

Council, 2 July 2014

Review of the Professional Standards Authority audit of the Nursing and Midwifery Council

Executive summary and recommendations

Introduction

The HCPC Fitness to Practise Department undertakes to review audits undertaken by the Professional Standards Authority (PSA) to assess what learning can be taken from them and applied to HCPC processes. In March 2014 the PSA published their findings following the audit of the initial stages of the fitness to practise process at the Nursing and Midwifery Council (NMC).

Attached at Appendix 1 is a summary of the key points made by the PSA in relation to the NMC. The document also outlines:

- additional activities that have been initiated to provide additional assurance as to the robustness of the HCPC's processes in light of the areas of concern
- details of processes and procedures that the HCPC already have in place
- details of on-going and planned activities which address the issues raised by the PSA audit.

The review follows the same general headings which are set out in the PSA's Fitness to practise casework framework. The casework framework is used as an aid in reviewing the quality of regulators' casework and related processes.

Decision

The Council is asked to discuss the findings of the PSA audit review.

Background information

The last PSA audit of the initial stages of HCPC fitness to practise process was published in September 2013. This report and a paper outlining a work plan which had been further developed in response to the audit was considered by the Fitness to Practise Committee at its meeting on 10 October 2013.

The Council agreed at the meeting held on 6 February 2014 that reviews of other regulators audit reports should continue to be undertaken and presented to Council.

Resource implications

None.

Financial implications

None.

Appendices

Appendix 1 - Review of the Professional Standards Authority audit of the Nursing and Midwifery Council

Appendix 2 – Audit of the Nursing and Midwifery Council's initial stages fitness to practice process

Date of paper

30 May 2014

Review of the Professional Standards Authority audit of the Nursing and Midwifery Council

1. Introduction

A review has been undertaken of the Professional Standards Authority's (PSA) audit of the Nursing and Midwifery Council's initial stages fitness to practise process audit report which was published in March 2014. The key points made by PSA are set out below. The paper also sets out what measures the HCPC already has in place to address the concerns raised as well as additional quality and compliance activities that have been initiated in light of the PSA's audit findings.

The PSA's audit of the HCPC's initial stages of fitness to practise process was published in September 2013 and is referred to in this paper.

The detailed findings of the PSA are set out in section 2 of each report. A copy of the full report is attached to this paper.

2. Fitness to practise casework framework

The PSA casework framework provides a standard framework as an aid in reviewing the quality of regulators' casework and related processes. The framework comprises four stage specific principles: receipt of information, risk assessment, gathering information/evidence and evaluation/decision making. The framework also includes six overarching principles: protecting the public, customer care, risk assessment, guidance, record keeping, timeliness and monitoring of progress.

3. Receipt of initial information

The key aspects of the FTP process relating to the receipt of initial information includes: providing clear information to complainants, responding promptly to correspondence; and ensuring there are no barriers to complaints being made.

3.1. NMC report paragraphs 2.4-2.8

In January 2011 the NMC introduced a new screening team with responsibility for handling complaints from the point of receipt until first consideration by the Investigating Committee.

Of the 11 cases audited which were opened prior to the creation of the screening team, the PSA identified concerns in relation to 4 cases. The concerns related to:

- A one year delay in acknowledging an initial complaint

- No recorded acknowledgements of complaints
- No record of key documents being acknowledged
- No recorded acknowledgement of handwritten correspondence.

Of the 70 cases audited which were opened after the creation of the screening team, the PSA had no concerns about the timeliness of acknowledging the complaints. However, the PSA did raise a concern about one case where a complainant had been dissuaded from making a complaint and another case where there was a 9 month delay in opening case as it had not been forwarded to the FTP department by another NMC department.

3.2 HCPC Response

The PSA Audit of the HCPC's initial fitness to practise process found no concerns regarding its processes for the receipt of initial information. The PSA commented that the HCPC continues to operate effective systems and processes in all areas of its initial stages FTP process.

With regards to future developments, there is an activity in the 2014-15 FTP work plan to examine alternative case management models. This will include consideration of whether, in the context of forecast caseloads, there is value in having a greater degree of specialisation within the case management process. This could include having a case reception team to perform a similar function to that of the NMC's screening team.

There are also a number of work plan activities looking: at the content and clarity of the information that is provided for complainants on HCPC's website, the guidance provided to employers and the tone of voice used in standard letters.

4. Risk Assessment

Conducting a robust risk assessment on receipt of a new complaint and updating that risk assessment in light of new information is an important part of public protection within a risk-based regulatory approach.

The requirement for NMC staff to document their risk assessments was introduced in February 2012. To this end, the PSA looked at cases opened before and after the requirement to document risk assessments was introduced.

4.1. NMC report paragraph 2.9 – 2.18

The PSA identified the following main areas of concern in relation to cases opened before February 2012:

- No evidence of a risk assessment being completed
- Delays in completing risk assessments
- Inadequate reasoning contained in the risk assessment
- Delays in applying for interim orders of between 10 months and 3 years.

In respect of cases opened after the introduction of the requirement to document risk assessments, the PSA identified the following issues:

- Delay in completing the risk assessment
- Risk assessment not updated in light of new information
- Risk assessments containing unsubstantiated assumptions
- No consideration of the potential need to apply for IO
- Substantial delays in considering the need to apply for an IO
- Absence of an audit trail to explain the reasons for decisions.

4.2. HCPC response

The HCPC approach to risk assessment requires the Case Manager to complete a risk assessment document at three key stages in the process. They are as follows:

- on allocation of the case;
- on receipt of significant further information; and
- at the time of drafting the allegation.

The form requires the Case Manager to rate the risk of the case as either A, B or C and explain why an interim order may or may not be required. An operational guidance document, Risk Profiling and Interim Orders, is provided to the team to explain what is required and how to assess and classify risk. To assist Case Managers, when a case is created in the case management system (CMS) a risk assessment action is automatically added to the case.

The PSA found that in some cases risk assessments had not been completed at all the required stages of the process. However, they were satisfied that a further risk assessment would not have resulted in a referral for an interim order.

The presence of risk assessments on case files has been audited as part of case file audits for a number of years. A report of risk assessments which have not been completed by their due date is run each week. This supports Case Team Managers in monitoring that their Case Managers are completing risk assessments in a timely manner.

The file audit process monitors the presence of risk assessments. In addition small samples of risk assessments are reviewed on a monthly basis to monitor the content and reasoning provided by Case Managers. Learning from this review is fed back to individual Case Managers and captured as part of on-going training.

Further training for Case Managers on the risk assessment process, with a particular focus on assessing whether an interim order is required, was undertaken in March 2014.

In light of the issues the PSA raised in the NMC report regarding interim orders, from April 2014 additional audit activities have been introduced to monitor interim order applications and interim order reviews to provide assurance that the HCPC did not have similar issues. These audits focus on both the case management and adjudications side of the process and review the:

- time taken from receipt of the concern to the IO hearing
- time taken to schedule the hearing
- length of time between issuing the Notice of Hearing and the IO hearing taking place
- level of reasoning included by the Case Manager in the IO Approval Form
- Completeness of decision making audit trail, including completion of risk assessment.

In relation to Interim Order applications (IOA), the audit of the 6 applications that were considered by panels in April 2014 found that there was an adequate audit trail of decision making in all the cases reviewed. However, in 3 cases there was judged to be insufficient reasoning for the justification of an IOA within the form submitted to the Investigations Manager. In particular, the grounds for the interim order were not set out and, or there was an absence of clear reasons why an IO was warranted. However, this was rectified by the Investigations Manager by the inclusion of additional comments when approving the IOA form.

In all but one case reviewed, the hearing was listed within 25 days of Investigations Manager approval. In one case the matter was listed 29 days after the Investigation Manager had approved the case. In all cases the registrant was provided with 7 days' Notice of Hearing and scheduling was completed within 7 days.

In all cases the hearing decision was sent to the registrant within 3 working days.

We are working to reduce the length of time it takes for a case to be listed once approval to apply for an Interim Order has been given. This includes monitoring on a monthly basis the length of time that it takes to make an application.

5. Gathering information and evidence

Gathering the right information and evidence is essential to enable regulators ensure that appropriate decisions are made and that any necessary action is taken promptly.

5.1. NMC paragraph 2.19 – 2.29

The PSA found the following issues in relation to gathering information and evidence:

- Inadequacies in the investigations carried out by external lawyers which led to avoidable delays
- Failure to share information appropriately to external during an investigation
- Not seeking further information when receiving information from a registrant's employer concerning their redeployment.
- Failure to investigate concerns that a registrant had been working while their registration had lapsed prior to the case being considered by the Investigating

Committee. This resulted in the case needing to be reconsidered at a later date

- Complete documents not being included in the bundle provided to the Investigating Committee
- Concerns relating to case investigation plans not being properly followed, with specific information not being requested.

