professional standards authority

Annual review of performance 2018/19

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 10 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.

Our organisational values are: integrity, transparency, respect, fairness and teamwork. We strive to ensure that our values are at the core of our work. More information about our work and the approach we take is available at www.professionalstandards.org.uk

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

Contents

This report looks at the NMC's performance against our Standards of Good Regulation between April 2018 and March 2019. As part of our discussion about some of the Standards, we refer to the NMC's plans for future work. This report was, however, drafted before the Covid-19 pandemic reached the UK. This has led to a range of emergency measures to enhance the ability of public bodies across the UK to provide an effective response to tackle the pandemic. It is also placing unprecedented pressure on health and care professionals and their regulators. This may well mean that regulators need to change their plans and priorities to ensure that their resources and processes concentrate on the most crucial areas of patient and public safety. We recognise that this means that some of the plans referred to in this report may be delayed.

About the NMC

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

- Setting and maintaining standards of practice and conduct
- Maintaining a register of qualified professionals
- 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 2019, the NMC was responsible for a register of 698,237 nurses, midwives and nursing associates. 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 10 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 months. We use this to decide the type of performance review we should carry out.

[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, the Pharmaceutical Society of Northern Ireland, and Social Work England.

1.7 When considering information relating to a 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 2019 we carried out an initial review of the NMC's performance from 1 April 2018 to 31 March 2019. Our review included an analysis of the following:

- Council papers, including fitness to practise reports, Audit Committee reports and business plan monitoring reports
- Policy and guidance documents
- Statistical performance dataset
- Third party feedback
- Register check
- Information available to us through our review of final fitness to practise decisions under the Section 29 process.[3]

2.2 As a result of this assessment, we carried out a targeted review of:

- Standard 2 of the Standards of Good Regulation for Guidance and Standards;
- Standard 2 of the Standards of Good Regulation for Education and Training;
- Standard 5 of the Standards of Good Regulation for Registration; and
- Standards 3, 5, 7, 8 and 10 of the Standards of Good Regulation for Fitness to Practise.

2.3 We obtained further information from the NMC relating to these Standards. We also carried out an audit of 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 2018/19 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 10 Standards of Good Regulation for Fitness to Practise. The NMC did not meet Standards 5 and 7.

[3] 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 This is the second consecutive year in which the NMC has met all Standards with the exception of Standards 5 and 7 of the Standards of Good Regulation for Fitness to Practise.

2.6 We recognise that the NMC has undertaken extensive work to improve its fitness to practise processes and the way in which it communicates with stakeholders involved in the process. However, much of this work was at an early stage during the period under review. We will monitor the progress of the changes made and report on this in future performance reviews.

3. Guidance and Standards

3.1 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 Standard 2 was met and therefore the NMC has met all of the Standards of Good Regulation for Guidance and Standards in 2018/19.

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

Standards of proficiency for registered nurses

3.2 On 22 May 2018 the NMC published its new standards of proficiency for registered nurses. The standards describe the knowledge and skills that nurses should have at the point of joining the NMC's register. The NMC reported that the standards have been updated to reflect changes in healthcare and to ensure that nurses are equipped with the skills and knowledge they need to deliver good quality and safe care now and in the future. The new standards came into effect from January 2019.

3.3 We received feedback in support of the new standards from one organisation which considered that they raise the bar of what is expected of registered nurses working across a range of practice settings in the modern healthcare system.

Standards of proficiency for registered nursing associates

3.4 The NMC published its new standards of proficiency for registered nursing associates on 10 October 2018. The NMC reported that the standards are derived from the standards of proficiency for nurses in order to help to show the synergies and the differences between the two roles, and to make clear the additional proficiencies required to progress from being a nursing associate to become a registered nurse via a nursing degree.

3.5 On 10 October 2018 the NMC also published an updated version of the Code, setting out professional standards of practice and behaviour for registrants. The Code now covers nursing associates.

Standards of proficiency for prescribers and standards for medicines management

3.6 In January 2018, following a period of consultation, the NMC adopted the Royal Pharmaceutical Society's (RPS) prescribing competency framework as its standards of proficiency for prescribing practice. This replaced the NMC's Standards of Proficiency for Nurse and Midwife Prescribers (2006). The NMC advises that prescribers on its register should refer to the RPS's prescribing competency framework and other relevant sources of information and guidance to inform their ongoing prescribing practice.

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 We carried out a targeted review of this Standard this year.

3.9 The NMC reported to its Council in July 2018 that respondents to its consultation on new standards of proficiency for prescribers and the withdrawal of the NMC's Standards for Medicines Management indicated that there were a range of subject areas suitable for further underpinning prescribing guidance. There was perceived to be a lack of current clear guidance about prescribing, particularly in respect of cosmetic and aesthetic, and sports work.

3.10 We wanted to understand how the NMC had responded to this evidence and its process for determining whether to issue additional guidance.

3.11 The NMC told us about the factors it takes into account when deciding whether to issue guidance. These include:

- the potential number of registrants engaged in the area of practice;
- the number of fitness to practise cases related to the area of practice;
- the number of enquiries the NMC receives related to the area of practice;
- the scope for harm within that area of practice and its media profile; and
- the existence of other relevant guidance.

3.12 Regarding sports prescribing, the NMC told us that it had not received any enquiries on the issue for a number of years and that other sources of evidence did not indicate a high level of risk in this area. It therefore had determined not to issue additional guidance.

3.13 We consider this decision to be proportionate in the circumstances. We note that the RPS prescribing competency framework, which the NMC adopts, does not refer to sports prescribing specifically, but does contain requirements that may be relevant to this area of practice. These include the requirements that prescribers must consider the potential for misuse of medicines and that they must recognise and deal with factors that might unduly influence prescribing.

3.14 The NMC told us that following an assessment of the evidence of the need for additional guidance on remote prescribing, it published on its website *Useful information for prescribers*.[4] We consider that this guidance sets out the broad considerations pertinent to safe remote prescribing. The guidance is clear that registrants must prescribe in line with best available evidence and the requirements of all relevant legislation, policies, standards and guidance. This applies to all forms of prescribing, including remote prescribing, and to all medicinal products, including non-surgical medicinal products being used for cosmetic and aesthetic purposes. The guidance highlights relevant sections of the NMC's Code and the RPS prescribing competency framework to assist registrants to prescribe safely.

3.15 We note also the NMC's involvement in work during this review period to develop inter-regulatory guidance on remote prescribing. The joint guidance, *High level principles for good practice in remote consultations and prescribing*,[5] was published on 8 November 2019.

Conclusion

3.16 The NMC has what appears to be an appropriate process for determining whether to issue additional guidance to help registrants apply its standards. We note that the NMC is using intelligence gained from its fitness to practise process in considering the need for additional guidance, which we commend, and that the process involves an assessment of the scope for harm within a given area of practice.

3.17 Following its adoption of the RPS prescribing competency framework and withdrawal of its Standards for Medicines Management, the NMC appropriately gave consideration to the need to issue additional guidance and we are satisfied that the decisions it reached were proportionate and evidence-based.

3.18 We therefore concluded 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

Regulation of nursing associates

3.19 Between April and July 2018, the NMC consulted on the regulation of nursing associates, including the standards of proficiency for them.

3.20 The NMC hosted a series of events across England to provide further opportunities for engagement, and met with specific groups where

[4] www.nmc.org.uk/standards/standards-for-post-registration/standards-for-prescribers/useful-information-for-prescribers/

[5] www.nmc.org.uk/globalassets/sitedocuments/other-publications/high-level-principles-for-remote-prescribing-.pdf

opportunities arose, such as children's nurses and GP practice nurses. The NMC also sought and received responses to the consultation from stakeholders across the UK and responded to requests for engagement on nursing associates from the devolved administrations. The NMC reported that overall, there was a strong degree of support for its proposals, but it made some changes to the standards following the consultation. For example:

- intramuscular route injections were included, while intradermal route injections and cannulation were excluded
- communication and relationship management skills were amended to ensure that they were not too acute or adult focused.

