

Annual review of performance 2018/19

Pharmaceutical Society of Northern Ireland



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.

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About the Pharmaceutical Society of Northern Ireland

The Pharmaceutical Society of Northern Ireland (the PSNI) is the regulator for pharmacists and registered pharmacies in Northern Ireland. Its work includes:

- Ensuring high standards of education and training for pharmacists
- Maintaining a register of pharmacists ('registrants') and a register of students in pre-registration training
- Setting standards of conduct, ethics and performance that registrants must meet
- Setting standards for continuing professional development to ensure registrants maintain their ability to practise safely and effectively
- Taking action to restrict or remove from practice registrants who are not considered fit to practise
- Maintaining a register of registered pharmacies and setting standards they must meet.

As at 31 March 2020, the PSNI was responsible for a register of 2,764 pharmacists and 552 registered pharmacies. Its annual retention fee for pharmacists is £398 and for registered pharmacies is £155.



At a glance

Annual review of performance

Regulator reviewed: **Pharmaceutical Society of Northern Ireland**

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 PSNI.² More information about the range of activities we undertake as part of this oversight, as well as more information about these regulators, can be found on our website.
- 1.2 An important part of our oversight of the regulators is our annual performance review, in which we report on the delivery of their key statutory functions. These reviews are part of our legal responsibility. We review each regulator on a rolling 12-month basis and vary the scope of our review depending on how well we see the regulator is performing. We report the outcome of reviews annually to the UK Parliament and the governments in Scotland, Wales and Northern Ireland.
- 1.3 These performance reviews are our check on how well the regulators have met our *Standards of Good Regulation* (the Standards) so that they protect the public and promote confidence in health and care professionals and themselves. Our performance review is important because:
- it tells everyone how well the regulators are doing
 - it helps the regulators improve, as we identify strengths and weaknesses and recommend possible changes.

The Standards of Good Regulation

- 1.4 We assess the regulators' performance against the Standards. They cover the regulators' four core functions:
- Setting and promoting guidance and standards for the profession
 - Setting standards for and quality assuring the provision of education and training
 - Maintaining a register of professionals
 - Taking action where a professional's fitness to practise may be impaired.
- 1.5 The Standards describe the outcomes we expect regulators to achieve in each of the four functions. Over 12 months, we gather evidence for each regulator to help us see if they have been met.
- 1.6 We gather this evidence from the regulator, from other interested parties, and from the information that we collect about them in other work we do. Once a year, we collate all of this information and analyse it to make a recommendation to our internal panel of decision-makers about how we believe the regulator has performed against the Standards in the previous 12

² These are the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical Council, the Health and Care Professions Council, the Nursing and Midwifery Council, the Pharmaceutical Society of Northern Ireland, and Social Work England.

months. We use this to decide the type of performance review we should carry out.

- 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 November 2019 we carried out an initial review of the PSNI's performance from 1 November 2018 to 31 October 2019. Our review included an analysis of the following:
- Council papers, including committee reports and meeting minutes
 - 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 decided to carry out a targeted review of:
- Standard 2 of the *Standards of Good Regulation* for Registration
 - Standards 1, 3, 6 and 7 of the *Standards of Good Regulation* for Fitness to Practise.
- 2.3 We obtained further information from the PSNI relating to these Standards. We also carried out an audit all the fitness to practise cases closed by the PSNI between 1 November 2018 and 31 October 2019. As a result of a detailed consideration of this further information and our audit findings, we determined that the PSNI had not met Standards 5 and 7 for Fitness to Practise. The reasons for this are set out in the following sections of the report.
- 2.4 Where applicable, we have noted the impact of the Covid-19 pandemic on the work of the PSNI but it is not mentioned frequently as the review period for this report ends in October 2019. We expect to be able to report more fully on the impact of the pandemic in future reports.

Summary of the PSNI's performance

- 2.5 For 2018/19 we have concluded that the PSNI:
- 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 PSNI 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 \(as amended\)](#).

3. Guidance and Standards

- 3.1 The PSNI has met all of the *Standards of Good Regulation* for Guidance and Standards during 2018/19. Examples of how it has demonstrated this are indicated below each individual Standard.

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

- 3.2 This Standard was met with no concerns last year.
- 3.3 The PSNI sets out the professional standards of conduct, ethics and performance for pharmacists in Northern Ireland in *The Code*, which was introduced in March 2016. *The Code* is based around the following five principles, which we are satisfied prioritise patient and service user safety and patient and service user centred care:
- Principle 1: Always put the patient first
 - Principle 2: Provide a safe and quality service
 - Principle 3: Act with professionalism and integrity at all times
 - Principle 4: Communicate effectively and work properly with colleagues
 - Principle 5: Maintain and develop your knowledge, skills and competence
- 3.4 The PSNI conducts planned and prompted reviews of its Guidance and Standards. A planned review of *The Code* takes place every five years with all associated standards and guidance documents being reviewed within the subsequent two year window. The PSNI conducts horizon-scanning exercises and if these identify any developments which may result in the need to update *The Code* or supplementary guidance, a prompted review will take place.
- 3.5 A planned review of *The Code* is not yet due and there were no developments during the period under review that would have required a prompted review to take place. We have seen no evidence to suggest that *The Code* has become outdated.
- 3.6 We are satisfied that this Standard continues to be 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

- 3.7 This Standard was met last year when we reported on the ongoing work of the PSNI to review its suite of standards and guidance documents. As part of this work the PSNI developed a Decision Making Framework which sets out the purpose of additional guidance and when it is needed.

- 3.8 The PSNI expected its review to remain ongoing until late 2019 due to the number of documents to be reviewed. This year, the PSNI continued with its review and:
- published minor revisions to its *Guidance on Raising Concerns (Whistleblowing)* and *Guidance on maintaining clear sexual boundaries with patients and carers*
 - decided to discontinue three guidance documents⁴ which it considered contained information that is sufficiently addressed by legislation or guidance published by other organisations
 - progressed work to develop new guidance on *Provision of Services* which will include guidance on the refusal of services on the basis of religion, personal values and beliefs and violence/potential violence or criminal conduct.
- 3.9 The PSNI's draft guidance on *Provision of Services* was presented to its Council in November 2019. However, the planned public consultation was delayed in order to ensure the guidance could incorporate any necessary changes arising out of the legislative change to abortion services in Northern Ireland.⁵
- 3.10 In June 2020, the PSNI's Council approved a revised version of the guidance for public consultation. The consultation is running from 8 July 2020 to 30 September 2020.
- 3.11 We are satisfied that this Standard continues to be met.

Standard 3: In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and international regulation and learning from other areas of the regulator's work

- 3.12 This Standard was met with no concerns last year.
- 3.13 The Decision Making Framework we referred to under Standard 2 sets out criteria the PSNI will consider when deciding whether a proposed change to guidance or standards may need to be consulted on and, if so, the type of consultation that would be suitable.
- 3.14 During the period under review, the PSNI conducted a targeted consultation exercise when revising its *Guidance on Raising Concerns (Whistleblowing)* and *Guidance on maintaining clear sexual boundaries with patients and carers*. Prior to formally discontinuing *Professional standards and guidance on the Responsible Pharmacist Regulations* and *Guidance for Hospital Pharmacists on the Responsible Pharmacist Regulations*, the PSNI will be

⁴ *Professional standards and guidance for advertising medicines and professional services, Professional standards and guidance on the Responsible Pharmacist Regulations* and *Guidance for Hospital Pharmacists on the Responsible Pharmacist Regulations*.