5.2. HCPC Response

The HCPC has a number of measures and safeguards in place to ensure that the right information and evidence is gathered to ensure appropriate case decisions can be made.

Case review meetings are held at least once per month at which Case Managers can discuss cases with their Case Team Manager and questions can be asked of the Case Manager about the investigation and the approach taken. In addition, the Case Advancement team (the Case Advancement team has responsibility for progressing the more complex cases) holds regular case investigation strategy meetings.

At the time the allegation is drafted to send to the Registrant, the Case Team Manager approves the allegation and in doing so reviews the case. This occurs in advance of the case being considered by an Investigating Committee Panel (ICP) and provides an opportunity for any missing information to be identified. When the case is being considered by the ICP it has the option of requesting further information if it considers that this would assist in making a case to answer decision. It is important to note that at this stage in the process the panel is not making any finding of fact and is generally only provided with sufficient information to allow a case to answer or no case to answer decision to be reached.

Where the HCPC is aware of on-going employer action in relation to a registrant who has been the subject of a capability or disciplinary the HCPC will keep the case open until confirmation is received that the Registrant has successfully completed any recommendations and there are no fitness to practise concerns.

Where a decision is made to close a case prior to consideration by an ICP as the case is deemed not to meet the standard of acceptance, approval must be sought from a Case Team Manager. The CMS has an automatic approval process attached to these closure actions which requires a manager to review the action before it can be completed. This prevents cases from being closed without the appropriate review being undertaken. The Investigations Managers undertake a review of a sample of closure forms on a monthly basis to assess the quality of the content and reasons given for the closure.

Revised operational guidance on the assessment of new information which may be received after a case has been closed was issued to staff in May 2013 and further updated in April 2014.

An audit of cases closed prior to consideration by an ICP is also completed by a Quality Compliance Officer to ensure that all necessary actions have been undertaken and the case complies with the required process.

Training for Case Managers on requesting further information was held in June 2013. Further training on the critical analysis of evidence is planned for 2014. This will include identifying case studies where further information could have been gathered during the course of the investigation.

An extensive review of the processes and procedures underpinning the Investigating Committee Panel process has recently been completed. This review has made a number of recommendations in relation to information gathering. They include reviewing operating guidance on investigations and information gathering and revising the Case Investigation Report (CIR) template. In addition, a project to evaluate the benefits of using Screeners/Case Examiners is included in the 2014/15 FTP work plan.

6. Evaluation and giving reasons for decisions

Ensuring that detailed reasons are given for decisions which clearly demonstrate that all relevant allegations/issues have been addressed, and that decisions are communicated to the parties effectively, is essential to maintaining public confidence in the regulatory process. The requirement to provide detailed reasons also acts as a check to ensure that the decisions themselves are robust.

6.1. NMC report paragraph 2.30 – 2.43

The PSA identified the following issues:

- a small number of cases where the reasons for the decision not to apply for an interim order were not documented
- strengthening of investigating committee decisions by the inclusion of more detailed reasoning
- cases where the Investigating Committee had referred the cases to the Health Committee despite being concerned about serious misconduct which might have justified striking off¹
- recording of decisions
- communication of decisions.

The PSA noted particular concerns regarding the lack of reasoning provided in relation to decisions about applications for removal from the register.

6.2. HCPC response

The HCPC Case to Answer Determinations Practice Note and decision template provides guidance for panels on the drafting of decisions, giving reasons and the importance of doing so. The importance of providing reasons is emphasised during panel training and refresher training. An ICP co-ordinator is present at the panel

¹ Crabbie v GMC establishes that cases should not be referred to the Health Committee if the allegations are so serious that they might result in the registrant being struck off the register.

meetings to ensure consistency and remind panels of the requirement to include sufficient reasons in their decisions. The Case to Answer Determinations Practice Note is due to be reviewed in September 2014 as part of the on-going cycle of review.

All ICP decisions are reviewed by a Quality Compliance Officer following the panel meetings and a report providing analysis on the review of the decisions has been provided periodically to the Fitness to Practise Committee/Council.

Where improvements are identified during the review, this is fed into panel training and future developments to practice notes and templates.

Where decisions are made by Case Managers and Case Team Managers to close a case without consideration by an ICP as the case does not meet the standard of acceptance, the case closure form should record the reasons for this. As part of the quality review undertaken by the Investigations Managers of the content of risk assessment forms, the content of case closure forms is also reviewed.

The HCPC process is to provide the registrant and complainant with a copy of the ICP decision following the meeting. The Case Manager is not able to add additional reasons or detail to the decision provided by the panel and it is therefore important that, as referred to above, the panel provide adequate reasons in their decision.

Where a case is closed without consideration by an ICP, the reasons for that decision should be set out clearly in the letter sent to the registrant and complainant. Last year a new process was put in place whereby closure letters are required to be approved by a Case Team Manager to ensure that the reasons provided are adequate. The audit of cases closed without an ICP now checks that this approval has been sought. The audits also look at the quality of the content of letters.

A new training package for ICP Panel members was introduced last year. The training now includes more practical elements which focus on the importance of Panels producing clear and well-reasoned decisions. The training also focuses on the application of the 'realistic prospect test' and reinforcing the ICP's responsibility as 'gate keeper' of the quality of allegations.

As part of the file audits which are undertaken, the quality of the content of letters is reviewed and feedback provided. As mentioned above, there is a project in progress to review the fitness for purpose of the standard letters that are used, as well as the 'tone of voice' adopted in the various letters that are used.

As outlined in paragraph 4.1, additional quality and compliance audits have been implemented to provide assurance that the decision making and reasoning in respect of Interim Order applications is robust and properly documented.

Following the review of the ICP process (see 5.2 above) a number of recommendations designed to improve decision making and the communication of decisions have been identified. These include: reviewing the decision form used by ICPs to record where any outstanding evidence is identified and developing a

checklist for panels to work through as they consider cases and draft decisions to ensure they address the key issues.

Protecting the public

Each stage of the regulatory process should be focussed on protecting the public and maintaining confidence in the profession and the regulatory system.

6.3. NMC report paragraph 2.108-2.112

The following concerns regarding public protection and the maintenance of public confidence in the regulatory system were identified:

- Delays in applying for interim orders where there was sufficient information available to justify an earlier interim order application
- Data protection and confidentiality breaches where it was not evident that the NMC identified the breach for itself or had taken any remedial action
- Procedural failing which resulted in a case being closed by the Investigating Committee before further investigation had been undertaken
- Lack of knowledge and understanding by the Investigating Committee of the NMC's legal framework
- Significant (9 months) delay in opening a case due to administrative errors
- Failure to notify another regulator in the case of a registrant who was dual registered.

6.4. HCPC response

The PSA identified a small number of cases where there were concerns about the implications of the HCPC's decisions for public protection and maintaining public confidence. Particular concerns were raised in relation to the gathering of information and the recording of reasons in relation to decisions for closing cases. The actions we are taking in relation to these issues are outline in paragraph 6.2.

We have undertaken a range of activities which are designed to minimise the risk of information security issues that can have an impact on public confidence. The Fitness to Practise department completed a comprehensive review of data security and information management arrangements last year. The purpose of this review was to scrutinise the FTP processes and procedures to identify possible risk areas which could contribute to a data breach occurring, and to identify possible changes to systems, processes and training that would mitigate the risk.

The review identified a number of different areas where further work could be done to mitigate the possibility of data breaches occurring. The activities that have been completed as a result of the review include:

- Information management and data security training for all FTP staff
- Guidance and online information security training for Panel members
- Guidance on redaction for our instructed solicitors

- Enhancement to case logging processes to verify the identity of registrants who are the subject of FTP complaints.

Information security is also a standing item on the agenda of weekly FTP management meetings. This ensures there is a continued focus on assessing and mitigating the risks associated with information security whilst balancing this against the need to maintain operational effectiveness. A log of issues and actions is maintained by the Quality Compliance Manager and is used to identify trends that may affect induction or training of team members, enhancements to core business systems, or areas to target in compliance audits.

As outlined at para 4.2, additional audit activities have been introduced to provide assurance that the proscribed procedures and timescales are being followed in respect of interim order applications and interim order reviews.

The review of the ICP process has identified where improvements can be made to the training and guidance provided to ICP panels to further support robust decision making. This includes evaluating the benefits and costs of a legal assessor attending ICPs for particularly complex cases.

7. Customer care

Good customer service is essential to maintaining confidence in the regulator.