3.21 As noted above, the final standards were published in October 2018.

Standards of proficiency for registered midwives

3.22 During this review period the NMC progressed its development of the standards of proficiency and education for registered midwives. The NMC reported that from May to July 2018 it engaged with stakeholders and held workshops, focus groups, forums, roundtable discussions and webinars to help inform its draft standards. The NMC's consultation on the draft standards was held from February to May 2019. The NMC reported that it would use the consultation responses to refine the standards to ensure that they reflect what a midwife should know and be able to do to provide safe and modern care.

3.23 The final standards were approved by the NMC's Council in October 2019 and published in November 2019.

3.24 We have seen evidence that the NMC has engaged effectively with stakeholders and taken account of a diverse range of views and experiences in development and revision of its guidance and standards. 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

3.25 The NMC's website contains information for patients and the public about what to expect from a nurse, midwife or nursing associate and how to raise concerns about registrants. The website has dedicated pages with information for different stakeholders (including employers and the public) about how to raise concerns about registrants and how the NMC deals with concerns.

3.26 The updated version of the Code published in October 2018 is available on the NMC's website along with supporting guidance. A Welsh version of the Code and 'easy read' versions of many of the supporting guidance documents are also available.

3.27 The standards of proficiency for registered nurses published in May 2018 are available on the NMC's website along with Welsh and 'easy read' versions. The standards of proficiency for nursing associates published in October 2018 can be accessed via the website, though Welsh and 'easy read' versions do not appear to be available. We note however that the nursing associate role is specific to England and the NMC states on its website that people can get in contact if they need any adjustments to access the NMC's services. We have not received any reports of anyone experiencing difficulty in accessing the standards.

3.28 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 the Standard was met and therefore the NMC has met all of the Standards of Good Regulation for Education and Training in 2018/19.

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

Standards of education and training for registered nurses

4.2 New standards for pre-registration nursing programmes came into effect in January 2019, following consultation with relevant stakeholders during the 2017/18 review period. All approved education institutions (AEIs) are required to adopt the standards by September 2020.[6]

4.3 Under the new standards, the mentor role has been replaced with practice supervisors, practice assessors and academic assessors, each with specific responsibilities in relation to students. Those supporting, supervising and assessing students no longer need to complete a programme that is NMC-approved but should be suitably prepared.

4.4 We received feedback from an external stakeholder which raised concern over the quality of training for practice supervisors and practice assessors due to the gap left by the removal of mandatory training for the mentorship role. In response to questions about the new roles replacing the mentor, the

[6] At the NMC's Council meeting in March 2020, the implementation date for the standards was extended to September 2021, due to the difficulty of undertaking approval activity during the Covid-19 pandemic.

NMC has published information on its website including a list of frequently asked questions and links to relevant supporting information.

4.5 The NMC told us that it changed the standards to be more proportionate and outcomes focused. AEIs and practice partners will need to evidence how they are meeting the Standards for Student Supervision and Assessment and the NMC will follow up concerns as part of its quality assurance process.

Standards of education and training for registered midwives

4.6 During this review period the NMC concluded the engagement and research gathering phase of its work to develop new standards for pre-registration midwifery programmes. The NMC reported that this 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. This evidence and engagement activity informed the development of the draft programme requirements which were subject to consultation between February and May 2019. The NMC hosted events, social media chats and webinars to encourage participation in the consultation.

4.7 An independent research company was commissioned to analyse the responses received to the consultation. The report was then considered by a team of experts and representatives from the field of midwifery and used to refine the draft standards.

4.8 The final standards were approved by the NMC's Council in October 2019, after the end of our review period. The first midwifery programmes based on the new standards will begin in September 2020 and the standards will be fully implemented by September 2021.

Standards of education and training for nursing associates

4.9 The NMC consulted on draft standards for pre-registration nursing associate programmes between April and July 2018. The NMC reported that it used the feedback from the consultation to refine its standards and approach to regulating nursing associates. The standards were approved by the NMC's Council in September 2018.

Conclusion

4.10 The NMC has carried out extensive work to review and develop its standards for education and training for nurses, midwives and nursing associates. The NMC's standards for education and training are linked to its standards for registrants. In reviewing and developing its standards, the NMC has engaged with a range of stakeholders and all the changes were subject to a public consultation. While some stakeholders have concerns about the new standards, there is evidence that the NMC is engaging with and responding to these concerns to ensure it prioritises patient and service user safety and patient and service user centred care.

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

4.11 We carried out a targeted review of this Standard this year.

Quality assurance of nursing education programmes

4.12 We noted that the NMC had largely excluded nursing education programmes from its risk-based monitoring visiting activity during the review period. We noted that this had been done at a time of significant change because of the introduction of new programme standards, when the risk of non-compliance with the standards might be higher. We asked the NMC for further information.

4.13 In response to our questions the NMC explained that undertaking monitoring visits to assess nursing programmes which would be undergoing re-approval against its new standards from 2018 would have led to a potential duplication of scrutiny and be disproportionate.

4.14 We consider this to be a fair and pragmatic approach, particularly in light of feedback we have received from stakeholders regarding the level of time and work involved for education institutions to complete the newly introduced approval process in its first year.

4.15 We note that one nursing programme was included in the sample that was subject to monitoring visits in this period. We also considered that some of the institution-level issues identified during monitoring visits of other education programmes will have had relevance to nursing programmes at the same AEI.

4.16 The NMC told us about the risk factors it takes into account when selecting programmes for a monitoring visit, including the time that has elapsed since the last monitoring visit, and any concerns regarding practice learning partners identified as part of monitoring visits or reports by system regulators. We note that monitoring visits are only one mechanism used by the NMC to detect and manage risk in this area, alongside annual self-reporting, exceptional reporting and whistleblowing.

Action plans

4.17 When an AEI subject to a risk-based monitoring visit is found not to be compliant with the NMC's standards, it is required to formulate and complete an action plan. The NMC follows up on any improvements made in the next cycle on annual self-assessment. We wanted to understand whether these action plans are subject to monitoring in the interim.

4.18 The NMC confirmed that the action plans are tracked against their stated timeframes and signed off on completion after further scrutiny by the original reviewers involved in the monitoring visit.

Protected learning time for nursing associate students

4.19 The NMC has introduced the new option of 'protected learning time' for nursing associate students, as an alternative to supernumerary status. We wanted to understand how the NMC has prepared itself to understand the potential risks that might arise under this new option and how its quality assurance process will address these.

4.20 The NMC described the difficulty of assessing any risks associated with this change in advance, given the absence of a previous example of a regulated health profession likely to join the register principally through an apprenticeship route. The NMC told us that it is working to increase its understanding of work-based learning in general, and apprenticeship in particular, so that it can assure itself that its approach is appropriate and proportionate to the risks.

4.21 The NMC is clear that education institutions and their practice learning partners must be able to demonstrate how they will ensure that learning time is protected in order to gain NMC programme approval. Beyond programme approval, the NMC confirmed that the sufficiency of protected learning time will be considered as part of its ongoing monitoring process to ensure continued compliance with its standards.

4.22 The NMC has committed to evaluating its approach once there is sufficient evidence available. We will consider the outcomes of that work in future performance reviews.

Conclusion

4.23 We are satisfied that the NMC's decision to largely exclude nursing education programmes from monitoring visiting activity in this period was proportionate.

4.24 We have seen no evidence that the NMC's approach has resulted in a failure to identify concerns about a nursing programme in the period under review.

4.25 The NMC has explained how it monitors risk both in its selection of programmes for visiting and more widely through the various mechanisms it uses to gain intelligence on AEIs and their programmes throughout the year.

4.26 We were reassured by the NMC's confirmation that action plans formulated in response to failures to meet its standards are monitored throughout the year.

4.27 The NMC has provided an explanation of the difficulty of assessing the risks associated with the introduction of protected learning time given the absence of directly comparable roles. It has set out how it will take this issue into consideration in its approval and quality assurance activity and has committed to a full evaluation in the future.