⁵ The guidance was developed prior to the Northern Ireland (Executive Formation etc) Act 2019, which came into force on 22 October 2019, and subsequent Abortion (Northern Ireland) Regulations 2020 and Abortion (Northern Ireland) (No. 2) Regulations 2020.

undertaking a targeted engagement exercise to explore whether any stakeholders find the guidance or, aspects of them, helpful and whether they should be retained as a result.

- 3.15 The PSNI has also been taking part in inter-regulatory work⁶ on remote prescribing arising from the Care Quality Commission (CQC) Online Primary Care Cross Regulatory Forum. A draft *Shared Problem Statement* and a draft set of *High level principles for good practice in remote prescribing* have been developed, with consideration being given to whether it will be possible to align regulators' standards or guidance on good practice in this area. The *High level principles for good practice in remote prescribing* are being considered for publication and may be subject to public consultation.
- 3.16 The PSNI has noted that the inter-regulatory work on remote prescribing will be beneficial when it reviews its *Standards and Guidance for Pharmacist Prescribing* and *Professional Standards and Guidance for Internet Pharmacy Services*.
- 3.17 We are satisfied that this Standard continues to be 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

- 3.18 This Standard was met last year when we reported that the PSNI's website included a message notifying users that they may need to contact the PSNI directly for materials if using outdated PDF readers which were no longer compatible with the PSNI's updated platform.
- 3.19 There has been no change since last year in the way that the PSNI publishes its standards and guidance. These remain accessible on the PSNI's website and a 'Google translate' button in the top right corner allows the user to translate information into a number of languages.
- 3.20 We are satisfied that this Standard continues to be met.

4. Education and Training

- 4.1 The PSNI has met all of the Standards of Good Regulation for Education and Training during 2018/19. Examples of how it has demonstrated this are indicated below each individual Standard.

Standard 1: Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user centred care. The process for reviewing or

⁶ The organisations that have attended meetings to date are General Medical Council, Health and Care Professions Council, General Dental Council, General Pharmaceutical Council, General Optical Council, Nursing and Midwifery Council, British Medical Association, Royal College of General Practitioners, Royal Pharmaceutical Society, Royal College of Nursing, Royal College of Midwifery.

developing standards for education and training should incorporate the views and experiences of key stakeholders, external events and the learning from the quality assurance process

- 4.2 This Standard was met with no concerns last year when we reported on the General Pharmaceutical Council's (GPhC's) ongoing review of its *Standards for the education and training of pharmacist independent prescribers* and *Standards for the initial education and training for pharmacists*, both of which have been adopted by the PSNI.

Standards for the education and training of pharmacist independent prescribers

- 4.3 In January 2019, the GPhC introduced new *Standards for the education and training of pharmacist independent prescribers*, which were adopted by the PSNI in April 2019. The new standards include revised learning outcomes which are based on the prescribing competencies set out in the Royal Pharmaceutical Society (RPS) publication *A Competency Framework for All Prescribers*. The PSNI participated in the development of the competency framework as an External Reference Group Member.

- 4.4 The revised learning outcomes are based around the following four 'domains', which mirror four of the principles in *The Code*:

- Domain 1: Person-centred care
- Domain 2: Professionalism
- Domain 3: Professional knowledge and skills
- Domain 4: Collaboration

Standards for the initial education and training of pharmacists

- 4.5 The PSNI also adopts the GPhC's *Standards for the initial education and training of pharmacists*, which the GPhC is proposing changes to. The PSNI participated in the development of the proposed changes through the GPhC's Education Advisory Group and Task and Finish Group.

- 4.6 The GPhC is proposing five key changes to the standards:

- Learning outcomes – these will be set around the same four themes as the *Standards for the education and training of pharmacist independent prescribers* and will have a greater focus on the application of scientific knowledge, clinical skills, the importance of communicating effectively and multi-professional learning
- Integration of academic and practical experience – the learning outcomes are intended to be achieved over the five years so the academic qualification and 52 weeks practical training can be combined and providers may use different models
- Learning in practice – as the learning outcomes will be set to be achieved over five years, there will no longer be a separate set of pre-registration performance standards. Instead, the learning in practice components of

the course will count towards the registration requirement for 52 weeks of practical learning

- Selection and admission – course providers will be required to assess the professional skills and attributes of prospective students as well as their academic qualifications. Providers will be required to build interactive activities into their admissions processes, for example multiple mini interviews and group work
- Equality and diversity – education and training systems and policies will be required to promote the principles and legal requirements of equality, diversity and fairness. Course providers will be required to conduct an annual review of student performance and admissions by the protected characteristics as set out by the Equality Act 2010. Evidence will also be required of the action taken to examine the reasons for any differences and what the provider has done to address any situations where students are disadvantaged.

4.7 Following a consultation on the proposed changes, which took place between January and April 2019, the GPhC intends to undertake further engagement activities with stakeholders to explore issues raised by the consultation, including the implementation and funding of the proposals.

4.8 The PSNI has reported on this work to its Council in the knowledge that it may decide to adopt the revised standards. The PSNI has identified that the proposal to integrate academic training and practical experience may have implications for its current model of delivering pre-registration training in Northern Ireland. It continues to monitor the developments in this area.

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

Standard 2: The process for quality assuring education programmes is proportionate and takes account of the views of patients, service users, students and trainees. It is also focused on ensuring the education providers can develop students and trainees so that they meet the regulator's standards for registration

4.10 This Standard was met with no concerns last year.

4.11 There has been no change in the way the PSNI conducts quality assurance of its education programmes, which is carried out in conjunction with the GPhC under a Memorandum of Understanding between the two regulators.

4.12 Pharmacist training programmes are assessed against each of the 10 standards in the GPhC's *Standards for the initial education and training of pharmacists*. Independent prescriber training programmes are assessed against the four learning outcomes and nine standards for course providers in the GPhC's *Standards for the education and training of pharmacist independent prescribers*. Both sets of standards include a requirement for the training provider to consider the views of external stakeholders, including patients and the public, when refining the design and delivery of the course.

Quality assurance of pre-registration tutors

- 4.13 The PSNI is responsible for overseeing the quality assurance of the pre-registration training year in Northern Ireland. Since 2016, the PSNI has been introducing new quality assurance components to its pre-registration training programme. In 2018, it carried out a review of its existing trainee feedback process which led to the development of a new approach. In January 2019, the PSNI reported on the first use of the new approach.
- 4.14 The results showed a response rate of 95% from trainees, with high levels of satisfaction about tutor performance across four different areas:
- being a trainer and a coach
 - providing feedback
 - being an assessor
 - providing support.
- 4.15 From the trainee feedback, the PSNI also identified opportunities to further improve the quality of pre-registration training by:
- ensuring tutor training courses cover verification deadlines, protected study time and the importance of sharing with trainees how their feedback has been used to effect change
 - sending communications to tutors about the verification deadlines
 - sending communications about protected study time.

