-reviews/allowing-orders-to-expire-when-a-nurse-or-midwifes-registration-will-lapse/.

evidence, and whilst this represents a small proportion of the NMC cases notified to our Section 29 team, it has significant implications for the fairness, transparency and focus on public protection of the process.

Approach to offering no evidence

6.36 Through our Section 29 work we identified cases where, in its approach to offering no evidence,[22] the NMC had not followed its own guidance and not provided fitness to practise committees with enough evidence to enable them to determine if it was in the public interest to proceed with the charges. We considered seven such cases at detailed case review meetings and considered in three of these cases the decisions were insufficient to protect the public. We appealed two of these cases successfully.[23]

6.37 In one of these successful appeals, the case of PSA V NMC and X[24] (case of X), the court criticised the NMC's approach to offering no evidence, submitting no case to answer, and its superficial approach to evidence gathering in that case. We wanted to understand what action the NMC had taken to address the issues described.

6.38 The NMC has outlined its updated approach to offering no evidence and submitting no case to answer.[25]

6.39 The NMC has said that it has changed its approach to offering no evidence and now makes very few applications. Its updated approach is outlined on its website.[26]

6.40 Whilst the NMC's updated approach appears to be generally in line with the procedures to follow as described by the judge in the case of X, we still have some reservations. For example, we note from the NMC's guidance that the panel is not necessarily provided with copies of the evidence to help it reach its decision. The NMC should ensure that it puts before the panel all relevant evidence that it has obtained so that the panel has the full picture and can exercise its duties as a panel of inquiry. The NMC was criticised for not doing this in the case of X. We also consider that the guidance could be clearer about the distinction between offering no evidence and making a submission of no case to answer.

6.41 We are mindful that the case of X was dealt with using our Section 29 powers of appeal and that these types of cases, including the others where our

[22] In limited circumstances the NMC may determine that it would not be in the public interest for it to carry on with all or part of a case referred to the fitness to practise committee (FtPC). It will ask a full panel of the FtPC to approve its decision not to continue with all or part of the case against a registrant, for example when it considers that there is no longer a realistic prospect of some or all of the factual allegations being proved or when there is no longer a realistic prospect of a FtPC finding that the registrant's fitness to practise is currently impaired.

[23] Section 29(4) of the National Health Service Reform and Health Care Professions Act 2002 provides: *'Where a relevant decision is made, the Authority may refer the case to the relevant court if it considers that the decision is not sufficient (whether as to a finding or penalty or both) for the protection of the public'"*

[24] PSA V NMC and X [2018] EWHC 70 (Admin).

[25] Where the NMC considers that there is an inherent weakness in the charges, it will ask a full panel of the FtPC to approve its decision not to continue with all or part of the case against a registrant.

[26] See: www.nmc.org.uk/ftp-library/ftpc-decision-making/offering-no-evidence/.

Section 29 work identified concerns during this review period, represent a small proportion of the NMC's caseload. Nonetheless, the NMC's approach to these types of cases had a significant impact on the fairness, transparency and focus on public protection of the fitness to practise process. We will continue to monitor the NMC's approach to offering no evidence.

Cancelling hearings using Rule 33 of the Fitness to Practise Rules[27]

6.42 The NMC had published guidance on cancelling hearings under Rule 33, which said that a decision to cancel a hearing should only be made when it is the public interest to do so and where there is no public interest in a case proceeding to a hearing. The guidance described three circumstances where its use might be appropriate:

- Where the registrant's registration would have lapsed but for the fitness to practise proceedings, they do not intend to practise in the future, and there is no public interest in pursuing the concerns.
- If, in a serious case, evidence is not available to prove the factual charges but could become available in the future.
- When there is some other compelling reason for not holding a hearing, for example, severe ill health of the registrant.