4.28 We are satisfied that this Standard is met.

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

4.29 In its most recent annual report on quality assurance of nursing and midwifery education the NMC reported that in recent years it has been working closely with AEIs to stress the importance of timely exceptional reporting of concerns about approved education programmes. For a third consecutive year the NMC reported an annual increase in the number of exceptional reports made to it. There were 133 reports in the 2017/18 academic year, compared with 89 in 2016/17 and 58 in 2015/16. Most continue to relate to issues in practice environments. Where concerns arise, the NMC requires AEIs to provide evidence of actions taken to control or mitigate any identified risks to their ability to meet the NMC's standards.

4.30 Where the NMC identifies serious adverse incidents and concerns regarding an AEI or practice partner, it may decide to conduct an unscheduled extraordinary review. No extraordinary reviews took place in the 2017/18 academic year.

4.31 The NMC continues to have measures in place to take action where concerns are identified about education and training programmes. We are satisfied that this Standard is met.

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

4.32 Information on approved nursing, midwifery and nursing associate education programmes and the approval process is available on the NMC's website.

4.33 The NMC's website contains specific pages for those applying for programme approval under the NMC's new quality assurance framework, which includes a case study and links to its quality assurance framework, quality assurance handbook and supporting information for the standards for supervision and assessment.

4.34 A search function on the NMC's 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 Standard 5 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 the Standard was met and therefore the NMC has met all of the Standards of Good Regulation for Registration in 2018/19.

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

5.2 We have not seen any information which suggests that the NMC has added anyone to its register who has not met its registration requirements.

Registration and revalidation processes

5.3 The NMC has in place registration, readmission and revalidation processes to ensure only individuals who meet its requirements join or remain on its register. The NMC has published guidance about how it will consider allegations about incorrect and fraudulent entries to the register.

5.4 As part of its revalidation process, the NMC selects a group of around 1,000 people a year on the basis of risk and 1,000 randomly (this equates to about 1 per cent of the registrants revalidating). Those selected are required to provide additional documentary evidence in support of their application, to allow the NMC to verify that they have met all revalidation requirements. This includes the NMC contacting the confirmer and reflective discussion partner to verify that discussions took place and were in accordance with NMC guidance, as well as further information about professional indemnity. If the information is not returned within a reasonable time or the information shows the registrant has not met the revalidation requirements, their registration will lapse.

Transitional arrangements for the registration of nursing associates

5.5 The NMC became the regulator in law for nursing associates in England in July 2018 and published its standards for nursing associates on 10 October 2018. The NMC's nursing associate part of the register opened on 28 January 2019.

5.6 As we reported in our last performance review, the first nursing associate students began their training at pilot sites overseen by Health Education England (HEE) prior to the finalisation of the NMC's standards of proficiency for nursing associates. This meant that the first applicants eligible to join the new nursing associate part of the register did not have a qualification from a programme approved by the NMC.

5.7 An early working draft of the proficiencies and a skills annexe were made available on the NMC's website so that those students could work towards readiness to meet the NMC's expectations. Transitional arrangements were then put in place to register nursing associate students who began their training before 26 July 2019 via a HEE approved pilot site and/or a nursing associate apprenticeship programme.

5.8 Before students can join the register, the NMC assesses the qualification they have obtained. As part of the assessment, the education institution must confirm that the student has:

- been assessed against and met the NMC's standards of proficiency for nursing associates;

- achieved the number of learning hours required by HEE's Curriculum Framework; and
- benefited from a breadth of placement experience in keeping with a generic (non-field specific) role.

5.9 If the programme is found to be comparable applicants can apply to the register by the same route as someone who has completed an approved qualification. If the NMC finds that a qualification is not comparable, applicants must complete a test of competence before they can apply for registration.

Brexit arrangements

5.10 In March 2019 the NMC published information on its website about what Brexit means for registrants, and for those applying to join the NMC's register before and after the EU exit, taking into account various possible outcomes of the negotiations. There is evidence that the NMC is actively considering the impact of the various possible outcomes on the validity of those on its register.

Conclusion

5.11 The NMC has measures in place to ensure that only those who meet its requirements are registered. This included making appropriate transition arrangements for the first cohort of nursing associate students. 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

English language requirements

5.12 The NMC requires all applicants trained outside the UK to demonstrate competency in the English language. In November 2018, the NMC's Council approved changes to the minimum level of achievement accepted by the NMC in the writing element for International English Language Testing (IELTS) for overseas applicants. As before, applicants will be required to achieve a minimum overall level of 7 in the test. However, a level 6.5 in writing will be accepted alongside a level 7 in reading, listening and speaking. The change came into effect on 5 December 2018. IELTS results under two years old that meet the new requirements will be considered.

5.13 The NMC reported that the decision followed widespread engagement with stakeholders, who told the NMC that, despite being able to communicate to a high level in English, many nurses and midwives taking the IELTS test were missing out on achieving a level 7 by a narrow margin.

5.14 The NMC reports that it is monitoring the impact of this change.

Review of international registration requirements

5.15 As part of its ongoing review of its registration requirements for applicants trained outside the EU/EEA, the NMC made a number of changes. These included:

- The removal of the requirement for those who have failed parts of the objective structured clinical examination (OSCE) test to re-sit the test in full. Applicants now only need to re-sit the parts of the assessment they failed.
- The introduction of improved preparation materials to help those sitting for OSCE.
- The removal of the requirement for applicants trained outside the EU/EEA to have undertaken 12 months in practice prior to being eligible to undertake the test of competence.

5.16 We received some positive feedback from stakeholder organisations about these changes.

Review of return to practice standards

5.17 The NMC's legislation specifies the minimum number of hours of practice that nurses, midwives and nursing associates must complete to revalidate or to re-join the register (if they have not been registered for a period of up to five years).

5.18 The NMC's return to practice standards set out the options available to those who wish to rejoin the register or renew their registration but cannot meet the practice hours and registration requirements.

5.19 The NMC consulted on new return to practice standards and standards for return to practice programmes from September to November 2018. The final standards were approved by the NMC's Council in March 2019.

5.20 Under the new standards, those wanting to re-join the register can choose to take a test of competence to demonstrate that their skills and knowledge are up to date, rather than undertake a course. The NMC no longer has requirements as to the minimum length of return to practice courses and their content. The NMC reported that educators will now be able to consider the skills and experience of the applicants and design the courses accordingly, increasing flexibility.

5.21 The NMC reports that it will be introducing a new test of competence assurance panel, consisting of experienced nurses, midwives and other health and care professionals which will be tasked with ensuring the consistency of tests across different test centres.

Apprenticeships

5.22 In our last report we noted the distinction between the completion of the nursing degree, required for NMC registration, and the subsequent end-point assessment (EPA), required for completion of the nursing degree apprenticeship. 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.

5.23 The NMC has updated the information available on its website. It explains that the EPA for the nursing degree apprenticeship is currently non-integrated and therefore successful completion of the EPA is not a requirement for entry onto the NMC's register.

Processing of registration applications

5.24 The table below shows the median time taken by the NMC to process complete registration applications each year from 2015/16:

Median time (working days) to process initial registration applications	2015/16	2016/17	2017/18	2018/19
UK graduates	2	1	0	0
EU (non-UK) graduates	10	13	0	0
International (non-EU) graduates	10	2	1	1

5.25 Last year, we noted that the figures for 2017/18 represented a significant reduction in time across all categories of registrants. This year that performance has been maintained.

Registration appeals

5.26 The table below shows the number of registration applications and registration appeals received, as well as the number of appeals concluded and their outcomes in each year from 2014/15:

	2014/15	2015/16	2016/17	2017/18	2018/19
Registration applications received	28,517	30,157	28,932	25,459	30,623
Registration appeals received	64	109	105	122	75
Registration appeals concluded	53	104	97	94	102
Outcomes in concluded appeals					
Upheld	20 (38%)	63 (61%)	49 (50%)	40 (43%)	43 (42%)
Rejected	13 (25%)	16 (15%)	30 (31%)	42 (45%)	38 (37%)
Withdrawn	20 (38%)	25 (24%)	18 (19%)	12 (13%)	21 (21%)

5.27 The total number of appeals the NMC has received this year has decreased to its lowest level since 2014/15, despite the increase in registration applications received. The number of appeals as a proportion of all applications received remains very low, at less than 0.2 per cent. The proportion of appeals upheld is broadly the same as last year.