Pre-registration examination

- 4.16 The PSNI sets and administers the pre-registration examination in Northern Ireland. In Great Britain, the examination is set and administered by the GPhC. The two regulators work together in a number of areas, including, as referenced above, the quality assurance of education programmes.
- 4.17 During the period under review, the two regulators progressed work to develop a joint UK-wide examination, and the PSNI issued a public consultation on the proposals between August and October 2019.
- 4.18 In its consultation document, the PSNI identified that a UK-wide registration examination run by the GPhC exposes the PSNI to the risk of losing influence over the final assessment and entry onto the Register in Northern Ireland and the subsequent ability of Council to meet its statutory and regulatory obligations. The consultation included a draft partnership agreement between the PSNI and the GPhC containing clauses to mitigate this risk, including:
- the Board of Assessors responsible for the examination will be accountable to both the GPhC and the PSNI
 - the Chair of the Board of Assessors will provide an annual report to the PSNI for quality assurance purposes
 - the recruitment of Northern Ireland members to the Board of Assessors and the Adjustments Panel

- the recruitment of more Northern Ireland based question writers and standards setters if there is a need to add to the existing members
- the PSNI will continue managing the Northern Ireland examination venue, invigilation and handling and communication of results
- appeals will be handled by the GPhC but all appeals outcomes will be notified to the PSNI.

4.19 In November 2019, the PSNI's Council agreed the proposed joint examination and the GPhC's Council agreed it in December 2019. The first sitting is due to take place in June 2021.

Conclusion

4.20 The PSNI continues to follow processes for quality assuring education programmes which take account of the views of relevant stakeholders and focus on ensuring training providers can adequately develop students and trainees.

4.21 The PSNI recognised that a joint UK-wide pre-registration examination may affect its involvement with the quality assurance of its pre-registration programme and reached a partnership agreement with the GPhC which ensures the PSNI has sufficient oversight of and involvement with key aspects of the examination, including quality assurance.

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

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

4.23 This Standard was met with no concerns last year.

4.24 During the period under review, the PSNI was involved with the accreditation of two Independent Prescribing programmes in Northern Ireland. One of the programmes was new and it was provisionally accredited for a period of three years with no conditions. The other accreditation visit was for an existing programme, which was reaccredited for a further three years subject to a condition intended to address concerns that there was no form of technological check in place to guard against plagiarism and the potential for collusion or impersonation on assessments which are undertaken remotely. Following the reaccreditation visit, the accreditation team received evidence that the condition had been met.

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

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

4.26 This Standard was met with no concerns last year.

4.27 The PSNI continues to use its website to publish information about accredited programmes, including accreditation reports, and the accreditation process. The website page also has links to a full list of accredited

Universities on the GPhC's website. The PSNI presents accreditation reports and their recommendations at public Council meetings.

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

5. Registration

5.1 As we set out in Section 2, we considered that more information was required in relation to the PSNI'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 PSNI 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 This Standard was met last year when we reported that the PSNI had adopted the GPhC's *Guidance on student fitness to practise procedures in schools of pharmacy*, which contains explicit reference to the PSNI's conduct requirements. We noted that this should help to ensure that students are aware of the PSNI's requirements before they start their training.

5.3 We have previously reported that the PSNI is seeking a legislative change to enable it to introduce a fit and proper person test as part of its registration process. While it awaits the necessary legislative change, the PSNI continues to address adverse health or character declarations through its fitness to practise process upon registration of the applicant.

5.4 We have seen no evidence to suggest that individuals who did not meet the PSNI's requirements have been registered. By referring applicants who make adverse health and character declarations to its fitness to practise process, the PSNI continues to act within its powers to manage potential risks arising from its inability to refuse registration to applicants who meet its education and indemnity cover requirements.

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

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

5.6 This Standard was subject to a targeted review because the PSNI's website indicated that some applicants may be invited to attend an interview as part of the registration process. We wanted to understand:

- which applicants would be invited for interview
- the purpose of the interview
- the possible outcomes of the interview.

- 5.7 The PSNI can accept applications to join its register from applicants who first registered as pharmacists in Great Britain or in the European Economic Area (EEA).⁷
- 5.8 The website section for applicants who first registered in the EEA stated that applicants may be required to attend an interview on application.⁸ The section for applicants who first registered in Great Britain did not list a similar requirement.
- 5.9 The PSNI explained it uses the interview to address the gap in its current legislation, which means that it is required to register applicants who meet its education and indemnity cover requirements. This means that the PSNI cannot refuse registration on the basis of concerns about an applicant's knowledge of English. The other regulators we oversee have powers to set English language requirements.
- 5.10 The PSNI told us that it has drafted Knowledge of English Language Regulations and Guidance for approval by the Department of Health in Northern Ireland (the Department). Once they are introduced, the PSNI will be able to consider any concerns about an applicant's knowledge of English prior to their registration.
- 5.11 In the meantime, the PSNI has introduced the interview as a tool to identify potential concerns about an applicant's knowledge of English. The PSNI told us that if an application form suggests concerns about communication skills, the applicant may be invited to attend an interview. Should it become apparent at interview that there are significant communication challenges, the applicant will be told that the concerns may be referred to the fitness to practise process immediately after the applicant's registration. This is similar to the process we referred to under Standard 1 whereby adverse health or character declarations are referred to the fitness to practise process upon the applicant's registration.
- 5.12 Applicants are invited for interview by telephone and are told that they are not obliged to attend and that attending will not prevent their registration. Applicants are told that the purpose of the interview is to explain their obligations under *The Code*, particularly in relation to communication skills, and that it will also provide them the opportunity to ask questions about the practice of pharmacy in Northern Ireland prior to their registration.
- 5.13 The PSNI told us that it does not regard the interview as any type of formal assessment. As such, it does not have any criteria to decide which applicants are invited for interview or whether a fitness to practise referral is needed following the applicant's registration.
- 5.14 The PSNI also told us that it is extremely rare for an interview to be offered and no interviews took place or were offered during the period under review.

⁷ The PSNI does not currently recognise pharmacy qualifications obtained outside the EEA area but its website provides information about courses in Great Britain which would then enable applicants to complete the necessary pre-registration training for registration in Great Britain or Northern Ireland.

⁸ The reference to the interview has since been removed from the PSNI's website but the PSNI has not informed us that its process has changed.

- 5.15 We did not consider that the process described to us was fair or transparent. Applicants are not clearly and unambiguously told that the purpose of the interview is to assess their communication skills. Nor are they told that it may result in a fitness to practise referral being raised against them once they are registered. For transparency and fairness, it is essential that potential registrants should have a true understanding of the purpose of any interaction with the regulator, regardless of whether it is compulsory or not. This does not appear to be the case with the interview process and we were very concerned by the approach taken by the PSNI.
- 5.16 We were also concerned that there are no criteria in place to guide decisions on who should be invited for interview or when a fitness to practise referral should be made. Without clear criteria to guide this decision-making it is difficult to see how the PSNI ensures consistent, and thus fair, decisions are being made. This creates a risk that such decisions could be unjustifiable and discriminatory.
- 5.17 We recognise that the PSNI's intention is to address the gap in its governing legislation. We agree that it is unfortunate that legislation does not provide an appropriate power to enable the PSNI to test for English language competence and we consider that it is important that the NI Government should act as swiftly as possible to address this. If the PSNI considers that there needs to be a process to test this and that it can do so without an express power, then it should do so in a way which is transparent.
- 5.18 We are satisfied that, aside from this concern, the process continues to be efficient, with the PSNI consistently processing applications within two weeks during the period under review. We have not identified evidence of other concerns about the other elements of this Standard.
- 5.19 We carefully considered to what extent our concerns about the interview process impact our assessment of the PSNI's performance against this Standard. Our concerns are about the process lacking elements which should be fundamental and so they could have led to us concluding that the Standard was not met. It was only because the PSNI has not used the process in this review year, combined with the general efficiency of the remainder of the process, that we decided that, this year, the Standard is met. As we have noted significant concerns this year about the approach being followed, should the process remain the same in future years, we may not be able to take a similar view.