6.43 Following scrutiny of the guidance we had a number of concerns about the circumstances in which this power could be used:

- We had concerns that the first circumstance might allow registrants to bypass the formal VR process. It did not require a registrant to admit facts or impairment and we were unclear how the risk of registrants returning to the register would be managed.
- In the second circumstance we wanted to understand how the public interest was balanced with the registrant having a fair and expeditious hearing; whether this balancing exercise was regularly undertaken; and how the risk that a registrant's registration might lapse was managed.
- In the third circumstance we had concerns about how widely this was drafted and how health was taken into account considering that this is a basis for impaired fitness to practise.

6.44 Furthermore, the decision is made in a private preliminary meeting by a panel chair and we were unclear what was presented by the NMC to ensure the chair had a proper understanding of the charges. We sought further information from the NMC.

6.45 The NMC did not entirely clarify its use of Rule 33. It remained unclear what was presented to the chair to ensure that they had a proper understanding of the allegations and how the risk of registrants returning to the register (circumstances 1 and 3) or lapsing (circumstance 2) was managed. The NMC did confirm that the referrer is given the opportunity to comment on a request to cancel a hearing, and the chair would receive such comments prior to making a decision. The NMC informed us that this power had only

[27] The Nursing and Midwifery Council (Fitness to Practise) Rules 2004.

been used twice in this reporting period and only in cases where registrants were seriously ill.

6.46 We note that the NMC has now reviewed this power and restricted its use to circumstances where a registrant has a terminal illness. The NMC will prepare a document, called a 'reasoned opinion' that sets out the background to the case, and explains the registrant's health condition. The chair will then decide whether to direct that the case should be closed.

6.47 We were concerned about the wide-ranging circumstances in which the NMC could use its Rule 33 powers to cancel hearings, and the mechanisms in place for those who wished to return to the register when no findings on facts or impairment were made. However, its use in this reporting period was minimal and only in relation to registrants' health. The NMC has reviewed this power and has now restricted its use to circumstances where a registrant has a terminal illness. This alleviates the concerns we had about the potential lack of fairness, transparency and focus on public protection of the process.

Charging amendments

6.48 Through our Section 29 work we identified instances of the NMC making charging amendments at substantive hearings and pursuing charges at final hearings for which there appeared to be little or no evidence.

6.49 The NMC has described the processes it has in place to review charges prior to case presentation, including detailed reviews by lawyers. The NMC has also described the mechanisms it has in place to learn from charging amendments made at hearings. It said it is carrying out a review of the nature and frequency of amendment applications during the first six months of 2018. It will use the results to inform training and changes in the process.

6.50 A number of cases we reviewed were subject to charging amendments at substantive hearings. As a proportion of the cases notified to us through our Section 29 work, this is small, but it can impact on the fairness of proceedings. We welcome the work the NMC is undertaking and we will keep this under review.

Approach to complaints about personal independent payment (PIP) assessments

6.51 We received concerns in this reporting period from members of the public and advocacy groups relating to the NMC's decisions not to progress concerns about registrants conducting PIP assessments. These suggested that the NMC relied on the findings of employers and/or advised complainants that no credible evidence existed even where the NMC had been advised that witnesses were present, or audio recordings made. We wanted information to understand the NMC's approach to these complaints.

6.52 The NMC informed us that it considers complaints about registrants conducting PIP assessments in line with its published criteria and considered witnesses and recordings to be credible and important evidence. The NMC's figures showed that only two concerns progressed to the investigation stage out of 83 cases received in 2017/18, which demonstrated that most cases

about registrants conducting PIP assessments did not pass the screening stage[28] of the process. We decided to audit a sample of these cases.

6.53 We reviewed 28 cases, which represents 34 per cent of cases about registrants conducting PIP assessments considered by the NMC in the reporting period. All cases were closed between 1 April 2017 and 31 March 2018. The sample comprised:

- 26 cases closed at screening
- one case closed by the case examiners with no further action
- one case closed by the case examiners with a published warning

6.54 We identified numerous concerns in our audit. Prevalent concerns included that the NMC:

- did not systematically consider all the concerns raised by complainants;
- said that the role of disability assessor was not relevant to registrants' fitness to practise unless it involved dishonesty;
- relied on the findings of employers and their assessment of issues to close cases, without proper scrutiny;
- did not obtain and/or consider primary source documents and other relevant information;
- did not consider and/or give appropriate weight to the concerns/evidence of complainants in its screening decisions; and
- did not seek further information from complainants.