Conclusion

5.28 The NMC continues to review and make changes to its registration processes to increase fairness and flexibility while maintaining public protection and has committed to monitoring the impact of changes made. It has updated information on its website about nursing degree apprenticeships to provide greater clarity.

5.29 The NMC's performance in processing registration applications has been maintained and its performance in processing registration appeals appears to have improved on some measures.

5.30 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 on their practice

5.31 Each year we conduct a check of a sample of entries on the NMC register for accuracy. The entries checked are randomly selected from registrants who have been subject to a final fitness to practise decision in the relevant period.

5.32 In our 2017/18 performance review we identified inconsistencies in the NMC's register search results when searching by name. This meant that information about registrants was not always easily available unless the user had the registrant's Personal Identification Number (PIN), which we consider the public is less likely to have. The NMC identified the cause of this issue and modified its systems to rectify it.

5.33 This year we checked 120 entries, 30 per quarter. As was the case last year, we identified variations in the search results returned when we searched by registrant name only. The registrants could be found when we searched by their PIN. However, we note that these inconsistencies were found only in the checks conducted in the first two quarters of the review period, prior to the implementation of the NMC's modifications to its systems. The absence of similar errors identified in the latter quarters of the year indicates that the action the NMC has taken to address the issues has been effective.

5.34 We are also aware that the NMC is currently undertaking a substantial work programme to modernise its technology, including a review of the register and its search functionality.

5.35 We are satisfied that this Standard continues to be met.

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

5.36 There have been no significant changes to the NMC's work in this area during the review period.

5.37 The registration search function is clearly visible on the front page of the NMC's website and is available for everyone to use. Employers may search

multiple entries at once through the employer confirmations service. The NMC provides guidance for users about how to search the register which includes a glossary of terms it uses to describe the registration status of a nurse, midwife or nursing associate.

5.38 The NMC continues to provide guidance for employers on its website which sets out their responsibilities in recruiting, managing and supporting nurses, midwives and nursing associates. The NMC's Employer Link Service engages with employers on regulatory matters.

5.39 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

5.40 We carried out a targeted review of this Standard this year.

5.41 The Nursing and Midwifery Order 2001 makes the illegal use of the protected titles 'registered nurse' and 'midwife' an offence. Amendments to the Nursing and Midwifery Order 2001 make illegal use of the now protected title 'nursing associate' an offence. These amendments provide that a person commits an offence when falsely claiming to be on the nursing associate part of the register, falsely claiming to hold a nursing associate qualification or using the title 'nursing associate' when not entitled to. The offences have been drafted to reflect that nursing associates are regulated in England only.

5.42 Concerns were raised with the Authority by two members of the public regarding matters relating to the misuse of a protected title. We noted the absence of published information about how the NMC deals with reports of individuals who misuse a protected title.

5.43 We therefore requested further information from the NMC about its current approach to reports of title misuse and wider issues of unregistered practice. The NMC told us that it currently deals with those purporting to be on the NMC register when they are not on a case by case basis. This may involve referral to a third party such as the police or the Advertising Standards Authority.

5.44 The NMC told us that it is currently working to develop enforcement policies setting out how it will respond both to:

- those who have previously registered with the NMC and hold the appropriate qualifications but have worked when they have not maintained their registration; and
- those who have never been registered with the NMC and do not hold appropriate qualifications in nursing and midwifery who purport to be on the NMC register.

5.45 The NMC has confirmed that draft policy proposals will be subject to external engagement before the policies are finalised.

5.46 We consider the NMC's intention to formalise its approach to such cases and to develop consistent, documented policies that are available to the public to be a positive development. That work is still ongoing.

5.47 In previous years we have not found that the absence of a published, transparent approach to this issue meant that this Standard was not met. We have gained assurance from:

- the NMC's publication of the legal requirement for all nurses and midwives practising in the UK to be on the NMC's register;
- its published approach in respect of those who have previously registered with the NMC but have worked when they have not maintained their registration, as well to cases of fraudulent and incorrect entry to the register; and
- the NMC's employer confirmation service, which enables employers to search for multiple PIN numbers simultaneously to check that an individual is registered and able to use a protected title.

5.48 We have seen no evidence that the NMC has failed to deal with a report of misuse of title appropriately.

5.49 We therefore reached the decision that this Standard continues to be met this year. We will report on the outcomes of the NMC's policy development work in our next performance review.

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

5.50 The NMC commissioned an external organisation to carry out a formal independent evaluation of its revalidation process in the first three years of implementation. The third and final annual evaluation report was published by the NMC's evaluation partner in July 2019. The report outlined the findings from research activities undertaken in the first three years of the delivery of revalidation, covering the period April 2016 to March 2019.

5.51 The report noted that the implementation of revalidation progressed as intended and that as of March 2019, an overall total of 611,462 registrants had successfully revalidated out of a total of 658,100 due to undergo the process in the first three years (93%). The report described no evident adverse impact on renewal rates compared to those under the process that was in place prior to the introduction of revalidation (Post-registration education and practice or 'Prep').

5.52 It was reported that registrants across the evaluation were positive about the NMC's communications regarding revalidation and provided positive feedback about the guidance provided by the NMC on the process.

5.53 The report described positive changes in registrants' behaviour resulting from undergoing revalidation including an increase in those proactively seeking feedback from patients and service users, undertaking CPD activities and reflecting on their practice. There was also evidence that implied that revalidation led to more registrants viewing the Code as central to their

everyday practice and that positive changes in attitudes relating to the Code have some longevity.

5.54 The report provided examples of behavioural change leading to positive outcomes, including evidence that revalidation may go on to contribute to increased embedding of standards among registrants in the future and that an increased culture of sharing, reflection and ongoing improvement will be fostered by engagement with reflection activities.

5.55 Last year we said that we would monitor the work the NMC has carried out to make sure that revalidation is not an obstacle to particular groups of registrants maintaining their registration. The third evaluation report noted that statistical analysis of findings for the key attitudinal and behavioural outcomes for revalidation did not find any variation across demographic groups. However, some small differences in renewal rates and differences in ease of completing the requirements were identified.

5.56 The report noted that the NMC has work planned to review all its processes in terms of the impact on registrants with protected characteristics. It recommended that alongside this the NMC continues to monitor lapsing rates and that work to diagnose the causes of issues or difficulties for particular groups should be continued.

Conclusion

5.57 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. We note that the independent evaluation identified ways in which the NMC's revalidation process promoted positive changes in registrants' behaviour.

5.58 While the final evaluation of the first three years of delivery of the scheme has noted some differences in how particular groups of registrants experience revalidation, the available evidence does not suggest significant detriment being caused to any particular group. We note that the NMC continues to publish detailed quarterly and annual reports containing data on revalidation rates among groups with protected characteristics and across different work settings. The NMC also collects data and reports on the reasons given by registrants for their decision to leave the register. We will consider the outcomes of its work to establish the causes of issues or difficulties for some registrants in revalidating in future performance reviews.

5.59 We are satisfied that this Standard is met.

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, 8 and 10 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 Standards 3, 8, and 10 were met but Standards 5 and 7

were not met and therefore the NMC has met eight of the 10 Standards of Good Regulation for Fitness to Practise in 2018/19.

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

6.2 Through its website the NMC continues to offer comprehensive information for registrants and other healthcare workers, employers and members of the public explaining the type of concern that the NMC can handle (and where other concerns might be better directed), how to make a referral, and what action the NMC will take in respect of referrals received.

6.3 The NMC continues to provide referral forms in different formats and invites users who need assistance completing the form to get in touch for help. The NMC also has a publicly available 'Fitness to Practise library' for decision-makers, which sets out information about the fitness to practise process.