7.1. NMC report paragraph 2.48-2.64

The PSA found that the NMC is only inconsistently achieving its own customer service standard for updating parties every six weeks and that it is either not effectively monitoring compliance with this standard or it is not taking effective action to improve compliance. For example, updates were not provided to either the complainant, or both, in 19 out of the 25 cases audited.

The PSA also made the following comments in relation to the NMC's customer service:

- Receipt of correspondence not being acknowledged even though the sender had specifically requested an acknowledgement
- Significant delays in responding to correspondence, as well as a complete failure to respond
- Inconsistent compliance with the NMC's customer service standard requirement that customer service feedback forms should be provided to the registrant and complainant in all cases that were either opened or closed on or after 1 August 2011
- Customer service failings relating to: supporting complainants and witnesses during the FTP process; communicating effectively with registrants and their representatives during the FTP process; and the accuracy of written correspondence.

7.2. HCPC response

Those involved in a case should be kept informed of the progress of the case at regular intervals and the CMS provides Case Managers with actions to prompt them to review cases at least once a month. When a case reaches a certain stage, specific actions are added to the case automatically to prompt particular actions. For example, when an ICP date is set the ICP follow up action is applied to the case which is linked to a checklist of all the required steps to be undertaken. Contact is maintained following an ICP and the Case Support Team ensures that parties are contacted every two months to update them on progress.

Other areas of work related to this are set out above, for example the audit of cases which includes a review of a sample of documentation sent and the CMS template issues encountered which are being addressed. We aim to keep cases loads at a level that allows Case Managers time to properly manage their case load and ensure accuracy.

The Patients Association was also recently contracted to undertake a peer review of the HCPC's fitness to practise process using the model designed for the Mid Staffordshire NHS Foundation Trust. The peer review methodology involves reviewing a sample of complaints against a scorecard which has been developed in partnership with clinicians, lay people and complaints managers from the NHS and elsewhere. It provides feedback on specific process points and general areas of improvement. We are due to receive the Patients Association's report on the outcome of its peer review in June 2014.

As part of the 2014-15 FTP work plan a case mix weighting analysis is being undertaken. This will provide additional management information to help ensure the continued progression of cases by ensuring that Case Managers have manageable case loads. In addition, improvements in resilience planning have been introduced. This includes looking at the actual available resources, taking into account absences and staff turnover, against the forecast caseloads so that resources are deployed appropriately. For example, a temporary Case Manager will be appointed in June to provide additional resource to manage the 'seasonal peak' of health and character declaration cases.

We are also currently undertaking a programme of work which is looking at the experience of those who come into contact with the FTP Department and how this might be improved. Activities include seeking feedback from complainants and registrants at the conclusion of a case and reviewing feedback from complaints. Other work planned includes reviewing the 'tone of voice' of the standard letters that we use.

8. Guidance

It is good practice to have staff guidance, documents and tools setting out the regulator's established policies and procedures, in order to ensure consistency and

efficiency in case management.

8.1. NMC report paragraph 2.65 – 2.69

The PSA did not identify any concerns about the guidance that the NMC has in place for the use by the NMC's FTP staff, except in relation to the voluntary removal process which is covered at paragraph 12. However, PSA identified concerns in relation to compliance with existing guidance and its application in respect of:

- Delays with completing risk assessments
- Updating and ensuring the accuracy of NMC's registration database
- Failures to adhere to customer service standards
- Failures to adhere to processes related to information governance to prevent confidentiality and data breaches from occurring and failure to identify and investigate such incidents when they occur.

8.2. HCPC response

The PSA did not identify any concerns in relation to the HCPC's guidance and supporting documentation.

The HCPC has a number of policies and procedures in place and all team members are trained on these as part of their induction and as part of on-going training. Monitoring compliance forms part of the file audits that are undertaken and as part of on-going.

Due to the complex nature of case work there are instances where policies are not correctly followed or errors are made. HCPC has a number of mechanisms in place to assist Case Managers in ensuring that procedures are followed and to identify issues when they occur. For example, some action on the CMS have due dates set to coincide with the timeframes in which the action should be performed and checklists are provided for key parts of the process to remind individuals of tasks that need to be undertaken. Where an issue is identified, measures are put in place to provide training to individuals or the team as a whole and to rectify the errors that have occurred.

Operating guidance and practice notes are subject to a cycle of on-going review which is overseen by the FTP Management team. Updates and changes to operational guidance are communicated to the team through team meetings, update emails and workshops, and to panel members through a quarterly newsletter and refresher training.

An audit of the consent and discontinuance processes is also planned to provide additional assurance that operational guidance is being properly followed.

9. Record keeping

Good record keeping is essential for effective case handling and good quality decision making.

9.1. NMC report paragraph 2.70 – 2.77

The PSA found no concerns in the cases audited that had been closed at the NMC's screening stage, which was introduced in January 2011. However, concerns about record keeping were found in approximately a quarter of the remaining cases that were audited. Specific concerns included:

- No records relating to an 'in house' investigation
- Misfiling and loss of case documents
- One registrant not being sent notification about the date on which the IC would consider their case or copy of the investigation report that would be considered by the Investigating Committee
- One instance of a data breach when the notification about the Investigating Committee's consideration of a case was sent to the wrong registrant.
- A data protection breach when a registrant's personal data was sent to another registrant in error. Although a request was made for the information to be returned the matter was not reported internally and no remedial action was taken.

9.2. HCPC response

The PSA were satisfied with the HCPC's standard of record keeping in the majority of cases. They also cited as good practice the HCPC's use of checklists as tools to assist case managers in ensuring that all necessary actions on the case have been completed.

Concerns were identified by the PSA in a small number of cases in relation to relevant documents not being saved on all "linked" cases and the recording of telephone conversations.

In terms of ensuring accurate record keeping, the HCPC uses an electronic paperless Case Management System. All correspondence is scanned on receipt and allocated to the case by the Administration Team. Processes are in place to minimise the risk of correspondence being allocated to an incorrect case.

The monthly file audits completed by the Quality and Compliance team provide additional assurance that case records are maintained correctly. Refresher training was held last year for Case Managers on how to ensure all relevant documents is copied into "linked" cases.

All outgoing letters and emails are produced in the CMS and printed and sent from that system at which point it is saved directly into the CMS case record. Therefore the risk of documents being incorrectly filed.

As outlined at paragraph 7.2, data security compliance is overseen by the Quality Compliance Manager with any data security issues being considered by the FTP Management team on a weekly basis.

10. Timeliness and monitoring of progress

The timely progression of cases is one of the essential elements of a good FTP process. It is essential to manage workflow evenly, because delays in one part of the process that cause backlogs can stress the system unless relieved quickly.

10.1. NMC report paragraph 2.78-2.107

The PSA found 11 cases where there had been delays in case handling. The delays related to:

- The efficiency of investigations carried out by external lawyers. This included delays resulting from: incomplete investigation reports; failure to investigate particular issues which had been identified at the outset and a lack of active monitoring by the NMC of external lawyers' investigations
- The omission of key documents from the bundle to be considered by the Investigating Committee. This resulted in the Investigating Committee having to reschedule its consideration of each case
- Delays in progressing cases following the receipt of new information
- Periods of inactivity in 6 out of 11 cases opened before January 2011 for periods between two and 19 months
- Delays in chasing outstanding information
- Delays in notifying the parties of the Investigating Committee's decision.

The PSA also reported that the NMC had improved the timeframes for the conclusion of its pre-Investigating Committee investigations. This was attributed to the NMC bringing the bulk of its investigations 'in-house' as well as its use of investigation plans.

The PSA also raised particular concerns regarding the timeliness of the NMC's review of Interim Orders. 12 out of 33 cases audited were found not to have been reviewed with the required statutory timescales. Concern was also expressed regarding the NMC's on-going need to seek court extensions of interim orders.

10.2. HCPC response

The PSA concluded that the HCPC has effective systems in place for monitoring case progression, including regular review meetings between staff which are intended to ensure active case progression. The PSA also noted that there was evidence of clear and active case progression, and commented particularly on the timeliness and pro-active chasing of third parties for further information where necessary.

Reports on the number of outstanding actions, chases and upcoming chases are produced and monitored on a weekly basis to ensure the timely progression of cases. We have also reviewed our internal service standards and these have been cascaded to the teams.

With regards the length of time it takes to progress cases, in February 2014 we subjected the cases that fell outside the service standards to closer scrutiny. The purpose of this review was to ensure that the reasons for any issues had been explored, and appropriate escalations had been applied to the case.

Cases are rated as Red, Amber, Green, based on whether there were concerns that should be managed as a matter of urgency (Red), whether there were cases where a plan was in place, but if that did not advance the case it would require escalation (Amber), or where the case progression was deemed appropriate (green).