6.55 In two cases we considered that the outcome might not be sufficient to protect the public. In nine cases we decided we could not determine whether the outcome was sufficient to protect the public. In 24 out of the 28 cases audited, we determined that the handling of the case might undermine confidence in the NMC.

6.56 In its response to our audit findings, the NMC told us that overall it accepted our findings. The NMC advised that before we started our audit it carried out its own review of a small sample of relevant cases. This had identified concerns with its assessment and decision-making, including that it had narrowly focused its consideration on whether it could establish evidence of dishonesty. The NMC found in some cases its reasons did not evidence it had: applied its screening guidance; made its own assessment independent of the registrant's employer; and addressed all concerns raised by the complainant.

6.57 The NMC considered whether it needed to formally reconsider any cases and determined it did not. The NMC informed us of the actions it has taken or planned, which include meeting with the DWP to help inform the NMC's consideration of these complaints, introducing a new mechanism to review a sample of screening decisions closed with no further action each month and holding decision drafting workshops for screening decision makers. An audit

[28] The NMC uses this process to decide whether concerns need full investigation.

by an independent law firm will also be carried out on a sample of public referrals to identify learning relevant to the NMC's handling of these referrals.

6.58 Whilst we acknowledge the work that the NMC is doing, we consider that our audit findings, supported by the NMC's review findings, suggest that the NMC did not appropriately follow its published screening guidance in handling concerns about registrants conducting PIP assessments. This has significant implications for the fairness and transparency of the fitness to practise process. We recognise that complaints in relation to PIP assessments can be challenging for professional regulators,[29] for example in determining whether a complaint raises concern about an individual registrant's fitness to practise, as distinct from wider concerns about the assessment process or outcome. That makes it all the more important that regulators follow their published guidance and procedures in handling such complaints.

6.59 We also consider that our audit findings, and the NMC's review findings, suggest that the NMC's approach to screening these types of referrals relied excessively on the evidence of employers and did not give appropriate weight to other sources of evidence, such as that from complainants, primary source documents, and investigations by other bodies (such as DWP). We can draw parallels with our LLR in which we found that as an organisation, culturally, the NMC did not recognise the value that patient or family evidence provides.

Conclusion

6.60 We consider that failing to apply its screening guidance appropriately to complaints about registrants conducting PIP assessments created a barrier to vulnerable people raising potentially serious concerns. Our audit and the NMC's review identified a lack of independence demonstrated in the screening decisions, and a lack of engagement with the concerns raised by complainants (an issue which was also identified in our LLR).

6.61 These concerns, in addition to those around the NMC's approach to evidence gathering, evidence presentation (which was identified as an area of concern in both our Section 29 review work and our audit) and offering no evidence, had a significant impact on the fairness, transparency and focus on public protection of some of the NMC's fitness to practise processes.

6.62 In discussion with us, the NMC has taken action to review these concerns and we recognise that it is taking steps to address them, which we welcome. We will monitor the effectiveness of these in coming years. However, for the purposes of this review year, we consider that these concerns mean that this Standard is not met. The other issues discussed in relation to this Standard have been addressed by the NMC or do not appear to us to be significant.

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

[29] The General Medical Council and the Health and Care Professions Council also regulate healthcare professionals who may carry out PIP assessments.

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

Adjournments of final fitness to practise hearings

6.63 Last year we reported that there had been an improvement in the proportion of final fitness to practise hearings running part-heard, while the proportion of hearings being adjourned had remained stable. Information on adjournment and part-heard rates is not routinely published by the NMC. However, the NMC 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 decreased this year from 87 per cent to 76 per cent. Failure to schedule a consistently high proportion of final hearings with sufficient time to enable them to conclude has the potential to cause a backlog of cases awaiting conclusion as well as delays to the cases themselves. Such delays can lead to a loss of public confidence in the fitness to practise process. However, this year's rate is higher than in 2015/16 when it stood at 72 per cent.