6.4 The Employer Liaison Service continues to offer services to employers including support to enable them to make a referral, advice on information to include in referrals, and training on fitness to practise thresholds. The NMC reports that its Regulatory Intelligence Unit helps the Employer Liaison Service prioritise contact with employers by analysing data to understand whether there are any concerns and whether any regulatory action is needed.

6.5 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 fitness to practise information handling guidance[7] sets out how it processes information gathered as part of the fitness to practise process and its legal basis for doing so. The guidance makes it clear that the NMC may be required to disclose fitness to practise information, including personal information, in response to requests from bodies such as the courts, tribunal, regulators, and others and has a general power to disclose information where it would be in the public interest to do so, including for public protection.

6.7 The NMC's website lists memoranda of understanding (MoU), which set out how the NMC will work together with other organisations to protect the public, including how information will be shared.

6.8 On 26 July 2018, the NMC became party to the emerging concerns protocol,[8] a joint agreement which aims to make it easier for regulators to share information about potential risks to patients, families and professionals.

6.9 On 14 October 2018, the NMC signed an MoU with the Joint Council for Cosmetic Practitioners (JCCP). This sets out a framework to support the

[7] www.nmc.org.uk/globalassets/sitedocuments/ftp_information/ftp-information-handling-guidance.pdf

[8] www.cqc.org.uk/sites/default/files/20181112_emerging-concerns-protocol.pdf

working relationships between the NMC and the JCCP, to promote patient safety and high-quality services for patients receiving non-surgical aesthetic treatments.

6.10 We received positive feedback from a third-party organisation that its MoU with the NMC is working well in practice.

6.11 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

6.12 We carried out a targeted review of this Standard this year.

6.13 Last year we reported on changes 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 cover these new powers.

6.14 We undertook a targeted review of this Standard because these new powers represent a significant change to the NMC's process for determining whether there is case to answer. This was the first full year in which the NMC had been operating its new processes and we considered that there was a need to gain independent assurance that this was being done effectively.

Our audit findings

6.15 We reviewed a total of 55 cases that were closed during the review period. The sample included 22 cases that were closed at the screening stage. Of the remaining 33 cases which were referred on for further investigation, 25 were closed by CEs, either with no further action being taken, or by issuing advice or a warning. In six of the 33 cases undertakings were agreed. The remaining two cases were referred on to the Fitness to Practise Committee (FTPC).

6.16 We identified concerns in some cases in relation to:

- How the NMC identified the need for, and obtained, sufficient relevant information and evidence;
- its drafting of regulatory concerns;[9]
- its assessment of the information obtained during the investigation and its consideration of any risks arising from it; and

[9] If the NMC's screening decision is to refer an allegation about a registrant's fitness to practise to the CEs, it says it will identify and articulate the issues that concern it as a regulator. It calls these 'regulatory concerns'.

- the level of information provided to case examiners at the conclusion of the investigation.

6.17 The NMC's omissions meant that in a small number of cases we could not be assured that the outcome was sufficient to protect the public. However, we agreed with the overall outcome in most cases.

6.18 The NMC accepted many of our audit findings. While it was satisfied that a reasonable outcome had been reached in most cases, it told us that a small number of cases would be reopened for further consideration or submitted for review under its Rule 7A process. This includes some cases where we concluded that we could not be assured that the outcome was sufficient to protect the public.

Identification of registrants at the screening stage

6.19 During the audit we noted that the NMC's screening process does not require staff to identify the registrant involved in cases where concerns do not pass the first stage of its screening test.[10] The screening test asks whether the concerns are serious enough to suggest that the registrant may not be fit to practise.

6.20 We had some reservations about this approach in that it might limit the NMC's ability to consider a registrant's previous fitness to practise history and/or record low level concerns that do not meet the seriousness threshold but might be relevant in future should similar concerns arise.

6.21 In response to our concerns, the NMC explained that the screening guidance does not preclude identification of the registrant as part of the first stage, where the individual's fitness to practise history may be relevant to the question of seriousness. It told us that in practice the identification of registrants for this purpose does happen, where it is considered that a history of similar matters or repetition of the same matter would affect its assessment of seriousness.

The NMC's approach to drink driving offences

6.22 Based on our review of a small number of cases in our audit sample, we asked the NMC to clarify its position on the investigation of reports of registrants committing drink-driving offences. The NMC told us that it no longer routinely investigates a registrant's health in response to a report of this nature and may only make enquiries with the registrant's employer to determine whether they have any concerns about the registrant's fitness to practise.

6.23 We note that the NMC's current approach continues to give scope for further investigation into a registrant's health where this is considered necessary. We have not seen evidence (including in the cases we saw during the audit) to suggest that health concerns about registrants are not being identified and that the public may therefore have been put at risk of harm.

[10] For more information about the NMC's four stage screening test, see www.nmc.org.uk/ftp-library/screening/the-four-stages-of-our-screening-decision/

Signposting to other organisations

6.24 Last year we identified serious concerns in our audit of cases involving complaints about personal independence payments (PIP) concerning the NMC's failure to signpost some complainants to the Department for Work and Pensions. 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. During the audit this year we identified a small number of cases where we considered that the NMC could have signposted complainants to another organisation but did not do so. However, we did not consider the omission to be serious in any of these cases.

Conclusion

6.25 On balance, we have concluded that the concerns identified in some cases during our audit regarding the quality of the NMC's investigation and case preparation do not mean that this Standard is not being met. While there are concerns about individual cases we agreed with the outcome in most cases and the NMC will be reopening some matters for further consideration.

6.26 We are, therefore, satisfied that this Standard is met.

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

Interim order data

6.27 The median time taken from receipt of a complaint to an interim order (IO) committee decision has slightly increased to 27 days this year, compared to 26 days last year. As we noted last year, 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.

6.28 Last year, we noted that 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.

6.29 The NMC has previously informed us that it will not be able to provide us with data on both IOs imposed after the screening stage and the time taken from identification of the need for an IO to the IO decision until its new case management system is introduced. We understand that work has been subject to some delay and is not expected to be complete until 2020/21.

6.30 In March 2019 the NMC reported to its Council that 46 referrals from employers were held up in the NMC's new online referral system between 7 December 2018 and 25 January 2019 due to a technical error. The NMC reported that once it discovered the problem all cases were risk assessed

within 48 hours. This resulted in some interim orders being imposed outside of the NMC's 28-day target timeframe. It was reported that the NMC contacted all employers affected to explain what had happened and apologise for the error. Additional checks were introduced to ensure no further cases were held up in the system and the NMC reported that it identified learning around its IT requirement scoping and system testing processes.

6.31 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 but significantly decreased to 285 last year. This year the figure has decreased further to 238.

Our audit findings

6.32 We considered the quality of the NMC's risk assessments in the cases we reviewed as part of our targeted audit. We identified deficiencies in the risk assessments undertaken in a number of cases, though we did not consider most of them to be particularly serious. Examples of the types of concerns identified were: cases where there was limited narrative about the assessment of risk against the three limbs of public protection;[11] failures to document risk consistently throughout the case; and risk assessments recorded in insufficient detail.

Conclusion

6.33 We do not consider the slight increase in the median time taken to an interim order committee decision from receipt of a complaint to be of significant concern, although we will keep this under review. The continued decrease in the number of interim order extension requests by the NMC is a positive development. We recognise the limitations in the data provided by the NMC but note that the NMC is working towards being able to provide us with the data that is currently unavailable.

6.34 The delay in reviewing a group of cases in early 2019 had a significant impact on the NMC's ability to prioritise serious cases and refer for an IO. We note however that this issue appears to have arisen in novel circumstances following the introduction of a new online system and that the NMC has sought to learn from the incident.

6.35 We do not consider that the concerns around risk assessment identified during our audit are so serious as to affect the achievement of this Standard.

6.36 We are satisfied that this Standard is met.

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

6.37 We carried out a targeted review of this Standard this year.

[11] *Protecting the public (safety); upholding professional standards; and maintaining public confidence in the professions*.