The status of these cases is monitored at the FTP managers meeting. The 'RAG' rating approach is also being applied to the post-ICP cases to inform the monitoring of the cases where we have instructed external solicitors.

On closure of the escalated cases, a post closure review will be undertaken, in order to identify trends or possible triggers that can be applied to forthcoming cases. These reviews will be reported through the Quality Assurance Framework feedback meetings through the year.

11. Voluntary removal NMC report paragraphs 3.1-3.42

The NMC introduced a voluntary removal process to enable a registrant who is the subject of an fitness to practise investigation to apply to be voluntarily removed from the NMC's register without a full public hearing. The decision about whether or not to grant a request for voluntary removal is made by the NMC's Registrar, on the basis of a recommendation made by FTP staff.

Particular concerns were identified in relation to the NMC's guidance on voluntary removal decision making and about the way the NMC applied the guidance. The concerns related to:

- The Registrar's assessment in granting voluntary removal including:
 - Insufficient weight being given to the public interest in granting voluntary removal

- Assessment of the health of the registrant, the likelihood of them seeking readmission, length of time since they last practised and the genuineness of their desire to permanently remove themselves from the register
 - Consideration of comments from the ‘maker of the allegations’ which is a requirement of the NMC’s legislative framework.
- Cases involving misconduct allegations.

NMC’s guidance requires that the Registrar must consider both the extent of harm caused to patients and the potential impact on public confidence. The guidance also draws distinctions between cases involving ‘serious’ misconduct or convictions and cases involving less ‘serious’ misconduct or convictions ie cases where suspension or striking off may be the likely outcome at a final hearing.

The PSA found that not all of the cases had been categorised as being serious. Of those cases which had been categorised as involving serious misconduct, voluntary removal was granted on the basis that there were ‘exceptional circumstances’ which made voluntary removal appropriate. The PSA concluded that the seriousness of the misconduct in each case, combined with weaknesses in the mitigating evidence, meant that voluntary removal was not appropriate.

- Cases where allegations of impairment have not been admitted

The NMC’s guidance states, in relation to cases involving competence or less serious misconduct and convictions, that ‘it is only ever likely to be appropriate to grant an application for voluntary removal when the allegations of impairment have been admitted or proved’. Notwithstanding this guidance, the PSA identified cases where the allegations had not been proved and the registrant had either not admitted all the allegations, or it is questionable whether or not they had done so.

- Cases involving health and misconduct allegations

The NMC’s guidance states that where allegations are ‘multi-factorial’ the Registrar will consider whether voluntary removal is appropriate in all the circumstances. The PSA identified a number of cases involving ‘multi-factorial’ allegations, which had been referred for a hearing in front of the Health Committee and where the Registrar granted voluntary removal. In taking the decision to grant voluntary removal, the Registrar considered only the ill health matters and did not take into account additional misconduct allegations.

- The revocation of interim orders to enable voluntary removal to be granted

16 out of the 21 cases audited which had been closed following a successful application for voluntary removal involved registrants who were subject to interim suspension or conditions of practise orders at the time. The PSA had concerns that where panels were being asked to revoke interim orders to allow voluntary removal the panels did always understand whether it was open to them not to revoke the interim order, or the basis on which they might decide that is

appropriate.

- Cases where voluntary removal was granted after the final FTP hearing had commenced.

One of the public policy reasons why voluntary removal is considered acceptable in some circumstances is that a final hearing is not needed, which reduces costs and speeds up the conclusion of the case. This benefit is not achieved when voluntary removal is only granted partway through a hearing. The PSA found a number of NMC cases where voluntary removal was granted after the final FTP hearing had commenced.

- Protecting the public and maintaining confidence in regulation

The PSA noted the following issues:

- Concerns about the age of the case being used as the justification for voluntary removal
- Procedural errors
- Failure to provide reasons. The PSA were particularly concerned that there was no evidence to demonstrate that the Registrar conducted appropriate scrutiny of each application before granting voluntary removal, as no separate rationale for their decisions was recorded.

12. HCPC Response

The Health and Social Work Professions Order 2001 does not explicitly provide for consent arrangements to be put in place. However, the Practice Committees have approved consent arrangements as a means of allowing registrants, in suitable cases, to be removed from the Register, or to dispose of a case without the expense and time that a full hearing can require.

The HCPC's approach to the disposal of cases by consent is outlined in a Practice Note and associated operational guidance. The operational guidance was reviewed and updated in March 2013 and the Practice Note is due to be reviewed in November 2014.

The HCPC's approach to disposing of cases by consent differs to that of the NMC in that both pre and post final hearing consent applications are considered by a panel of the relevant practice committee, and the outcome is recorded in the Panel's Notice of Decision. This approach removes the risk of justice being seen to be being done 'behind closed doors'.

The HCPC has other procedural safeguards to ensure that only appropriate cases are considered for disposal. As outlined in the Practice Note, the HCPC will only consider resolving a case by consent:

- after an Investigating Committee Panel has found that there is a “case to answer”, so that a proper assessment has been made of the nature, extent and viability of the allegation
- where the registrant is willing to admit the allegations in full
- where any remedial action proposed by the registrant and to be embodied in the Consent Order is consistent with the expected outcome if the case was to proceed to a contested hearing.

Furthermore, the Director of Fitness to Practise is required to approve any application to dispose of a case by consent following legal advice before the matter is put before a panel.

An audit of the consent and discontinuance processes is planned to provide additional assurance that the processes are being correctly followed and that only suitable cases are being identified for consensual disposal.

13. Recommended actions

As outlined in this paper, there are a number of activities that are either in progress or planned to take place during 2014-15 which address many of the issues identified by the PSA in relation to the NMC’s initial stages fitness to practise process. Furthermore, the review of the ICP process has identified additional activities which are intended to improve the quality of decision making and the progression of cases through the fitness to practise process. To this end, additional significant additional development activities are not required. However, in order to mitigate the risk of similar issues being identified in respect of HCPC’s fitness to practise process it would be prudent to:

- Maintain focus on case progression and reviewing the pre and post Investigating Committee Panel which are not progressing in line with service standards
- Continue to audit Interim Order applications and Interim Order reviews, with a focus on the length of time taken to list hearings
- Extend the audit of risk assessments, with a particular focus on quality and timeliness of completion
- Undertake an audit of the disposal by consent and discontinuance processes.

May 2014

Audit of the Nursing and Midwifery Council's initial stages fitness to practise process

March 2014

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care¹ promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.² We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

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

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

² CHRE. 2010. *Right-touch regulation*. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

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1. Overall assessment

Introduction

- 1.1 At the initial stages of the fitness to practise (FTP) process, the health and care professional regulators decide whether complaints should be referred for a hearing in front of an FTP panel or whether they should be closed.
- 1.2 Between August and September 2013 we audited 100 cases handled by the Nursing and Midwifery Council (NMC). Eighty one of the 100 cases had been closed at the initial stages of its FTP investigation process during the period 1 January 2013 to 31 July 2013. The remaining nineteen cases concerned registrants who had been employed at the Mid Staffordshire NHS Foundation Trust. These cases had either been closed during the period 1 January 2013 to 31 July 2013 or were included within a case review that the NMC conducted during this period. We specifically include these cases within our audit in light of the public interest in the accountability of health professionals employed at the Mid Staffordshire NHS Foundation Trust for the failings identified in care provided to patients.
- 1.3 Our overriding aim in conducting audits is to seek assurance that the health and care professional regulators we oversee are protecting patients, service users and the public and maintaining confidence in the reputation of the professions and the system of regulation. During our audit, we assessed whether the NMC had achieved these aims in the particular cases we reviewed. We considered whether weaknesses in the handling of any of these cases might also suggest that the public might not be protected, or confidence not maintained in the system of regulation, if this approach were adopted in future cases.
- 1.4 We operate a risk based approach to carrying out audits and we audit each regulator at least once every three years. We have audited the NMC every year since 2009/2010. In our last audit report of the initial stages of the NMC's FTP processes (published in December 2012³) we summarised our findings as follows:

'...we are concerned about the extent of the weaknesses identified during this audit including in cases opened since the NMC initiated its improvement programme in January 2011. In our view, our findings mean that we have not yet seen evidence that the improvements that have been initiated since January 2011 have resolved the problems we previously identified....In our view the weaknesses we have identified in this audit, together with the evidence that improvements have not been entirely successful in resolving problems identified in previous audits, have the potential to create risks for public protection and damage public confidence in the NMC as a regulator.'