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

- 5.20 This Standard was met with no concerns last year.
- 5.21 The PSNI's online register is accessible through its website and shows information about registrants, including restrictions on their practice.
- 5.22 As part of our review of this Standard, we conducted a check of the register entries for five registrants who were subject to fitness to practise proceedings during the period under review. All of the registrants subject to restrictions

had their entry on the register annotated with a link to information about the restrictions. No health information was published.

5.23 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

5.24 This Standard was met with no concerns last year.

5.25 The PSNI's website and *The Code* include reminders of the importance of checking a health professional's registration. The PSNI's July 2019 edition of its Regulatory Update e-newsletter also contained an article reminding readers of the importance of checking the register.

5.26 We are satisfied that this Standard continues to be 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

5.27 This Standard was met with no concerns last year.

5.28 The PSNI's legislation does not provide powers for the PSNI to take enforcement action in respect of protected titles or protected acts. The Department is responsible for investigating and taking action in instances of illegal practice under the Medicines Act 1968.

5.29 The PSNI continues to share relevant information with the Department and the Health and Social Care Board (HSCB) through the Pharmacy Network Group (PNG), which meets on a monthly basis to share intelligence on investigations related to pharmacists and pharmacy in Northern Ireland and to manage the associated risks.

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

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

5.31 This Standard was met last year following a targeted review we carried out to better understand how the PSNI implements and enforces its CPD requirements for pharmacists who applied to re-join the register after a break in registration. We were satisfied that its approach appropriately managed the risk created by another gap in its legislation which does not enable it to enforce the requirements that apply to pharmacists who withdrew from the register on a voluntary basis.

5.32 Last year we also reported that the PSNI had continued developing a new CPD framework. This year, the PSNI finalised its proposals for the new framework and publicly consulted on them between October 2019 and January 2020. The main changes proposed were to:

- increase the pass mark from 40 per cent of cycles to 50 per cent of both cycles and hours
- reduce the number of assessment criteria from nine to six
- introduce the option to quality assure portfolios that pass on first assessment.

- 5.33 The new framework was approved by Council and was due to come into effect on 1 June 2020 for the 2020-21 CPD year. This was deferred until 1 June 2021 because of the Covid-19 pandemic.
- 5.34 We have not identified any concerns about the CPD framework being used in the period under review or the new framework that will be introduced in 2021.
- 5.35 We are satisfied that this Standard continues to be 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 PSNI's performance against Standards 1, 3, 6 and 7 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 1, 3 and 6 were met but Standards 5 and 7 were not met.

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

- 6.2 This Standard was subject to a targeted review because the data we held showed that approximately 50% of the referrals received by the PSNI were closed at the initial stages of its fitness to practise process without a referral to its Scrutiny⁹ or Statutory Committees.¹⁰ This appeared to be a high proportion so we wanted to understand the reasons for this.

Initial stages of the fitness to practise process

- 6.3 Referrals received by the PSNI undergo an initial screening¹¹ process to check whether the PSNI has the jurisdiction to look at the referral (the jurisdictional test). The PSNI may decide to make some enquiries before making this assessment. If a case meets the jurisdictional test, the PSNI will conduct an investigation, following which it will assess the case against its threshold criteria. In essence, the threshold criteria in place at the time of our audit¹² set out that a case should not be referred to the Scrutiny Committee

⁹ The PSNI's Scrutiny Committee is the equivalent of Investigating Committees/Case Examiners within other regulators and decides whether a case should be referred to a hearing before the Statutory Committee.

¹⁰ The PSNI's Statutory Committee is the equivalent of Fitness to Practise Committees within other regulators and considers final hearings and interim order hearings.

¹¹ Initial screening is also sometimes referred to as triage.

¹² The PSNI introduced new threshold criteria in June 2020 and this is discussed further under Standard 3.

unless there is evidence that one, or more, of the five principles of *The Code* has been breached. If a case meets the threshold criteria, it is referred to the Scrutiny Committee which applies the ‘real prospect’ test to the case. If the Scrutiny Committee decides there is a real prospect of a finding of impairment against the registrant based on the allegation and information before it, the case is referred to the Statutory Committee for a final hearing.

- 6.4 The PSNI does not have written guidance on the jurisdictional test, but the threshold criteria and the Scrutiny Committee’s referral criteria are published on the PSNI’s website.
- 6.5 The PSNI can also refer cases directly to its Statutory Committee for a final hearing without it first being considered by the Scrutiny Committee. The PSNI’s regulations¹³ prescribe the circumstances in which the PSNI can make a direct referral to its Statutory Committee. A direct referral is mandatory in some circumstances, such as when an interim order should be considered or when a case relates to a conviction with a custodial or suspended custodial sentence. In other circumstances, such as where the case relates to incorrect or fraudulent entry to the Register, a direct referral is optional.

Audit findings

- 6.6 Our targeted review included an audit of all 44 of the cases¹⁴ closed by the PSNI at the initial stages of its fitness to practise process during the period under review. Our audit included cases which had been closed at the three decision-making points of the PSNI’s initial process:
- at initial screening for not meeting the jurisdictional test
 - following investigation for not meeting the threshold criteria
 - by the Scrutiny Committee for not meeting the real prospect test.
- 6.7 When assessing the PSNI’s performance against this Standard, we looked at the decisions made at the jurisdictional test stage and the threshold criteria stage because this is where cases can be closed without investigation or without being referred to the Scrutiny Committee for independent consideration so may provide insight into whether there are any barriers to concerns being raised.
- 6.8 Our audit identified concerns about record-keeping because it found that decisions were not recorded contemporaneously and we also saw a number of cases where the reasons for decisions were not fully or clearly recorded.
- 6.9 Each of the case files we audited contained an overarching case summary document which the PSNI confirmed to us was completed retrospectively after a case had been closed. The case summary set out:
- the concerns raised

¹³ The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012 [No.311]

¹⁴ A small number of the cases we audited were subsequently excluded from our overall audit findings on the basis that they related to matters outside the Authority’s jurisdiction.