Third-party investigations

6.64 The Gosport Report[30] published in June 2018 considered, among other matters, actions the NMC did or did not take as it declined to proceed in respect of allegations against seven nurses between September 2000 and April 2010. It criticised the NMC for relying on the reports of other bodies rather than conducting its own enquiries, dismissing police information, failing to obtain expert advice on misconduct and excessive delays in waiting for third-party investigations. We note that these events took place well before the period under review.

6.65 In relation to the NMC's process for dealing with complaints that are delayed by third-party investigations, we reported in last year's performance review the NMC's criteria for delaying a case because of a third-party investigation. The NMC will only delay an investigation subject to a third-party investigation if there are clear and compelling reasons and it is in the public interest to do so. There are two teams that are responsible for progressing cases that are over nine months old and other teams deal with cases under nine months. There is a High-Profile Case Unit, which seeks to ensure cases that meet certain criteria receive the right level of handling and seeks to provide strong case management and hold regular meetings to discuss progress on cases. We concluded last year that the NMC has a clear policy in place for progressing those cases subject to third-party investigations as quickly as possible.

[30] Gosport War Memorial Hospital, The Report of the Gosport Independent Panel, June 2018. See: www.gosportpanel.independent.gov.uk/media/documents/070618_CCS207_CCS03183220761_Gosport_Inquiry_Whole_Document.pdf.

6.66 In our LLR we said that we think the NMC is in a significantly better position to reach appropriate decisions about delaying investigations based on third-party investigations.[31]

Timeliness of fitness to practise case progression

6.67 The NMC has significantly reduced its caseload of older cases this year. Comparative data for the last four years is set out below:

Open old cases at year end	2014/15	2015/16	2016/17	2017/18
52-103 weeks	917	1,437	1,170	798
104-155 weeks	133	281	294	240
156 weeks or more	54	48	71	71
Total	1,104	1,766	1,535	1,109

6.68 There has been a significant reduction in the number of cases over 52 weeks held by the NMC, from 1,170 last year to 798 this year and is at its lowest level since at least 2014/15.

6.69 The number of cases older than 104 weeks has decreased from 294 last year to 240 this year. The number of cases aged over 156 weeks has been maintained at 71.

6.70 We noted in last year's performance review report that 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. Although the NMC has not met this target the median has decreased, and the target is within sight.

6.71 The median time taken from the NMC receiving a case to the IC or CEs reaching a case to answer decision steadily increased in the years 2013/14 to 2015/16. The median had risen from 39 weeks in 2013/14 to 45 weeks in 2014/15 and it was 50 weeks in quarter three and 55 weeks in quarter four in 2015/16. The median for 2016/17 was 51 weeks, which we noted in last year's performance review report was a slight improvement. We are pleased to report that this year the median has decreased to 41 weeks.

6.72 This remains high in comparison to other regulators. However, as we noted in our performance review report last year, 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.

[31] Our LLR states that whilst the existence of the guidance is an important step, we did not see any further examples of cases where there have been third party investigations and so have not had the opportunity to see how they work in practice.

6.73 We note that the NMC's performance at the adjudication stage[32] remains stable at 26 weeks, which is low compared with some other regulators.

6.74 The NMC's median time taken from receipt of a case to a final hearing is 82 weeks. This has decreased from 87 weeks 2016/17. The figure was 83 weeks in 2015/16. This remains low by comparison with other similarly-sized regulators.

Conclusion

6.75 On balance, apart from a decrease in the rates of first substantive hearings that conclude within their original hearing day allocation, there has been an overall improvement in timeliness measures, as outlined above. The NMC's rate of part heard and adjourned substantive hearings this year has not reached the level over which we expressed concern in 2015/16. In the context of improvements in other timeliness measures, we are satisfied that there is sufficient evidence that this Standard is met.