³ CHRE, 2012. Audit of the Nursing and Midwifery Council's initial stages fitness to practise process London: CHRE. Available at: <http://www.professionalstandards.org.uk/cy/llyfrgell/manylion-y-ddogfen?id=b61bbd08-6d0f-47ec-8d52-fe5ff0443155>

- 1.5 In this audit we looked for evidence of the effectiveness of the changes introduced by the NMC since 2010 with the aim of improving its performance at the initial stages of the FTP process. These changes were:
- November 2010 – the introduction of full case audits every two to four weeks, and monthly reviews of the oldest open cases to prevent delays in cases
 - November 2010 – introduction of a new centralised filing system with a standard operating procedure to improve record keeping
 - January 2011 – the introduction of the screening team comprising case workers, screening lawyers and clinical advisers, responsible for cases from receipt to their first consideration by the investigating committee. The case workers in the team review the case within 48 hours of receipt and if an interim order application is required, they refer the case to the screening lawyer
 - January 2011 – the introduction of a new risk assessment process which introduced a formal and consistent approach to recording risk assessments
 - March 2011 – the introduction of procedures to quality assure correspondence twice⁴, return telephone and voicemails within 24 hours, acknowledge emails within 24 hours, provide a date for a substantive response within 20 working days, acknowledge letters and faxes within three working days and provide a date for a substantive response within 20 working days
 - April 2011 – the introduction of closer monitoring of investigations carried out by external bodies
 - May 2011 – the introduction of timeframes for solicitors undertaking investigations
 - August 2011 – the implementation of the customer service pledge to improve customer care
 - February 2012 – the introduction of an amended risk assessment procedure, requiring risk assessments to be documented
 - 2013 – use of the electronic case management system so that the electronic file is the single complete record in every case.
- 1.6 In our last audit we saw some examples of improved record keeping and correspondence in some cases. We also saw documented risk assessments in the eight cases we audited that had been opened after the NMC changed its risk assessment process in February 2012.
- 1.7 In this audit we looked for improvements in all areas of the casework framework (see annex 1) across the sample of cases we audited.

⁴ This process changed again one year later so that correspondence has not been checked twice since March 2012

- 1.8 We set out below a summary of our findings and recommendations in relation to this audit.

Summary of findings

- 1.9 This report sets out our findings in relation to 81 cases closed at the initial stages of the NMC's FTP process. In addition, the particular concerns we identified about the NMC's closure of 21 FTP cases following the grant of voluntary removal applications are set out in section 3 – the NMC introduced a voluntary removal process on 14 January 2013 to enable registrants who are subject to fitness to practise proceedings to apply to have their names permanently removed from the NMC's register without a full public hearing. This report also sets out our specific findings in respect of the 19 cases that we audited that concerned registrants who had been employed at the Mid Staffordshire NHS Foundation Trust in section 4. Our general conclusions and recommendations are set out at in section 5.
- 1.10 We identified some areas in which the NMC has demonstrated improvement following our audit of its handling of 81 cases closed at the initial stages of its FTP process. The majority of the improvements occurred in the initial handling of complaints by the new screening team which was introduced in January 2011. In summary, the improvements we observed were:
- We saw acknowledgements of complaints in 69 of the 70 cases that we audited that were opened after the screening team was introduced in January 2011 (see para 2.6)
 - We are pleased to find documented risk assessments in all 58 cases that we audited which had been opened after 1 February 2012 when the NMC introduced an amended procedure requiring risk assessments to be documented demonstrating good compliance with this process (see para 2.14)
 - We are pleased that there were no delays in applying for interim orders in the 17 cases we audited that had been opened after the NMC introduced its amended risk assessment procedure (see para 2.15)
 - We are pleased to report that there were no concerns about record keeping in the 27 cases we audited that had been closed by the screening team (see para 2.72)
 - We are pleased to report that there were no concerns about the NMC's evaluation and decision making in the 27 cases we audited that had been closed by the screening team (see para 2.32)
 - All 25 of the cases which we audited that had been closed by the Investigating Committee (IC) following an 'in-house' investigation by NMC staff had met the internal key performance indicator for completion within 12 months. This appears to be the result of NMC's initiative to bring the bulk of its investigations 'in-house' and its use of investigation plans (see para 2.99 last bullet)

- We noted that closure decision letters had been sent to all parties within five days in all 81 cases which we audited that had been closed between 1 January 2013 and 31 July 2013 (see para 2.95).
- 1.11 Six of the cases that we audited were opened in 2008 or 2009 and we noted that the NMC's handling and customer care of these cases improved from the middle of 2012.
- 1.12 We were pleased to identify the areas of improvement however our audit also demonstrated that a similar level of improvement has not yet been achieved consistently across the NMC's handling of the later parts of the initial stages of its FTP process. We hope to identify further improvement in our audit in 2014.
- 1.13 We are pleased that in this audit there were no concerns about public protection arising from the decisions to close the 81 cases we audited. We are, however, concerned that we audited nine cases involving delays in applying for interim orders when there was sufficient information available to justify an earlier interim order application (see para 2.109 to 2.110).
- 1.14 We recommend that the NMC reviews all our audit findings and implements remedial action where appropriate. In particular, we recommend that the NMC:
- Ensures that all NMC staff are aware of the NMC's remit and do not act as barriers to complainants wishing to raise concerns about the fitness to practise of registrants by providing appropriate training across its entire customer-facing staff
 - Takes steps to improve the customer care it provides during the FTP process and in particular that, when the NMC reviews its customer service standards for the FTP department, it set standards that are realistic as well as reasonable
 - Ensures that it takes action to improve the accuracy of its correspondence
 - Expands its quality assurance of records management to secure improvements with record keeping
 - Takes steps to monitor the handling of investigations by external lawyers to ensure that the investigations are thorough and to prevent avoidable delays
 - Reviews its handling of the cases that we identified in this audit as posing risks to the maintenance of confidence of the NMC's system of regulation and takes steps to prevent a recurrence of these issues.
- 1.15 We were disappointed to see an absence of proper consideration of the wider public interest in deciding whether or not to grant voluntary removal applications. We draw an overall conclusion about the NMC's handling of voluntary removal cases at paragraph 5.10. Specifically, we recommend that the NMC:
- Reviews our concerns relating to its categorisation of 'serious' misconduct matters in cases where voluntary removal has been

granted, and the application of the relevant guidance in this area and ensures that action is taken to address our concerns

- Makes the necessary amendments to its process to enable the Registrar making the decision about whether or not to grant voluntary removal to make an informed decision about why registrants are applying for voluntary removal and their views about the allegations against them, rather than just requiring registrants to tick various boxes
- Puts a written procedure in place to ensure that decisions about applications for readmission to the register from individuals who have been removed from the register while an FTP investigation is underway are taken on the basis of their full FTP history
- Provides guidance and training to its panels about handling applications for the revocation of interim orders and that it should routinely provide standardised documentation about the voluntary removal decision to a panel that is being asked to revoke an interim order in order to facilitate voluntary removal
- Reviews our concerns in section 3 of this audit report and considers what further processes, guidance and training is required for staff and panel members to prevent procedural errors from occurring and to ensure that it operates a voluntary removal process that not only protects the public but also maintains public confidence in the system of regulation
- Implements enhanced recording of reasons for decision making in cases that are closed following the grant of applications for voluntary removal to enable better understanding of the reasons for the decisions made.

1.16 In addition, we consider that the public policy reasons for allowing voluntary removal in cases involving misconduct/convictions do not apply to the same extent once an FTP panel hearing is already under way and we invite the NMC to reconsider its approach to such applications.

Method of auditing

1.17 In March 2010 we led a meeting with representatives from all the nine health and care professional regulators to agree a 'casework framework' describing the key elements common to the initial stages of an effective FTP process that is focussed on protecting the public. A copy of the final casework framework agreed can be found at Annex 1 of this report.

1.18 When auditing a regulator, we assess their handling of cases against this casework framework. Our detailed findings are set out below using the headings referred to in the casework framework. We also take into account information gathered during previous audits, information we are provided with in our annual performance review of the regulators, concerns we receive about the performance of the regulator and any other relevant information that is brought to our attention.

- 1.19 In this audit, we reviewed a sample of 100 cases which had been closed by the NMC without being closed following a hearing in front of a final FTP panel⁵ – either the Health Committee or the Conduct and Competence Committee. We drew our audit sample from the 1340 cases that the NMC had closed at the initial stages of its FTP process during the period between 1 January 2013 and 31 July 2013.
- 1.20 We selected 50 cases from across each of the closure points within the initial stages of the NMC’s FTP processes. We also selected a further 50 cases from categories of cases that we considered were more likely to be ‘higher risk’ (that is to say that, in our view, there was a higher risk to public protection if proper procedures were not followed in these cases). The cases where we considered were more likely to be ‘higher risk’ consisted of 21 cases that had been closed following successful applications for voluntary removal, 19 cases that involved registrants who had been employed by Mid Staffordshire NHS Foundation Trust and 10 cases closed either at the screening stage or by the IC where the registrant was subject to an interim order.