- a summary of any enquiries conducted by the PSNI
 - the closure decision and reasons.
- 6.10 We relied on these summaries to establish whether cases had been closed for not meeting the jurisdictional test or for not meeting the threshold criteria because the closure point was not always clear from the other documents on the case file.
- 6.11 We did not find evidence that this approach led to inappropriate decisions being made on cases, so we determined that our concerns about record-keeping did not significantly impact our assessment of this Standard. This is discussed further under Standard 5 below.
- 6.12 In terms of the decisions made by the PSNI, we found that we agreed with the majority of them and did not identify any significant concerns about the closure decisions at either the jurisdictional test stage or the threshold criteria stage.
- 6.13 We also saw evidence of the PSNI enabling concerns to be raised by providing reasonable adjustments to complainants and inviting them to provide further information for consideration if any became available after the case had been closed.
- 6.14 Although the data shows that the PSNI closed a high proportion of cases at the initial stages of its fitness to practise process, we did not see evidence to indicate this is a result of barriers being presented to complainants. We did not have any concerns about the closure decisions that we reviewed.
- 6.15 We are satisfied that this Standard continues to be 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

- 6.16 This Standard was met with no concerns last year when we noted that the PSNI has MoUs in place with the GPhC and the Pharmaceutical Society of Ireland (PSI).
- 6.17 As we have noted under Registration Standard 5, the PSNI continues to share information with the Department and the HSCB through the monthly meetings of the PNG.
- 6.18 Through our audit we saw examples of the PSNI sharing and seeking information about fitness to practise concerns with other organisations, such as the HSCB.
- 6.19 We are satisfied that this Standard continues to be 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

- 6.20 This Standard was met last year when we reported that the threshold criteria introduced by the PSNI in October 2016 did not appear to have impacted the number of cases being progressed to the PSNI's Scrutiny Committee.
- 6.21 This year, the PSNI has carried out a review of its threshold criteria and a new version was approved by its Council in June 2020. We responded to the PSNI's consultation on its proposed changes to the threshold criteria and a summary of our views is set out below.
- 6.22 We also decided to carry out a targeted review of this Standard this year because, as we noted under Standard 1, the data we held suggested that the PSNI closed a high proportion of its cases at the initial stages of its process. We wanted to obtain further information to help us assess whether the appropriate cases were being progressed.

New threshold criteria

- 6.23 The PSNI consulted on proposed changes to its threshold criteria between 15 January 2020 and 11 March 2020. The updated criteria were introduced on 30 June 2020. The work undertaken by the PSNI in reviewing the existing threshold criteria and developing a new version was undertaken during the period under review but the subsequent consultation, approval and introduction of the new criteria all fall outside the period under review.
- 6.24 The existing threshold criteria are closely aligned with *The Code*. The main changes proposed by the PSNI were to have the new criteria:
- include reference to the three limbs of public protection,¹⁵ which are not mentioned in the existing criteria
 - reflect the fitness to practise criteria considered by the Statutory Committee when making decisions on impairment rather than being based on the principles of *The Code*
 - list a number of factors the Registrar may consider when applying the criteria, including the behaviour and actions (or failure to act) of the pharmacist; whether the concern is a one-off or recurring issue; and any harm caused
 - explain that the Registrar can either close a case with no further action or with advice to the pharmacist on how to improve their practice.
- 6.25 The PSNI had initially considered the inclusion of a wider public interest test which would allow the consideration of issues such as insight, remorse, remediation and proportionality but decided against including this test because of concerns the Authority had expressed during the GPhC's

¹⁵ These are: protecting the public (safety); upholding professional standards; and maintaining public confidence in the professions.

consultation on proposed changes to its threshold criteria.¹⁶ In response to the GPhC's consultation, the Authority expressed concerns about:

- the assessment of insight, remorse, remediation and proportionality at this stage of the process as it may allow cases to be closed prematurely with the potential to result in public protection risks
- the transparency of decisions being made at this stage by GPhC staff behind closed doors using criteria that mirror aspects of the realistic prospect test, which is the remit of the Investigating Committee.

6.26 In our response to the PSNI's consultation on the proposed changes to its threshold criteria, we supported the inclusion of an explicit link to the three limbs of public protection and agreed with the decision not to take account of issues such as insight, remorse, remediation and proportionality at this stage of the process.

6.27 Following its consultation, the PSNI made some minor amendments to the new threshold criteria to improve its clarity and transparency. In response to comments it received on its consultation, the PSNI will also be reviewing some of the other information it publishes about investigations both in relation to pharmacy professionals and premises.

6.28 The new criteria will be introduced after the period under review so we will monitor its introduction and any impact in future performance reviews.

Audit findings

6.29 The cases in our audit comprised:

- 42 cases closed by the PSNI without a referral to its Scrutiny Committee
- two cases closed by the Scrutiny Committee.

6.30 We found a small number of cases where the decisions were not accompanied by full and clear reasons explaining the decisions reached. One of these was a Scrutiny Committee decision. However, we did not find that the absence of full and clear reasons had led to an incorrect or inappropriate decision being made in these cases.

6.31 As we have reported under Standard 1, we agreed with the majority of closure decisions made by the PSNI and therefore concluded that the PSNI refers cases to its Scrutiny and Statutory Committees where necessary.

6.32 Through our audit, we also saw evidence that the PSNI routinely signposts complainants to other relevant organisations when appropriate.

6.33 We are satisfied that this Standard is met and will monitor the introduction and impact of the PSNI's new threshold criteria in our future performance reviews.

¹⁶ The GPhC consulted on its proposals between December 2016 and March 2017 and introduced its new threshold criteria in February 2018.

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

- 6.34 This Standard was met last year with no concerns.
- 6.35 The statistical dataset for this year shows that the PSNI continues to take prompt action to seek interim orders when it decides one is necessary. The median time taken in 2018/19 to an interim order committee decision was less than a week from both receipt of the referral and from the decision that an application for an interim order was necessary.
- 6.36 Although this Standard was not subject to a targeted review, during our audit we saw further information about the PSNI's risk assessment process and how the PSNI uses risk assessments to identify and prioritise serious cases.
- 6.37 We noticed that most of the cases we audited were at the lower end of seriousness. Only one case was subject to an interim order. This may partly be because the PSNI can make direct referrals to its Statutory Committee and must do so in cases where it decides an interim order is necessary. We did not audit cases closed by the PSNI's Statutory Committee because we review all Statutory Committee decisions under our Section 29 powers and we did not identify any concerns about this stage of the PSNI's fitness to practise process. This is discussed in further detail under Standard 8 below.

Risk assessments

- 6.38 The PSNI risk assesses cases on receipt and thereafter on a weekly basis. The PSNI also told us that risks relating to ongoing investigations are discussed at the monthly PNG meetings. The records of these meetings and discussions did not form part of the fitness to practise case files we reviewed.
- 6.39 Most risk assessments completed by the PSNI are documented on a central spreadsheet rather than on the case file. Where a moderate or high risk is identified or there is a change in the risk rating assigned, this is documented on a risk matrix that is saved to the case file. We saw examples of both of these approaches to recording risk assessments.
- 6.40 The risk matrix template used by the PSNI enabled us to see the type of factors routinely considered when risk was assessed. These included the impact on patients or registrants and reputational factors that could be seen to equate to elements of the wider public interest, such as confidence in the profession.
- 6.41 Although we could see what factors the PSNI routinely considers as part of its risk assessment process, our audit found that the individual risk assessments usually contained limited narratives to explain the case-specific factors that had been considered and the rationales behind the risk ratings assigned. This meant we could not establish whether all relevant factors had been considered as part of the assessment. However, we did not identify any cases where we were concerned about the risk rating assigned by the PSNI.

- 6.42 In response to our audit findings, the PSNI accepted that a greater narrative could have been recorded in each case regarding the factors which influenced the risk rating.