6.38 Last year we found that this Standard was not met. We reported on concerns about the NMC's handling of complaints about registrants conducting PIP assessments. We also had concerns around the NMC's approach to evidence gathering, evidence presentation, and offering no evidence, as well as the number of cases we had seen through our Section 29 review where charging amendments were made at final hearings or charges pursued for which there appeared to be little or no evidence.

6.39 We reported that the NMC had taken action to address these concerns. We said that we would monitor the effectiveness of this in coming years. We therefore decided to seek further information this year about the outcomes of the NMC's work to make improvements to its FTP process.

6.40 We also sought information from the NMC in relation to its approach to considering interim orders following unsuccessful registrant appeals of substantive sanctions, in light of a High Court judgment that raised this issue.

Approach to complaints about PIP assessments

6.41 Last year we reported on evidence that the NMC had failed to apply its screening guidance appropriately to complaints about registrants conducting PIP assessments, creating a barrier to vulnerable people raising potentially serious concerns. Our audit and the NMC's own review of those cases identified a lack of independence demonstrated in the screening decisions, and a lack of engagement with the concerns raised by complainants.

6.42 We asked the NMC what work it had undertaken in response to these concerns and what were the outcomes of that work.

6.43 The NMC has established a new Public Support Service (PSS) pathway in screening in which PSS staff are partnered with screening case handlers and decision-makers with the aim of ensuring appropriate and effective engagement with referrers.

6.44 The NMC has also introduced new processes to review and improve the quality of its decision-making. All decisions not to investigate complaints involving PIP assessments further are subject to review by senior managers. The NMC told us that these reviews have identified cases where further enquiries were required or where a full investigation was necessary, and that individual feedback was provided to decision-makers in each case.

6.45 The NMC's new 'hot review' process involves structured review of a sample of cases where a decision has been made not to investigate a matter further, which will include complaints about PIP assessments. The NMC provided outcome data from 'hot reviews' undertaken between March and May 2019 which indicates some improvement in the quality of decision-making over time.

6.46 The NMC has also introduced a monthly quality assurance review group which audits a sample of cases where the decision has been taken not to investigate further, as well as monthly peer review of both decisions to investigate and decisions to take no further action.

6.47 The NMC told us it had carried out staff training and development activity including:

- a briefing and specific training session to address the relevant findings set out in our performance review report;
- unconscious bias training for decision-makers in screening;
- the introduction of a decision-makers forum where specific cases are discussed to facilitate consistency of approach; and
- regular sessions to provide support to decision-makers on effective drafting of decisions.

6.48 The NMC has reviewed and made changes to its documentation, including amending the investigation record used by case officers to support effective initial assessment of concerns in line with its screening guidance. The NMC reports that it has reviewed templates used to communicate decisions to referrers.

6.49 The NMC also reports that it is engaging with stakeholders to improve its response to complaints about PIP assessments, including the Department for Work and Pensions, other regulators which receive similar concerns, PIP assessment providers, and disability organisations.

6.50 We welcome these changes and the extensive work the NMC has undertaken to improve decision-making at this early stage of its process. However, we have limited evidence of the impact of these changes and there have not been sufficient cases in the time period to enable us to gain a reliable picture of the quality of decision-making in cases involving PIP complaints since the changes were implemented.

Charging amendments

6.51 Through our Section 29 work during this review period we continued to identify cases where the NMC made charging amendments at final hearings or pursued charges at final hearings for which there appeared to be little or no evidence. Although there was a slight reduction in the prevalence of these issues this year, we believe that they can impact on the fairness and, in serious cases, the outcome of proceedings and are therefore cause for concern.

6.52 Last year we reported that the NMC was carrying out a review of the nature and frequency of amendment applications. We asked the NMC to provide further information on that work and any changes it had made to its processes as a result.

6.53 From the information we have seen, the NMC is seeking to review charging amendments made in hearings through feedback forms completed by panels. However, the data collected by the NMC was limited because forms were not returned in a high number of hearings and we could not draw conclusions from this.

6.54 We consider that more work in this area is required to enable the NMC to understand the causes of the prevalence of late amendments to charges and how this can be reduced. The NMC has told us that further work in this area

was undertaken subsequent to the period under review. We will report on this in our next performance review.

The NMC's approach to evidence gathering and presentation

6.55 Last year, through our Section 29 work, we identified multiple instances of the NMC failing to obtain or present important and relevant evidence at final hearings.

6.56 This year there was a slight increase in the number of cases in which we identified this issue. We considered the outcome in one of these cases to be insufficient to protect the public and referred the decision to the High Court.

6.57 We also identified a number of concerns about the quality of the NMC's investigation at the early stages of its process during our audit this year, though we considered that these were not sufficient basis upon which to determine that the NMC is not meeting the third Standard of Good Regulation for Fitness to Practise this year.

6.58 We note that the NMC has recruited more clinical advisors to provide advice to decision-makers at the initial stages of the FTP process. While this has the potential to improve, in part, the NMC's approach to evidence gathering, we have yet to see that reflected in the cases we review through the Section 29 process.

The NMC's approach to considering interim orders following unsuccessful registrant appeals of substantive sanctions

6.59 When a registrant appeals against a decision of the NMC, an interim period of suspension is imposed, ending upon the resolution of the appeal or a period of 18 months, whichever is earlier. If the appeal is unsuccessful, the interim suspension is followed by the original sanction. The case of *Burton v NMC* [2018][12] raised the issue of whether the NMC should deduct the time a registrant has spent subject to an interim suspension order while the appeal is resolved from the duration of the original sanction following unsuccessful appeals to the High Court. On review of the NMC's website we considered that there was limited information about the NMC's approach to this issue. We therefore requested further information.

6.60 The NMC told us that the decision in this case was subject to an immediate risk analysis and impact assessment. The NMC said it had considered whether any of its internal guidance or outcome letter templates needed to be changed.

6.61 The NMC confirmed that it had not changed its policy in light of this case. Time spent subject to an interim order while an appeal against a substantive sanction is considered is not subtracted from the duration of the sanction when it comes into effect following an unsuccessful appeal. The NMC told us it considered its published guidance (*Factors to consider before deciding on sanctions*[13]) explained its position clearly and was adequate to cover the specific issue raised by this case.

[12] Burton v NMC [2018] CSIH 77

[13] www.nmc.org.uk/ftp-library/sanctions/decision-making-factors/

6.62 The guidance sets out the factors that the FTPC should take into account when deciding on sanction during a hearing. It refers to interim orders that have been put in place by the FTPC at an earlier stage of the process, to cover the period during which the matter is being investigated. The guidance does not specifically address the issue raised by the case of *Burton* about interim orders imposed to cover appeal periods.

6.63 We also think it unlikely that anyone seeking information on how interim orders are taken into account in the event of an unsuccessful appeal post-sanction would look to the guidance highlighted by the NMC, because it is clearly directed at a different stage in the FTP process, prior to a final decision having been made.

6.64 In our view, the NMC's existing published guidance does not cover the specific issue in *Burton*. We consider that information on the NMC's approach to this issue should be made available for greater transparency and to support understanding of the FTP process. The NMC has told us that it plans to update its guidance to make its position clearer.

Failures to provide panels with representations from registrants

6.65 In past years we have highlighted the NMC's failure (as a result of administrative errors) to provide panels at final fitness to practise hearings with representations made by registrants. In 2016/17 we identified four instances and in 2017/18 we identified one. This year we have identified a similar failing in two cases we considered through our Section 29 work. We accept that this failing does not appear to be widespread. However, this issue has significant implications for the fairness of the fitness to practise process and, indeed, usually necessitates a new hearing.

Presentation of a case successfully appealed by the Authority

6.66 The Authority referred a case to the High Court because it considered that the decision was insufficient to protect the public because the panel had failed to consider whether the dishonest conduct involved posed a threat to public protection and, in particular, whether there was a risk of repetition. The case was settled by consent and it was agreed that a review panel would consider the Authority's concerns. In fact, the NMC failed to comply with the consent order and did not provide the panel with details of the Authority's concerns. We regarded this failure as serious, in that the NMC had breached the terms of a court order in a case where it had itself agreed that its panel's original decision had been insufficient to protect the public. We therefore needed to refer the case again to the High Court. We were concerned that the NMC apparently did not have processes which ensured that its undertakings to the court were fulfilled. We took our concerns up formally with the NMC.