Overview of the NMC’s FTP Framework

- 1.21 The structure of the NMC’s FTP process means that there are four points at which cases may be closed without referral to a formal hearing in front of an FTP panel:

By NMC FTP staff without referral to the investigating committee

- 1.22 Rule 22 (5) of the NMC’s statutory rules (The Nursing and Midwifery Order 2001 as amended) says that the NMC must refer to the relevant committee or person any allegation that is made to it ‘in the form required’. The rules do not define what that phrase means. However, the NMC has defined it to mean that an allegation must identify the registrant (with contact details and PIN if possible), describe the incidents and be ‘supported by appropriate evidence’. The NMC’s processes permit staff in its FTP department to close cases which are not ‘in the form required’. Decisions to close cases on that basis are made by the screening team.

By the investigating committee (IC)

- 1.23 The IC’s role is set out in legislation. The Nursing and Midwifery Order 2001 (section 26 (1) and (2)) explains that the IC’s role is to:

‘...consider in the light of the information which it has been able to obtain and any representations or other observations made to it under sub-paragraph (a) or (b) whether in its opinion in respect of an allegation of the kind mentioned in article 22(1)(a) [misconduct, lack of competence, conviction or a caution in the UK for a criminal offence, physical or mental health, or a determination by a body in the UK responsible under any enactment for the regulation of a health and social care profession to the effect that their fitness to practise is impaired,

⁵ We note that two cases were closed at pre-meetings of a final FTP panel

or a determination by a licensing body elsewhere to the same effect], there is a case to answer...'

- 1.24 The NMC's IC is made up of members of the nursing and midwifery professions and lay people.
- 1.25 In order to carry out its role, the IC assesses whether or not there is a 'realistic prospect' of an FTP panel deciding that the registrant's fitness to practise is currently impaired, should the matter be referred to a formal FTP panel hearing. Hearings of allegations about impairment of fitness to practise due to ill health take place before a panel of the Health Committee (HC) and hearings of other allegations take place before a panel of the Conduct and Competence Committee (CCC). A case will not be referred for a hearing by an FTP panel unless the 'realistic prospect' test is met. In order to help it assess whether or not the realistic prospect test is met in each case, the IC can request that an investigation, or further investigation, is conducted by the NMC.
- 1.26 In the event that the IC decides not to refer a case for a hearing by an FTP panel, it may inform the registrant that the case may be taken into account in the consideration of any further allegation about them that is received by the NMC within three years of the decision not to refer the case for a hearing.⁶

Closure following voluntary removal from the register

- 1.27 The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Amendment Rules Order of Council 2012 made provision for the first time for a registrant who is the subject of an FTP investigation to apply to be voluntarily removed from the NMC's register. A nurse or midwife may submit an application for voluntary removal at any point during the FTP process, but applications will not be granted until a full investigation into the allegation has been completed. The application form will be assessed by NMC staff and the NMC's Registrar will decide whether or not to grant the application. If, however, the application for voluntary removal is received during the final FTP hearing then the FTP panel must assess the application and make a recommendation to the NMC's Registrar. Once a voluntary removal application is granted, the registrant is no longer authorised to practise and the FTP case about them is closed.

Closure following a referral for a final FTP panel hearing

- 1.28 The NMC can also close cases that have been referred for a final hearing in front of an FTP panel, before the hearing takes place. This may happen for example where the registrant is deceased or the registrant has already been struck off the register as a result of a separate FTP panel hearing. This also includes cases that are closed under Rule 33 of the NMC (Fitness to Practise) Rules 2004, which permits an FTP panel to decide to cancel a hearing and close a case without holding a final hearing, having considered the reasons put forward by the NMC about why the final hearing should not go ahead. The NMC describes these cases as 'administrative closures'.

⁶ NMC (Fitness to Practise) Rules Order of Council 2004 Rule (6)(1)

2. Detailed findings

- 2.1 In this section we set out our findings related to 81 cases that the NMC closed at the initial stages of its FTP process during the period 1 January 2013 to 31 July 2013.⁷ This figure comprises:
- 27 cases closed by the screening team
 - 30 cases closed by the Investigating Committee (IC) – 25 of which were investigated ‘in house’ by NMC staff and five of which were investigated by the NMC’s external lawyers
 - Three cases that were closed by the NMC following a referral for a final FTP panel hearing – either the Health Committee (HC) or the Conduct and Competence Committee (CCC)
 - 21 cases that were closed following successful applications for voluntary removal from the register.
- 2.2 Details of our findings in these 81 cases are provided below, under the headings used in the casework framework (see Annex 1).
- 2.3 In January 2011 the NMC introduced a new team (the screening team) with responsibility for handling complaints from the point of receipt until first consideration by the IC. That team uses revised processes and was given new targets. Where we consider it helpful to do so, we have separated out our audit findings about the case handling of complaints that were opened before January 2011 from our findings about the case handling of complaints opened since January 2011, when the new team and new procedures came into operation.

Receipt of information

- 2.4 The casework framework sets out key aspects of this part of the FTP process, including: providing clear information to complainants; responding promptly to correspondence; and ensuring there are no unnecessary barriers to complaints being made.

Cases opened before 1 January 2011

- 2.5 We audited 11 cases which had been opened before the new screening team and procedures were introduced. We identified concerns about the receipt of information in four cases. Our concerns were as follows:
- In one case there was almost a year’s delay in acknowledging the initial complaint (from November 2009 until October 2010)
 - In two cases there were no recorded acknowledgements of complaints (received in 2008)

⁷ We audited 19 cases involving registrants employed by the Mid Staffordshire NHS Foundation Trust. We have set out our findings and conclusions in relation to these 19 cases separately to our findings about the other cases, given the level of public interest in the NMC’s handling of cases involving registrants who worked at the Trust. Our findings about these cases are detailed in section 4 of this report.

- In one case there was no record of an acknowledgement of key documents
- In two cases there were no recorded acknowledgements of handwritten correspondence.

Cases opened after 1 January 2011

- 2.6 The significant majority of the cases we audited (70 out of the 81) had been opened after the introduction of the screening team. The caseworkers in the screening team have a target of reviewing each complaint within 48 hours of receipt. We were pleased that there were no concerns about the timeliness of acknowledging complaints in these 70 cases, except in one case where the complaint was not passed on to the FTP department by another department within the NMC.
- 2.7 We identified issues in two cases as follows:
- In one case we were concerned that when a potential complainant asked the NMC if they should make a complaint, the NMC advised them not to do so as the potential complainant thought the registrant was unlikely to continue practising due to their age. This raises a concern that NMC staff (whether FTP department staff or others) are dissuading potential complainants from raising concerns about NMC registrants for inappropriate reasons
 - In another case the complainant sent their complaint by email to an incorrect email address (which was not received) and by recorded mail to the wrong department at the NMC. The NMC department which received the mailed version did not pass it on to the FTP department and, as a result, a case was not opened until nine months after the initial complaint had been sent (when the complainant contacted the NMC to find out about progress of the case). By that time, the individual concerned was no longer an NMC registrant (their registration had 'lapsed' which meant that it was no longer possible for the NMC to investigate their fitness to practise. (Please see para 2.111 fourth bullet).
- 2.8 Our findings in these two cases above suggest that the relevant NMC staff were not aware of the NMC's remit and acted (even if that was not by design) as barriers to potential complainants. We recommend that the NMC addresses this issue by providing appropriate training across its entire customer-facing staff.

Risk assessment

- 2.9 Conducting a robust risk assessment on receipt of a new complaint and updating that risk assessment in light of new information is an important part of public protection within a risk based regulatory approach. Unless the regulator has conducted a proper initial evaluation of risk, it is difficult to make sound judgements about whether any regulatory action is necessary and in particular to decide whether an application should be made for an interim order restricting the registrant's ability to practise while the complaint is being investigated. Robust

and early risk assessment can also prompt the regulator to make a disclosure to an interested third party (for example another regulator) in order to safeguard the public. Risk should be assessed during the lifetime of the case, particularly on the receipt of new adverse information. The casework framework (see Annex 1) requires that decisions are recorded and reasons given for actions or no actions being taken.