Interim orders

- 6.43 Only one of the cases we audited was subject to an interim order. We did not identify any cases which, in our view, should have been referred to an interim orders panel but were not.

- 6.44 We had concerns about the management of the interim order case in terms of a lack of progression of a substantive investigation, a lack of full decisions produced for a number of interim order hearings and a lack of explanation on the risks identified by the Statutory Committee to explain why an interim order was considered necessary. However, we did not consider that this case necessarily represented the PSNI's usual approach to interim order cases. In addition, we did not find that any of our concerns resulted in, or had the potential to result in, any risks to public protection.

Conclusion against this Standard

- 6.45 There are some limitations to our audit data insofar as it evidences how the PSNI manages serious cases because the cases we saw were mostly about low level concerns. Nonetheless, we did not see any evidence which suggested to us that the PSNI is not identifying risks and prioritising serious cases.
- 6.46 Although we identified concerns about one interim order case and the PSNI's approach to documenting risk assessments, we did not find that these concerns resulted in, or had the potential to result in, risks to public protection.
- 6.47 We have also taken account of the statistical dataset, which shows that the PSNI continues to act promptly when it identifies a risk and decides an interim order application is necessary.
- 6.48 We are satisfied that this Standard continues to be met.

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

- 6.49 This Standard was met last year when we reported that the PSNI had updated its Indicative Sanctions Guidance (ISG) with the new version coming into effect on 27 March 2019. We were satisfied that the new ISG is more focused on public protection than the previous version.
- 6.50 This Standard was not subject to the targeted review we carried out this year however during our audit we saw evidence of how the PSNI's fitness to practise process operated in practice. We therefore considered whether our audit findings impacted our assessment of the PSNI's performance against this Standard.

Audit findings

- 6.51 Our audit identified concerns about the transparency of the PSNI's fitness to practise process because we found that:
- processes were not always fully and clearly explained to the parties
 - decisions and their accompanying reasons were not recorded contemporaneously
 - the jurisdictional test applied by the PSNI at initial screening was not explained to the parties
 - parties were not usually told explicitly that the PSNI had decided the jurisdictional test had been met/not met
 - in a significant number of cases parties were not kept informed of the progress of their case, what the next steps would be or what the possible outcomes were at each stage.
- 6.52 Our audit also identified a small number of cases where it was our view that information had been presented to the registrant or a third party in a way that was not fully accurate or omitted certain details. Our view was that the approach taken to communicating information in these cases had not been entirely transparent.
- 6.53 As we noted under Standard 1, the PSNI does not have any written guidance about its jurisdictional test. Its complaints leaflets¹⁷ mention there is an initial screening process but do not explain what that process involves. These do not explain that a jurisdictional test will be applied, what that test involves or what the possible outcomes are at that stage. We consider that the absence of this information has the potential to impact the transparency of the process.
- 6.54 We also identified concerns about the fairness of the fitness to practise process because:
- in almost all of the cases where the registrant was contacted,¹⁸ we did not see evidence of the process being clearly explained to them¹⁹
 - the PSNI's internal guidance sets out timeframes for updating complainants but does not provide equivalent timeframes for updating registrants.
- 6.55 The PSNI provided a response to our audit findings where it explained that processes were often verbally explained to the parties but it accepted these conversations were not always documented. The PSNI also highlighted that its approach to record-keeping, including the recording of decisions, is influenced by the small size of its fitness to practise team.

¹⁷ The PSNI publishes two different complaints leaflets; one aimed at complainants and one aimed at registrants.

¹⁸ There may be circumstances where it is reasonable to not notify the registrant on receipt of a concern.

¹⁹ Complainants were sometimes provided with a copy of the PSNI's complaints leaflet for complainants but none of the registrants were provided with a copy of the complaints leaflet for registrants. Some registrants were provided with a copy of the leaflet for complainants in error.

- 6.56 Together with its response to our audit findings, the PSNI provided a list of actions it had identified for itself as a result of our feedback. The PSNI intends to reduce the use of verbal communications but where they are used, they will be documented immediately. The PSNI also committed to developing a template setting out the tests applied and the rationale for each decision made. The aim of the template is to assist both record-keeping and decision-making. In June 2020, the PSNI reported to its Council that the template was in place.
- 6.57 The PSNI also told us that in most cases it was implicit when the jurisdictional test was met or not met. It told us that the term 'jurisdictional test' may not be understood or may be confusing for the parties but, through the actions it has identified for itself, the PSNI has committed to explaining the reasons for decisions to the parties using plain English rather than the term 'jurisdictional test'.
- 6.58 In a separate action plan which was compiled in response to the Authority's *Lessons Learned Review*²⁰ and which we discuss in further detail under Standards 6 and 7, the PSNI has committed to:
- ensuring it provides as much information as possible to aid understanding and transparency of the fitness to practise process
 - a review of record-keeping across the fitness to practise process
 - exploring the introduction of a bespoke case management system to manage its fitness to practise investigations.

Conclusion against this Standard

- 6.59 Where parties are not provided with full and accurate information about their case or about how their case will be or has been considered, including how decisions will be or have been made, this impacts the transparency of the process. In addition, allowing parties to infer what decisions have been made creates a risk that parties may make incorrect inferences.
- 6.60 It is also our view that clear, accurate and contemporaneous records aid the transparency of decision-making and the transparency of the overall process.
- 6.61 We agree that an organisation's size will be a factor that influences the approach it takes to record-keeping; we do not prescribe a single approach. However, the PSNI's approach meant that we were not able to assure ourselves that processes had been fully and clearly explained to the parties because this was often done verbally without the conversations being documented.
- 6.62 We consider that the transparency of a process is linked to its fairness because where a process is not explained and where reasons cannot be readily established, it is difficult to demonstrate the fairness of that process.
- 6.63 In addition, we had concerns about the fairness of the process because we saw evidence that suggested a disparity between the information provided to

²⁰ In May 2018 we published a *Lessons Learned Review* which looked at the NMC's handling of fitness to practise cases concerning midwives at the Furness General Hospital.

registrants and the information provided to complainants, in terms of case updates and general process information.

- 6.64 We recognise and welcome the prompt action taken by the PSNI in response to our audit findings and we also note the PSNI's separate plan resulting from the *Lessons Learned Review* which contains actions that are also relevant to the concerns we identified. Although some of this work has already been completed, it will not have taken effect during the period under review. We will monitor the progress and impact of all of this work but have concluded that this Standard is not met for the period under review.

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

- 6.65 This Standard was met last year following a targeted review to understand why there had been a significant increase in the number of older cases within the PSNI's caseload and how the PSNI was managing these cases. The PSNI sent us corrected data, which no longer showed an increase in the number of older cases and explained that it monitors and manages cases involving third party investigations through regular contact with those third parties and through information-sharing with the PNG.
- 6.66 Last year we also noted that the PSNI had reported to its Council throughout the year that a number of its cases would not be closed within its own internal key performance indicator (KPI) timeframes because they either involved third party investigations or complex health matters. Our 2016/17 report also noted that more than half of the PSNI's open caseload as at 31 May 2017 involved separate external investigations.
- 6.67 This year, the PSNI again reported that its case progression was being impacted by external investigations. In January 2019, almost half of the PSNI's open caseload was outside KPI timeframes because of external investigations.
- 6.68 In July 2018, the PSNI reported to its Council that it was considering what action it might need to take in response to a number of external reports and investigations, including the Authority's *Lessons Learned Review*, which identified the need for regulators to work closely with other investigators and regulators to ensure that, so far as possible, they are able to act to protect the public and unnecessary delays are not caused by other investigations.
- 6.69 We carried out a targeted review of this Standard to understand whether the PSNI had made any changes to how it monitors and manages cases that are subject to external investigations in light of its consideration of the Authority's *Lessons Learned Review*.
- 6.70 Our audit also enabled us to see how the PSNI progresses fitness to practise investigations which are not subject to external investigations.