Standard 7: All parties to a fitness to practise case are kept updated on the progress of their case and supported to participate effectively in the process

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

Supporting complainants

6.77 Last year we decided, given the concerns set out in the LLR, the NMC had not met this Standard. We had concerns about the way in which the NMC dealt with families which we considered were ongoing and applied beyond the relatively small number of cases that we looked at as part of our LLR. We took the view that, culturally, the NMC did not recognise the value that patient and family evidence provides or that patients and families have an interest in cases.

6.78 We noted that the NMC had recently set up the PSS to address the way in which it deals with members of the public who complain about the fitness to practise of registrants, which we considered may go some way to addressing our concerns. We recognised however that the NMC may not have had sufficient time to address those concerns.

6.79 At paragraph 5.44 of our LLR we suggested that the NMC ought to look at a number of matters urgently. The NMC informed us it has put in place a significant programme of work to address these matters and its immediate activity has focused on two key priorities: improving how it engages with and listens to the public day to day and being open and transparent. The NMC's work includes:

- new website content for the public about its fitness to practise system which went live in July 2018;
- operationalising the PSS, which is now live;

[32] The median time in weeks from a case to answer decision to a final hearing.

- piloting calls to complainants at the start of investigations and conducting needs assessments;
- a tone of voice review of all public correspondence; and
- a new enquiries and complaints team which will be live from April 2019.

6.80 Our audit findings identified similar issues to those identified in our LLR. We note that the cases we audited predated the publication of our LLR and the NMC's response to it. However, we consider that the findings support our view that the NMC has work to do in respect of dealing with complaints from patients and other members of the public.

6.81 We acknowledge the significant work the NMC has undertaken to address the lessons we identified in our LLR which are relevant to this Standard. However, much of the work is in progress or has only recently been completed, and it will take time for the NMC to consider how to assess the impact of this work.

Supporting registrants

6.82 We reviewed the NMC's website and published literature and requested information from it to understand how the NMC supports registrants going through the fitness to practise process. We had noted a lack of signposting to support services, such as those that offer emotional support.

6.83 The NMC informed us that it assesses the support needs of registrants on a case-by-case basis. However, it will be undertaking further work to better understand what additional support can be provided.

Conclusion

6.84 Much of the work to address the lessons in the LLR is in progress or has only recently been completed and it will take time for the NMC to consider how to assess the impact of this work on the outcomes it wants to achieve and the lessons to be learned. Our audit sample was limited; however, the findings support our view from the LLR that the NMC has progress to make with regards to its communication of decisions and how it ensures that it properly understands the concerns of patients and families and addresses them. We have decided therefore that this Standard is not met.

6.85 The work that the NMC has outlined it will be doing to address the support needs of registrants in the future is welcome. We will continue to monitor this work alongside the NMC's work to learn from the LLR.

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

6.86 This Standard was considered as part of the targeted review this year.

CE and IC powers to agree undertakings, warnings and give advice

6.87 As explained in paragraphs 6.11 to 6.14 above, the NMC has provided us with some assurance that CE and IC decisions are being made appropriately

and there is a formal quality assurance mechanism in place to ensure consistent and robust decisions with opportunities for learning and feedback is shared.

Progress on the work to ensure consistency to decisions taken in the role of assistant registrar (AR)

6.88 Last year the NMC advised us it had recruited a senior lawyer to lead on and bring greater consistency to decisions taken in the role of AR. We asked the NMC to provide information on the progress of this work.

6.89 The NMC informed us that the senior lawyer has been in post since February 2017 and is responsible for considering all Rule 7A requests and some VR applications. The NMC described the process in place for the quality assurance of Rule 7A decisions. This includes quarterly reviews where learning is identified by the lawyer for decision makers and shared with relevant parties.

Audit of NMC's approach to complaints about registrants conducting PIP assessments

6.90 Many of the audit findings we have discussed under the fifth Standard for fitness to practise are relevant here. The findings of our audit and the NMC's findings indicate that the NMC's decision making in these cases was not well-reasoned or consistent. In some cases, this had an impact on how well it might have protected the public.

6.91 We are mindful that the sample we and the NMC reviewed was small and specific to complaints about registrants conducting PIP assessments, and so the findings are of limited applicability. We have not identified any significant cause for concern with the decision making by CEs and fitness to practise committees and others that suggests that this Standard is not being met.