6.67 The NMC investigated the matter and took action in response, including updating its internal guidance to ensure a legal review is carried out and directions given for any case remitted or returned to any stage of the FTP process following an appeal. The NMC told us that it would update all relevant staff to ensure that they were aware of these changes and would

use the case as a case study in training for its lawyers. It apologised for the error.

6.68 The NMC's handling of this case and the failure on the part of the committee to discharge its duties raised serious public protection concerns. However, we accept that this was an isolated incident in this review period, and that the NMC appears to have taken appropriate action to prevent its repetition.

Conclusion

6.69 We are not yet in a position to consider the effectiveness of the work that the NMC has undertaken to address our concerns about its approach to complaints about PIP assessments and to improve decision-making at the early stage of its process. We are also concerned that the information provided by the NMC does not provide sufficient assurance that it understands why amendments to charges continue to be made with such frequency. We have continued to identify multiple instances of the NMC failing to obtain or present important and relevant evidence at final hearings. While these concerns represented a small proportion of the NMC cases notified to us, they have significant implications for the fairness, transparency and focus on public protection of the process.

6.70 While we recognise that the NMC has undertaken considerable work to improve its process and is making significant changes under its new fitness to practise strategy to address our concerns, that work is at an early stage, and we have not yet seen evidence of the impact of the changes it has made to enable us to say that this Standard is being met. We will continue to review this.

6.71 For these reasons we decided that this Standard is not met this year.

Standard 6: Fitness to practise cases are dealt with as quickly as possible taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients and service users. Where necessary the regulator protects the public by means of interim orders

6.72 We collect a set of annual and quarterly performance data from each regulator. The data for the NMC shows that the median time taken from the NMC receiving a referral to a case to answer decision being reached decreased last year from 51 weeks in 2016/17 to 41 weeks in 2017/18. This year the median has increased to 45 weeks.

6.73 This figure is high in comparison to other regulators. However, unlike some of those regulators, the NMC conducts a significant proportion of the full investigation prior to the case to answer decision and so might be expected to take longer than others to reach this stage. We note that the NMC's performance at the adjudication stage (median time from final case to answer decision to final FTPC decision) remained stable at 26 weeks, which is low compared with some other regulators.

6.74 The NMC's median time taken from receipt of a referral to a final FTPC decision being reached was 80 weeks this year. This has decreased from 87

weeks in 2016/17 and 82 weeks in 2017/18. This remains low by comparison with the larger regulators.

6.75 The NMC has continued to significantly reduce its caseload of older cases this year, although the number of cases aged 156 weeks or more has increased slightly. Comparative data for the last four years is set out below:

Open cases over 52 weeks old at year end	2015/16	2016/17	2017/18	2018/19
52-103 weeks	1,437	1,170	798	712
104-155 weeks	281	294	240	164
156 weeks or more	48	71	71	74
Total cases over 52 weeks	1,766	1,535	1,109	950

Conclusion

6.76 While there has been a decline in performance in the median time taken from receipt of a referral to a case to answer decision, other timeliness measures have either been maintained or improved. We do not consider that the decline in one of the measures is of significant concern, particularly taking into account the significant progress that the NMC has made in reducing the number of older cases.

6.77 On balance, we are satisfied 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

6.78 We carried out a targeted review of this Standard this year.

Supporting complainants

6.79 In our *Lessons learned review*[14] (LLR) of the NMC's handling of fitness to practise cases concerning midwives at the Furness General Hospital published in 2018, we identified a number of concerns about the way in which the NMC dealt with the families involved, which we considered were ongoing and applied beyond the relatively small number of cases that we looked at as part of that review. 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. The NMC accepted our findings.

6.80 Last year we reported on the work that the NMC had undertaken in response to the lessons we identified in our LLR which are relevant to this Standard. We considered that much of that was still in progress or had only recently been completed and that it would take time for the NMC to consider how to assess the impact of this work. This year we asked the NMC to provide us

[14] *Lessons Learned Review into the Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital* (May 2018).

with an update on the actions it had taken in response to the LLR and to share with us any analysis of the impact of the changes made.

6.81 Our LLR highlighted the need for the NMC to ensure that those analysing and investigating complaints had access to appropriate clinical advice. The NMC has recruited six new clinical advisers who offer clinical input on all referrals from members of the public that involve alleged failings in clinical care.

6.82 The NMC's Public Support Service (PSS) went live midway through this review period, in September 2018. The NMC launched a 24-hour independent support line for the public and those involved in the FTP process. The NMC's website features information for the public about the PSS, the witness liaison team, and the FTP process, including short videos. A 'PSS pathway' has been introduced, intended to provide support to those raising concerns, from first contact to conclusion of a case. The pathway pilot commenced in November 2019.

6.83 A PSS Steering Group has been established, consisting of NMC staff and stakeholders, including members of the public who have been affected by the FTP process, patient groups, employers and representative bodies. The NMC told us that the group has been focusing on how the NMC can humanise its process and developing a standard framework for a person-centred approach to complaints handling.

6.84 The NMC trialled offering meetings to members of the public when a decision is made to investigate their concerns and again following a final decision in their case. Meetings are now routinely offered and information about them is provided in a leaflet available on the NMC's website.[15]

6.85 The NMC has taken further action to improve the way in which it communicates with parties to the FTP process including staff training and a review of all its templates for correspondence with the public to ensure that they are clear, easily understood, and set out plainly the reasons for decisions made, with appropriate reference to the NMC's guidance.

Our audit findings

6.86 In our audit of fitness to practise cases closed during the review period we identified some concerns relevant to this Standard. In most cases we did not consider that the concerns identified were so serious that they demonstrated that the parties involved had been prevented from participating effectively in the fitness to practise process.

6.87 We saw delays in updates being sent to parties, failures to acknowledge correspondence and instances where the NMC did not appear to respond to questions from parties to the case. We considered that some of the correspondence we saw was not adequately tailored, did not clearly set out the different stages of the fitness to practise process, or did not adequately communicate the NMC's role in maintaining public confidence in the professions and declaring and upholding professional standards. We also

[15] At the time of publication public support service meetings were being held remotely rather than face-to-face, due to the Covid-19 pandemic.

identified some cases where we considered parties could have been better supported to engage in the process or where unnecessary barriers to effective engagement were created, as well as instances where the NMC could have signposted parties to other avenues of support but did not do so.

6.88 In response to our findings the NMC told us that its approach to updating and communicating with members of the public has improved since the launch of the PSS, which postdates some of the information in the cases we reviewed. The NMC highlighted its work to improve the tone and sensitivity of its correspondence.

Supporting registrants

6.89 Last year, we noted a lack of signposting for registrants under investigation to support services. We reported that the NMC would be undertaking further work to better understand what additional support can be provided.

6.90 The NMC has reported on its plans to improve the level of support for registrants who go through its fitness to practise process. These include providing better information and signposting to sources of support and launching an emotional support helpline. We understand that the NMC is also scoping demand for a *pro bono* legal service for unrepresented registrants, in partnership with a law school.

6.91 We welcome the work that the NMC is doing to better support registrants involved in the fitness to practise process. We will continue to monitor the NMC's progress in this regard.

Conclusion

6.92 The NMC continues to undertake extensive work to address the concerns raised in our LLR and to improve its processes and the way in which it communicates with stakeholders to ensure that all parties to the FTP process are supported to participate effectively. However, much of this work was at an early stage during the period under review.

6.93 The NMC has not yet provided us with a detailed analysis of the impact of the changes made to its work in this area. We received mixed feedback from third party organisations, which was insufficient to enable us to make an informed judgement as to the effectiveness of the NMC's new approach.

6.94 During our audit we identified some concerns around the way in which the NMC communicated with parties to cases and the support it provided to them, though we accept that some of the evidence that we saw pre-dated the implementation of the NMC's new processes and the launch of the PSS.