Management of cases subject to external investigations

- 6.71 In January 2020, the PSNI reported to its Council that it will be taking a number of actions in response to the Authority’s *Lessons Learned Review* and the independent audit commissioned by the NMC into its handling of concerns about midwives at Furness General Hospital.²¹
- 6.72 The PSNI indicated it would introduce a *Parallel Investigations* policy to ensure investigations are only delayed where there exists a real risk of prejudice to criminal and other proceedings. The new policy was introduced in May 2020, which we note is after the period under review, and in June 2020, the PSNI reported that the policy had been applied to three cases.
- 6.73 The new policy supplements the PSNI’s existing approach to monitoring and managing cases which are subject to third party investigations. This approach, which was in place during the period under review, involves maintaining regular contact and sharing information with the relevant organisation, either directly or through the PNG.

Timeliness of the key stages of the fitness to practise process

- 6.74 The table below shows some of the key timeliness measures we collect from the regulators we oversee. The data shows that for three years in a row from 2016/17, including during the period under review, the median time that the PSNI progressed cases to final hearing was less than 52 weeks. The annual data for 2019/20 falls outside the period under review but we note there has been an increase in the timeframes and will monitor this closely.
- 6.75 The data also shows an increase in the number of open cases over 52 weeks old from 10 in 2017/18 to 14 in 2018/19. We expect to see year-on-year fluctuations in numbers and the increase, in absolute terms, is small so may not be significant. As we have noted above, we know that external investigations are affecting the PSNI’s timeframes and the PSNI has mechanisms in place to monitor and manage these types of cases so that they are progressed where possible. While recognising the data for 2019/20 falls outside the period under review, we note that it shows a decrease in the total number of older cases to nine which indicates older cases are being progressed. Consequently, we do not have concerns about the small increase in 2018/19.

| Measure | Annual 2016/17 | Annual 2017/18 | Annual 2018/9 | Annual 2019/20 |
|---|----------------|----------------|---------------|----------------|
| Median time from receipt of referral to the final FTP Committee determination/or other final disposal of the case (weeks) | 34 | 24 | 40 | 92.5 |
| Median time taken from receipt of referral to a final decision by the IC or case examiners on whether there is a case to answer (weeks) | 15 | 47 | 24 | 159 |

²¹ The NMC published the report from the independent audit in September 2019.

| | | | | |
|---|----|-------------------|-----------------|-----------------|
| Median time taken from final IC/case examiner decision to the final FTP Committee determination/or other final disposal of the case (weeks) | 12 | N/A ²² | 0 ²³ | 0 ²⁴ |
| Number of open cases (at the end of the period) which are older than: | | | | |
| 52 weeks-103 weeks | 2 | 9 | 3 | 4 |
| 104 weeks-155 weeks | 0 | 1 | 10 | 2 |
| 156 weeks and above | 0 | 0 | 1 | 3 |

6.76 The data in the table above does not capture cases that are closed by the PSNI without being referred to its Scrutiny or Statutory Committees. In 2018/19, we started collecting data that would capture the timeliness of these cases and so we are not yet able to discern any trends from it. However, the data showed that the PSNI's median timeframe from receipt of referral to the decision on whether:

- it had jurisdiction to investigate was one week
- the referral should progress to consideration by its Scrutiny Committee was one week.

6.77 Our audit also enabled us to look at the timeliness of case progression at these initial stages of the PSNI's fitness to practise process because most of the cases we audited were closed without being referred to the Scrutiny or Statutory Committee.

Audit findings

6.78 Our audit did not identify any cases which were unnecessarily delayed by external investigations but it did identify a number of cases with delays that were within the PSNI's control. The delays we saw ranged from three weeks to four months. We found that these cases were not dealt with as quickly as possible, however we did not identify any delays which resulted in harm or potential harm to patients or service users.

6.79 The PSNI has a small fitness to practise team and we are aware that during the period under review, a key member of staff had an unplanned and extended period of absence. Some of the delays we saw coincided with this period of absence.

6.80 We recognise that in an organisation the size of the PSNI, any unplanned and extended staff absence, particularly of a key individual, will inevitably affect performance. However, we would expect continuity plans to be in place to ensure that statutory functions are not unduly impacted. The PSNI has recognised the need to be able to make deputising arrangements and we are

²² This data is not available. The PSNI reported to us that this case was a direct referral and as such it is not able to calculate the timeframe from the final decision of the IC to the final FTPC determination.

²³ The PSNI told us that the case considered by its Statutory Committee this year was a direct referral so was not considered by its Scrutiny Committee.

²⁴ As footnote above.

aware that it is seeking the necessary legislative changes to enable it to do so. We welcome and support the steps the PSNI is taking in this regard.

6.81 In response to our audit findings, the PSNI accepted that there will always be room for improvement in terms of its general timeliness. It produced an action plan to address the concerns we had raised. It has implemented weekly reviews of progress on cases and monthly emails to other agencies to seek updates.

6.82 As part of the separate action plan compiled by the PSNI partly in response to the Authority's *Lessons Learned Review*, the PSNI will also be exploring the development of a bespoke case management system which will help it track the progress of its fitness to practise investigations. This tool, used in conjunction with its new *Parallel Investigations* policy, should assist the PSNI in identifying and addressing or preventing any unnecessary delays during the investigation of a case.

Conclusion against this Standard

6.83 Through our audit, we saw cases which were not dealt with by the PSNI as quickly as possible at the initial stages of its fitness to practise process. We were concerned by these delays but we noted that none of them had resulted in harm or potential harm to patients or service users. We also recognise that the absence of a key member of staff during the period under review partly explained some of the delays that we saw.

6.84 During the period under review, the PSNI's overall end to end timeframe for the fitness to practise process remained under 52 weeks.

6.85 We are satisfied that this Standard is met and will continue to closely monitor the timeliness of the PSNI's investigations, particularly at the initial stages of the fitness to practise process.

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

6.86 This Standard was met last year with no concerns.

6.87 This year, we carried out a targeted review to obtain further information about the PSNI's:

- review of the Authority's *Lessons Learned Review*
- annual report that is provided to its senior management team on feedback received once a fitness to practise case is concluded.

6.88 Our audit also enabled us to assess the PSNI's interactions with parties involved with the fitness to practise process.

The PSNI's review of the Authority's *Lessons Learned Review*

6.89 As we have noted under Standards 5 and 6, the PSNI compiled an action plan partly in response to the Authority's *Lessons Learned Review*. The PSNI reported that it has received no complaints in relation to how it has engaged with registrants, complainants and/or witnesses. Notwithstanding this point

and in addition to the actions we have already noted, the PSNI reported it would also:

- review its fitness to practise feedback policy, which it uses to proactively seek feedback from parties involved with proceedings once a case has concluded
- develop a Supporting Participation Policy.