Delays with completing risk assessments and applying for interim orders

- 2.10 In February 2012 the NMC introduced a new procedure, requiring staff to document their risk assessments. We report separately below our findings in respect of complaints received before or after the amended procedure was put in place.
- i) Cases opened before the introduction of the requirement to document risk assessments*
- 2.11 Twenty three of the cases we audited had been opened before February 2012. We noted the following in relation to the completion of risk assessments in those cases:
- We identified one case where there was no evidence that a risk assessment was ever conducted. In a further two cases there was evidence that a decision was taken not to apply for an interim order but we did not see any documented reasons for the decision taken
 - In a further three cases there were delays in conducting a risk assessment ranging from 16 weeks to 37 months. In a fourth case, while the electronic case management record was updated to note 'possible IO [sic]' a documented risk assessment was not carried out until March 2013, 15 months into the investigation. The risk assessment form contained inadequate reasons only stating 'N/A'. We note that a further risk assessment was carried out one month later and more detailed reasons were given for the decision not to refer the case for an IO.
- 2.12 We noted delays with applying for interim orders in five cases – those delays were between 10 months and three years in length. In our view there was sufficient information available at an earlier stage in each case's lifetime to justify an application for an interim order. A delay in putting an interim order in place can expose the public to unnecessary risk, because the registrant remains free to practise unrestricted. The details of these cases are as follows:
- In one case it was not until three years after the NMC had received the complaint that any action was taken to put an interim order in place. Once the IC identified the need to consider imposing an interim order, it then took two months for NMC staff to action the IC's request
 - In a second case the interim order was not imposed for three months after the registrant admitted to being alcohol dependent

- In a third case an interim order was only imposed seven months after receipt of the complaint although we considered that there was sufficient evidence to justify an interim order earlier in the case's lifetime
- In a fourth case there was a delay of one year from the receipt of the complaint until the IC was asked to consider imposing an interim order. In our view the NMC should have asked the IC to consider imposing an interim order shortly after receiving the complaint, as the NMC was aware that the registrant's employer was reporting a pattern of continuing competence and ill health issues on the registrant's part, which led to termination of their employment
- In a fifth case the NMC applied for an interim order on the basis of a psychiatric report which provided evidence that the registrant lacked insight, was at risk of relapse and would pose a risk to patients if they did relapse. We were concerned that the NMC was in receipt of this report for two and a half years prior to the interim suspension order being imposed in this case and in our view the NMC ought to have applied for the interim order as soon as it was received.

2.13 We consider that there is a real possibility that the delays outlined above may have exposed the public to unnecessary risk as they left the registrants concerned free to practise unrestricted and this regulatory failure has the potential to damage public confidence.

ii) Cases opened after the introduction of the requirement to document risk assessments in February 2012

2.14 We are pleased to report that we found documented risk assessments in all 58 of the cases in our audit which had been opened on or after 1 February 2012, demonstrating good compliance with the new requirement to document such assessments. We did however identify some issues with the completion or updating of risk assessments in three of these cases:

- There was a delay of five weeks in completing the risk assessment in one case
- A risk assessment was completed but not updated in light of new information in another case
- In a third case a risk assessment form contained unsubstantiated assumptions that a local investigation had been undertaken and that the incident was isolated.

2.15 We are pleased to report that there were no delays in applying for interim orders in any of the 17 cases (where interim orders had been imposed) that we audited that had been opened on or after 1 February 2012.

2.16 We identified concerns in four cases about delays in applying for interim orders in on or after 1 February 2012 (although the cases had actually been opened before 1 February 2012) which we consider also raised risks for public protection:

- In one case the NMC did not apply for an interim order on receipt of information (in June 2012) that the registrant had been under the influence of alcohol at work and also had two alcohol-related criminal convictions. An interim order application was not made for another two months, when the registrant's employer said that they suspected the registrant of being under the influence of alcohol at work
- In another case the complaint was received in January 2010 but the possible need for an interim order was not identified either by NMC staff or by the IC until three years later
- In a third case no consideration was given to the potential need to apply for an interim order until the IC considered the case, 16 months after the complaint had been received. The IC's request was not actioned for a further 18 months – at which point an interim conditions of practice order was put in place. That order was replaced six months later by an interim suspension order, following the receipt of psychiatric expert evidence
- In a fourth case the NMC was aware of the registrant's longstanding ill health but despite NMC staff documenting in January 2013 that the registrant had said that they had retired but there was nothing to stop them working again, no risk assessment was completed and no consideration was given to the potential need for an interim order.

2.17 While we acknowledge that these four cases were opened before 1 February 2012, we concluded that had the NMC completed risk assessments more promptly following the introduction of the requirement to document risk assessments in February 2012, the delays in considering the need to apply for interim orders in these cases might have been reduced.

2.18 Our audit identified three cases where we consider that the reasoning behind the decisions not to apply for an interim order could have been more detailed. We did not disagree with the actual decisions that were made, but we were concerned about the absence of an audit trail to explain the reasons for the decisions. We note that recording reasons for decisions is a requirement of the casework framework.

Gathering information / evidence

2.19 Gathering the right information early enough in the FTP process is essential to ensuring that appropriate action can be taken promptly and that decision makers are fully informed.

2.20 In our previous audit we found inadequate information gathering and insufficient explanations or inaccurate details in decision letters, raising risks that cases were closed too early, and/or risks to stakeholders' confidence in the regulatory action taken.

2.21 Since 1 January 2011 the newly introduced screening team has been responsible for information gathering at the initial stage of any investigation. We have

reported separately below our findings in relation to those cases that we audited which had been handled solely by the screening team before closure and those cases which had also been handled by others in the FTP department before being closed.

Cases closed by the screening team

- 2.22 We are pleased to report that there were no failures to gather sufficient information in the 27 cases we audited that had been closed at the screening stage.

Cases closed following investigation by external lawyers

- 2.23 We audited five cases that had been closed by the IC and 18 cases that had been closed following successful applications for voluntary removal where the NMC's investigations had been conducted by its external lawyers.
- 2.24 We had concerns about one of those cases where we identified two occasions when the NMC failed to share information appropriately during the investigation. First, the investigation report wrongly stated that the most recent course the former registrant had attended was in 2011 – it appeared that the NMC had not shared information with its external lawyers that the registrant had provided about their participation in more recent courses and had not checked that the report was accurate. That information was also not included in the information provided to the IC reviewing the interim order until the registrant's representative brought it to the attention of the NMC. The NMC said it has taken steps to prevent a recurrence of this issue.
- 2.25 We identified a further eight cases where inadequacies in the investigations carried out by external lawyers led to avoidable delays. The details of these eight cases are set out in the section of this report that addresses timeliness (see para 2.81 to 2.83). We consider that the NMC ought to have ensured that these cases were fully investigated within reasonable timescales.

Cases closed by the IC following an 'in-house' investigation

- 2.26 In early 2012 the NMC began a programme of work aimed at bringing 80 per cent of investigations 'in-house' (ie for investigation by NMC staff rather than by external lawyers) by the end of 2012. Our audit identified concerns about the gathering of information and evidence in five of the 25 cases we reviewed that had been investigated 'in-house'. We set out our findings in relation to those five cases below:
- In the first case the employer was asked if they had wider fitness to practise concerns about the registrant. The employer replied by saying that the registrant 'was undergoing a trial period in relation to the recent redeployment'. We consider that the NMC should have sought further information on receipt of that response but it did not do so
 - The second case concerned three complaints about an individual who was applying for readmission to the register after their registration had

'lapsed'. When the IC considered the case, it requested the NMC to investigate whether the registrant had been working while their registration had 'lapsed'. We consider that NMC staff should have identified and investigated this issue beforehand, which would have avoided the need for the IC to reconsider the case following the additional investigation, some two and a half months later

- In a third case the registrant's representatives had to highlight to the NMC that complete copies of two documents had been left out of the bundle of documents given to the IC when it was considering the case. The NMC's response was that complete copies had not been provided, and that the NMC had decided that it was not necessary to include the complete documents anyway. Our view is that complete copies should have been obtained before the case was considered by the IC, both to ensure fairness to the registrant and because it was important that the IC had all the relevant information and when deciding whether to refer the case for a hearing and whether an interim order should be imposed
- In a fourth case the caseworker had not chased up an outstanding response to a request made to the registrant's employer to check if they had any fitness to practise concerns about the registrant. The NMC did not follow its process in this case – which states that two attempts to chase for this information should be made
- In two cases it appears that investigation plans were not followed by NMC staff, which caused us concern, as there was no record of why the particular investigative steps that had been identified were never taken. In the first case the investigation plan identified that the caseworker should contact another regulator that was investigating related cases to request information but that information was never requested. In the second case the investigation plan and case management investigation plan both referenced concerns regarding the care of patients, which did not appear to have been pursued and it was not clear why as there was no audit trail of the decision taken.