Conclusion

6.92 We are satisfied that this Standard is met because:

- We have not identified any significant cause for concern with the decision-making by CEs and fitness to practise committees and others that warrants this Standard not being met
- The NMC now has in place a formal QA process for VR and Rule 7A decisions with opportunities to identify learning which is fed back. This should help to ensure that consistent and robust decisions are made
- Unlike the fifth Standard for Fitness to Practise, we have not seen evidence to suggest that the concerns our audit identified about the NMC's decision-making with regards to complaints about PIP assessments reflect wider issues in its culture/performance.

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

6.93 The NMC's publication and information handling guidance sets out its approach to the routine publication and disclosure of fitness to practise information. This is available on the NMC website.

6.94 The NMC's power to issue advice, warnings and undertakings came into effect in July 2017. The NMC has set out in its fitness to practise guidance library its approach to the publication of advice, warnings, and undertakings.

6.95 The NMC publishes undertakings and warnings issued to registrants on its register. In health cases the register entry states that a warning or undertakings have been issued, but the content remains private.

6.96 Undertakings are measures agreed between the NMC and the registrant to address problems in their practice that pose a current risk to patients. Their purpose is to make sure patients are protected while giving the registrant an opportunity to work on areas of their clinical practice which cause concern. Undertakings are published on the register along with a statement of regulatory concern. A statement of regulatory concern is a concise explanation of what appears to have happened in a particular case.

6.97 The NMC states that a warning is a way of publicly recording that a registrant's past conduct was unacceptable without the need to hold a hearing. Issuing a warning against a registrant who failed to observe the Code, and whose conduct was a source of concern, allows it to promote and maintain professional standards and public confidence in the registrants it regulates. Warnings are issued in cases where the registrant accepts the basis of the NMC's concern and has demonstrated that they would not be a clinical risk if they were allowed to practise unrestricted. Warnings appear on the registrant's register entry for 12 months.

6.98 The record of the warning sets out the statement of regulatory concern, the relevant standards of practice and behaviour under the Code, and the reason for issuing the warning. The fact that warnings are only issued in cases where the registrant's practice does not present a risk to patients is explained as part of the definition of a warning. This is accessible from the online record of the warning itself. Decisions to warn are published on the NMC website seven days after they have been made.

6.99 Advice is issued privately to the registrant only, but the referrer is informed that the case was closed with advice. The NMC sets out that the purpose of advice is to give registrants private guidance to assist them in keeping their practice safe, following an acknowledged minor breach of the Code.

6.100 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 and we have not seen anything to change our view. We are satisfied that this Standard is met.

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

6.101 The NMC publishes its information security policy. 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.

6.102 In 2017/18 there were a total of 124 incidents recorded, of which six were graded as 'major', 36 as 'moderate', 73 as 'minor' and nine as 'insignificant'. The NMC reports that of the six major incidents, two were personal data breaches. By comparison, in 2016/17 there were a total of 114 incidents recorded, of which four were graded as 'major', 36 as 'moderate', 63 as 'minor' and 11 as 'insignificant.

6.103 The NMC implements an annual information security work programme, which is mapped to the international information security standard ISO 27001. The NMC reports that it updated its policies and processes regarding data breach management to ensure compliance with General Data Protection Regulation (GDPR) requirements from May 2018.

6.104 We have been made aware of two data incidents that were reported to the Information Commissioner's Office (ICO).[33] In one incident the ICO determined that further investigation was not warranted and, in the second determined that the incident could be closed after the NMC's response satisfied it that the NMC had done everything that it reasonably could have to manage the data breach.

6.105 While the data incidents are a cause for concern, we note that the NMC's reported incident data was broadly the same in 2016/17 and 2017/18 and we are aware the NMC has policies and processes in place to monitor, review and learn from data incidents. We are satisfied that the Standard is met.

[33] In one incident the NMC reported the matter to the ICO and in the second incident a member of the public reported it.

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