6.90 The PSNI's intention was to complete these actions by Spring 2020. We have not seen the PSNI report on the progress of this work however we are aware that the timeframes for completion may have been delayed because of the Covid-19 pandemic.

Feedback received from fitness to practise participants in 2019

6.91 At the conclusion of a fitness to practise case, the PSNI sends a standard questionnaire to the participants to seek their views on the process and how the case was handled.

6.92 In January 2020, the PSNI presented a report to its Council on the feedback it had received from fitness to practise participants in 2019. All four of the responses received were positive, including about how the process ran and the level of communication from the PSNI. The report acknowledges that the low number of responses means there are limits to the conclusions that can be drawn from them.

Audit findings

6.93 In the cases we audited, we saw evidence of the PSNI providing reasonable adjustments to parties to support them in participating in the proceedings.

6.94 However, our audit also found that parties were not kept updated on the progress of their case in two thirds of the cases that were open for more than a month. The PSNI's internal guidance states that complainants should be updated on a monthly basis or at regular intervals and on any significant milestones so the need to update parties on cases open for less than one month will have been limited.

6.95 We were also concerned, as we have noted under Standard 5, that we did not always see evidence of the fitness to practise process being explained to the parties and we were particularly concerned that we did not see the process explained to registrants in almost all of the cases where the registrant was contacted. This meant that we could not establish whether parties had been provided with sufficient information to enable them to participate effectively in the process.

6.96 The PSNI accepted that parties had not been kept updated in a number of cases. In other cases, the PSNI explained that updates were not sent while it was awaiting information from third parties, for example the outcome of an external investigation. We do not consider this should have prevented the PSNI from contacting the parties to advise them of the same.

6.97 In its response to our audit findings, the PSNI also highlighted its existing plans to explore the introduction of a bespoke case management system.

The PSNI notes that this should enable improved record-keeping and prompting where action is necessary, such as the issuing of updates or the chasing of information.

Conclusion against this Standard

- 6.98 It is positive that the PSNI proactively seeks feedback from parties to fitness to practise proceedings and we note that all of the responses it received in 2019 were positive about the PSNI's processes and communications. We also acknowledge that the PSNI has not received any complaints in relation to customer service and its interactions with parties to fitness to practise proceedings.
- 6.99 However, when we take account of our audit findings, the number of cases where we had concerns relating to this Standard were significant. Based on the evidence from our audit, we could not conclude that parties were routinely updated on the progress of their case or that parties were provided with the information they needed to enable them to participate effectively in the process.
- 6.100 Prior to our audit, the PSNI already had plans to introduce a Supporting Participation policy and to explore the introduction of a case management system to assist it in managing its fitness to practise investigations. Both of these areas of work are relevant to the concerns we identified so we will monitor their progress but they will not have had an impact during the period under review. Consequently, we concluded that this Standard is not met.

Standard 8: All fitness to practise decisions made at the initial and final stages of the process are well reasoned, consistent, protect the public and maintain confidence in the profession

- 6.101 This Standard was met last year with no concerns when we reported that the PSNI had updated its ISG for fitness to practise hearings. As we noted under Standard 5, the new version came into effect on 27 March 2019.
- 6.102 Although this Standard was not subject to a targeted review, our audit enabled us to review all the decisions made by the PSNI at the initial stages of its fitness to practise process. In addition, we reviewed all decisions made at the final stage of the fitness to practise process through our Section 29 process.

Audit findings

- 6.103 As we have reported under a number of Standards, our audit did not identify any significant concerns about the decisions made at the initial stages of the PSNI's fitness to practise process. We did not identify any concerns about the consistency of the decisions made by the PSNI. Nor did we identify any decisions which we considered were insufficient to protect the public.
- 6.104 However, we have reported that we found that reasons for decisions were not always fully or accurately recorded. We also noted that the PSNI does not have written guidance to explain its jurisdictional test and it does not document triage decisions or threshold criteria decisions contemporaneously.

- 6.105 This approach to record-keeping and the absence of written guidance about the jurisdictional test meant that we could not see from our audit whether there was a clear correlation between the decision-making process and the decisions reached.
- 6.106 In response to our audit findings, the PSNI told us that its approach to record-keeping was influenced by its small size and it highlighted that its record-keeping did not result in poor decision-making. It nonetheless recognised that as cases become more numerous and complex, its current record-keeping arrangements are unsatisfactory. The PSNI noted that, in response to the Authority's *Lessons Learned Review*, it already had plans in place to review record-keeping across the fitness to practise process and to consider introducing a bespoke case management system.

Section 29

- 6.107 The PSNI reported five appealable decisions to the Authority during the period under review. The Authority did not appeal any of the decisions or issue any learning points to the PSNI.
- 6.108 Four of the appealable decisions notified to the Authority during the period under review were made after the introduction of the new ISG. There were no identifiable patterns in the outcomes from the hearings that took place after the new guidance was introduced.
- 6.109 We noted one case where a Committee member recalled part-way through the final hearing that they had also sat on an interim order hearing for the same case, which is contrary to the PSNI's guidance on *Investigation processes and committee structure*. Both the registrant and the PSNI confirmed they were content for the Committee member to continue their consideration of the case.
- 6.110 We are not aware of any similar incidents occurring during the period under review and we note that the issue was addressed as soon as it was identified, with the parties being given the opportunity to object to the continuation of proceedings. In light of this, we do not consider this matter to have an adverse impact on our assessment of the PSNI's performance against this Standard.

Conclusion against this Standard

- 6.111 We have not identified any significant concerns about the fitness to practise decisions made by the PSNI through either our audit or our Section 29 process.
- 6.112 We carefully considered whether our audit findings about the recording of decisions and accompanying reasons affected our assessment of the PSNI's performance against this Standard.
- 6.113 As we did not have significant concerns about the decisions made by the PSNI, we decided that our concerns about record-keeping were more significant to the transparency of the process and so were more appropriately captured under Standard 5.
- 6.114 We are satisfied that this Standard continues to be met.

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

- 6.115 This Standard was met with no concerns last year.
- 6.116 During the period under review, the PSNI reported five appealable hearing decisions to the Authority.²⁵ The decisions from three cases were published on the PSNI's website. In line with the PSNI's *Policy on the disclosure and publication of fitness to practise information*, the other two decisions were not published because one was a health case and the other resulted in a finding of no impairment.
- 6.117 We are satisfied that this Standard continues to be met.

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

- 6.118 This Standard was met with no concerns last year.
- 6.119 The PSNI did not report any changes to the way it retains information about fitness to practise cases. The work the PSNI intends to undertake to explore the commissioning of a bespoke case management system for its fitness to practise cases has not yet commenced and will fall outside the period under review.
- 6.120 The PSNI did not report any data breaches to the Information Commissioner's Officer (ICO) and a search of the ICO website did not identify any complaints against the PSNI.
- 6.121 We are satisfied that this Standard continues to be met.

²⁵ One hearing took place prior to the period under review but was notified to the Authority within the period of review.

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for Health and Social Care September 2020