6.95 In summary, we have not seen enough evidence that the NMC's performance in this area improved during this review period sufficiently that we can be assured that this Standard is being met.

6.96 We therefore decided that this Standard is not met this year.

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

6.97 We carried out a targeted review of this Standard this year.

6.98 The changes to the NMC's processes implemented in July 2017 via an Order under Section 60 of the Health Act 1999 which were discussed under the third Standard for Fitness to Practise above are also relevant to this Standard. We undertook a targeted review of this Standard because these new powers represent a significant change to the NMC's processes with implications for the quality of fitness to practise decisions. As noted previously, this was the first full year in which the NMC had been operating these processes and we considered that there was a need to gain independent assurance of the quality of decisions made under the new powers.

6.99 Last year we noted an increase in cases being closed with no case to answer. The NMC told us that this was due to its 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. Through our audit we therefore wanted to understand and gain independent assurance about how the NMC considers registrants' insight and remediation in reaching decisions.

Our audit findings

6.100 We identified some concerns with decision-making and the recording of decisions at both the screening and case examiner stages.

6.101 However, the majority of the concerns identified with screening decisions related to the clarity with which decisions were recorded against the NMC's four stage test. Most of the concerns related to cases where the decision was to progress the matter to investigation rather than to close it at screening, meaning there was less risk that this lack of clarity had resulted in premature case closure. Of greater concern were two cases where we did not agree with the screening decision, because we were of the view that the NMC had not adequately considered its role in upholding the public interest and declaring and upholding standards.

6.102 We noted a lack of clarity in some CE decisions we reviewed and considered that some could have been more comprehensive in setting out the CEs' reasoning. In a small number of cases we noted inaccuracies in the recorded decisions. In one case our concerns about the CEs' decision contributed to our view that we could not be assured that the outcome was sufficient to protect the public.

6.103 We identified concerns in a small number of cases where we considered that decision-makers had not adequately explained how they assessed insight and remediation and provided reasons for any departure from the NMC's guidance. We did not consider that this issue was of such prevalence that it was likely to be a significant factor in the increase in no case to answer decisions.

6.104 In some cases it was not clear why the circumstances of the case warranted a warning and whether the decisions reached were in line with the NMC's legislation, which allows for warnings to be issued only where there is no case to answer. In a small number of cases the wording of the warning did not appear to cover the full period of the conduct concerned.

6.105 The NMC accepted many of our concerns regarding the comprehensiveness, clarity and accuracy of some of the CE decisions we reviewed and agreed that some CE decisions should have better explained how its guidance on insight and remediation had been considered.

6.106 With regard to our concerns about cases where a warning was issued, the NMC confirmed that in each case no case to answer had been found, and therefore it was open to the CEs to issue a warning. The NMC noted that the wording of the decision in one case was incorrect.

6.107 The NMC expressed the view that the lack of clarity we observed in some cases as to why the circumstances warranted a warning, had in part been caused by its guidance which could have been clearer on when warnings should be used. It told us that it was working to update the guidance to make it clear that:

- The purpose of warnings is to maintain professional standards and prevent future breaches of the public's trust in nurses, midwives and nursing associates. They are not there to punish registrants for past mistakes but to warn them that repeating similar conduct in the future could raise fundamental questions about their practice as a registered professional. They also act as a public declaration of the NMC's professional standards.
- To impose a warning, the facts must be agreed and the concerns must be serious enough to be capable of impairing the registrant's fitness to practise but, on the evidence available, there is no realistic prospect of the FTPC making a finding of current impairment. This is likely to occur in cases where the concerns are about issues that call into question the registrant's professionalism or trustworthiness but where the quality of the nurse, midwife or nursing associate's reflection means there is no case to answer on impairment.

6.108 As noted under the third Standard for Fitness to Practise, the NMC told us that a small number of cases would be reopened for further consideration or submitted for review under its Rule 7A process in light of our findings. This includes both cases where we had concerns about the screening decision, because we did not think the NMC had adequately considered its role in upholding the public interest and declaring and upholding standards, as well as the one case where our concerns about the CEs' decision contributed to our view that we could not be assured that the outcome was sufficient to protect the public.

Section 29 review of final fitness to practise decisions

6.109 During this performance review period, 1,693 final decisions were provided to us by the NMC. We appealed six decisions on the basis that we considered they were insufficient to protect the public.

6.110 The most prevalent concerns identified through our Section 29 reviews were about: the NMC's failure to obtain or present relevant evidence at final hearings; inadequate or inappropriate charges and late amendments to charges; the comprehensiveness of the reasons for decisions; and inadequate assessment of insight, remediation and risk of repetition.

Conclusion

6.111 We are satisfied that the prevalence and seriousness of the concerns identified during our audit, taken together with the NMC's response, do not indicate that this Standard is not being met.

6.112 We did not observe any pattern of the NMC closing cases with no further action as a result of too great a weight being attached to any insight and remediation demonstrated by the registrant, without sufficient regard to wider public interest considerations.

6.113 The NMC has clarified its position regarding when warnings can be issued and we are satisfied that this is in line with its legislation. We note the NMC's intention to provide greater clarity for decision makers in its guidance.

6.114 While the issues identified though our section 29 review of final decisions are of concern, those cases represent a small proportion of the NMC's decision-making.

6.115 For these reasons we are satisfied that this Standard is met.

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

6.116 The NMC continues to publish its publication guidance[16] and information handling guidance[17] on its website. These documents set out its approach to the routine publication and disclosure of fitness to practise information.

6.117 The NMC publishes all fitness to practise decisions, apart from those relating to registrants' health. We have identified no significant concerns about or changes to the way the NMC publishes fitness to practise decisions or how it communicates its decisions to relevant stakeholders in this reporting period.

6.118 We are satisfied that this Standard is met.

[16] www.nmc.org.uk/globalassets/sitedocuments/ftp_information/ftp-publication-guidance.pdf

[17] www.nmc.org.uk/globalassets/sitedocuments/ftp_information/ftp-information-handling-guidance.pdf

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

6.119 We carried out a targeted review of this Standard this year.

6.120 The NMC made us aware of five data breaches it reported to the Information Commissioner's Office (ICO) during this review period. This is an increase from last year, when it notified us of two incidents that had been reported to the ICO. The NMC told us that the implementation of the General Data Protection Regulation (GDPR) had introduced a much lower threshold for reporting incidents to the ICO. We requested further information about the data incidents and the NMC's understanding of the GDPR reporting threshold.

6.121 The NMC told us that prior to the introduction of GDPR and mandatory reporting requirements, it would decide on a case by case basis whether to voluntarily report breaches to the ICO. Its approach was to report breaches which involved sensitive data where the NMC was unable to contain the breach, though it might also report other breaches if it considered that the ICO should be aware of them.

6.122 The NMC provided information on staff training delivered to ensure awareness of data breach reporting responsibilities. It confirmed that all reported breaches are assessed by a dedicated team to determine whether the threshold for reporting to the ICO is met.

6.123 Details were provided of each of the five reported breaches during this period and any action taken in response. One of the incidents was determined by the ICO not to be a reportable breach. No regulatory action was taken by the ICO in response to any of the incidents.

6.124 On two occasions, private conditions of practice were published in public determinations, amounting to three separate data breaches. The NMC considered this to be the result of human error caused by one individual in each case and did not make any changes to its processes as a result.

6.125 We noted that these two apparently similar incidents happened two months apart and consider that the NMC could reasonably have been expected to review its process for checking determinations prior to publication following one or both incidents. We consider that action could have been taken by the NMC in response to those breaches to ensure that its processes were sufficiently robust.

6.126 However, we do not consider these breaches and the NMC's response to them to be indicative that this Standard is not met this year. We note that although the number of breaches reported has risen this year, the total remains low, taking into consideration the overall size of the NMC's fitness to practise caseload.

6.127 The NMC implements an annual information security work programme, which is mapped to the international information security standard ISO 27001, and has policies and processes in place to monitor, review and learn from data incidents.

6.128 We are satisfied that this Standard is met.

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