2.27 While we have concluded that the NMC's initiative to bring the bulk of its investigations 'in-house' and its use of investigation plans has led to improvements in timeliness (see para 2.100) we would like to draw the NMC's attention to the issues our audit highlighted in respect of these five cases so that it can ensure that cases are thoroughly investigated.

Cases closed following the grant of voluntary removal

2.28 We identified a further three cases where it appeared that the NMC had failed to thoroughly investigate matters that were relevant to the fitness to practise of registrants before granting their voluntary removal from the register. The details of these cases are as follows:

- In the first case the NMC did not identify as a potential allegation the fact that the registrant (who was also registered with the Health and Care Professions Council (HCPC)) had not advised the HCPC of the

NMC FTP proceedings against them, or of the fact that the NMC had placed an interim conditions of practice order on them

- In a second case voluntary removal was granted on the basis of the registrant's ill health. However information that the registrant had continued working long after they were unfit to do so (as a result of a different health condition) was never investigated and was not referred to by NMC staff in recommending that voluntary removal should be granted. A testimonial was received when the case was being considered by the IC, which described a physical health problem and it was not clear that the NMC investigated this, even though the registrant had been dismissed from their employment due to this worsening health condition
- In a third case voluntary removal was recommended because the health condition of the registrant was such that there was little or no prospect of them returning to practice. We were concerned that the only evidence of the registrant's ill health came from a six year old letter from a consultant to the registrant's GP, expressing concern that the registrant's condition had worsened and requesting a further opinion. This correspondence pre-dated the issue that had triggered the FTP concerns about the registrant and the relationship between this correspondence and the FTP concerns was not clear. We were concerned that this evidence was not up to date and therefore the NMC did not have any reliable evidence on which the Registrar could base the voluntary removal decision.

2.29 We are concerned about the inadequacies in the investigation of these cases and the impact that might have should any of the individuals concerned seek readmission to the NMC's register in future.

Evaluation and giving reasons for decisions

2.30 Ensuring that detailed reasons are provided for decisions taken and that those reasons clearly demonstrate that all the relevant issues have been addressed is essential to maintaining public confidence in the regulatory process. The requirement to provide detailed reasons also acts as a check to ensure that the decisions themselves are robust.

2.31 In this audit we looked for evidence of continuing and consistent improvements to the quality of the NMC's decision making at the initial stages of its FTP process. This included considering the NMC's process for evaluation and decision making, whether we agreed that the decisions were appropriate and whether sufficient reasons were given for the decisions made.

Cases closed by the screening team

2.32 We are pleased to report that there were no concerns with the NMC's process for evaluation and decision making relating to the decision to close in the 27 cases we audited that had been closed at the screening stage. We did, however,

identify three cases where the screening team did not document the reasons for the decision not apply for an interim order (see para 2.18).

Cases closed by the IC

- 2.33 As set out above (see para 1.23 to 1.26), the IC assesses whether or not there is a 'realistic prospect' of an FTP panel deciding that the registrant's fitness to practise is currently impaired, should the matter be referred to a final FTP panel hearing.
- 2.34 In this audit we reviewed 30 cases which the IC had closed (ie where it had decided that the 'realistic prospect' test was not met). We only had concerns that the IC might have made the wrong decision in one case. In this case one of the IC's reasons for closure was that there was evidence that the inadequacy of the registrant's training had led to their inability to identify pressure sores and that there was no evidence that the registrant was aware of the requirement to report the more serious pressure sores to the local safeguarding team. We were concerned that the IC had treated the registrant's lack of training as an excuse for their failing although the NMC Code states that 'you must have the knowledge and skills for safe and effective practice when working without direct supervision' and, 'you must keep your knowledge and skills up to date throughout your working life.'
- 2.35 In addition, we identified two IC decisions that would have been strengthened by the inclusion of more detailed reasoning (we note that we did not disagree with decisions to close these cases). Failing to document reasons for key decisions means that the regulator may not be able to justify those decisions if challenged. Our concerns in these two cases are as follows:
- In the first case no reasons were provided for the IC's decision that the 'realistic prospect' test was not met. In response to our audit finding the NMC said that the IC did not provide reasons because it accepted the recommendation in the NMC's investigation report and that report had detailed every allegation as well as the remedial action the registrant had already taken. In our view, the IC ought to have documented its own reasons for its decision and/or explicitly stated which aspects of the investigation report it relied on in deciding that the 'realistic prospect' test was not met
 - In a second case the IC considering the need for an interim order adjourned its decision to enable the registrant to seek representation, stating that the registrant's interests outweighed the public interest.

Referring cases for consideration by the Health Committee (HC) rather than the Conduct and Competence Committee (CCC) (application of Rule 14 (2) and the principles in Crabbie v GMC)

- 2.36 If the IC considers that the 'realistic prospect' test is met, it decides whether to refer a case for a hearing in front of either the HC or the CCC (see para 1.25). The relevant case law (*Crabbie v GMC*) and the NMC's legislative framework establishes that cases should not be referred to the HC if the allegations are so

serious that they might result in the registrant being struck off the register. Our audit identified two cases which the IC had referred to the HC although they were concerned about serious misconduct which might have justified striking off. The details of these two cases are as follows:

- In the first case the misconduct allegations were serious (they involved dishonesty) and resulted in the former registrant's dismissal from employment. In our view, the IC could not properly have concluded that striking off was unlikely and therefore it was wrong to refer the case to the HC. We note that the NMC's internal lawyers also considered that the IC's decision was wrong and inadequately reasoned. The HC rejected an application by the NMC for the case to be transferred to an FTP panel that had the power to order striking off
- We considered that the IC had inappropriately referred a second case to the HC, in circumstances where the alleged serious misconduct meant that striking off might have been required. We noted that there was no evidence to show that the IC had considered the relevant case law or the legislative framework in reaching its decision.

2.37 In both these cases the Registrar subsequently granted applications for voluntary removal. We are particularly concerned that voluntary removal was granted without any consideration of the misconduct elements of these cases.

Decisions made to cancel hearings

2.38 Two cases we audited had been closed under Rule 33 of the NMC (Fitness to Practise) Rules 2004, which permits an FTP panel to decide to cancel a hearing and close a case without holding a final hearing, having considered the reasons put forward by the NMC about why the final hearing should not go ahead.

2.39 We identified concerns about the NMC's evaluation and decision making in one of these two cases. In this case the NMC made an application for the hearing to be cancelled under Rule 33 because the registrant's misconduct could be remediated and even if the allegations were proved, a finding of current impairment of the registrant's fitness to practise was 'not likely'. Our first concern is that it is not clear that the test apparently applied by the NMC in support of its application for cancellation was the 'realistic prospect' test although we agree with the Chair's conclusion that there was no realistic prospect of the CCC finding the registrant to be currently impaired. We also had two concerns about the recent evidence that was relied on by the panel in deciding to close the case. First, the evidence did not demonstrate that the registrant had insight into their failings (they did not admit the allegations). Second, there were deficiencies in the evidence about the registrant's current standard of practice – one reference was from someone who did not appear to be qualified to assess the registrant's competence, and the other reference (from the registrant's employer) was addressed 'to whom it may concern' which suggested that the author was not aware of the purpose it was being used.

- 2.40 We identified serious concerns about either the decision taken or the reasons provided for the decision to grant voluntary removal in all 21 cases that we audited. Details of our concerns are set out in section 3.
- 2.41 We have not identified consistent improvements with the NMC's process for evaluation and decision making or the reasons provided for decisions and we will follow up on this in our next audit in 2014.

Interaction between the FTP and registration departments

- 2.42 The NMC only has power to investigate fitness to practise concerns against individuals who are on its register. Preventing the readmission to the register of individuals who apply for readmission to the register and whose fitness to practise is impaired is an important aspect of the NMC's role in protecting the public and maintaining confidence in the profession.
- 2.43 Information about the registration status of each registrant is stored on the NMC's registration database (WISER). In normal circumstances, failure to pay the registration fee results in an individual's registration lapsing and their removal from the register. However in circumstances where a registrant is subject to an FTP investigation, their registration will not be permitted to 'lapse' even if they fail to pay the registration fee. The purpose of this is to ensure that the NMC retains its jurisdiction to complete the investigation and take action against that registrant if necessary. In order to ensure that a registrant's registration is not allowed to 'lapse' while they are under FTP investigation, the NMC places an 'under investigation' flag on the individual's WISER record as soon as an FTP investigation is opened.
- 2.44 We checked the registration status of each registrant in the 81 cases that we audited.⁸ We found the registration status had been accurately updated throughout the cases' lifetime in the majority of cases, however we found inaccuracies in five cases. Our findings are as follows:
- In three cases that had been opened in 2012 there was a delay in placing the 'under investigation' flag on WISER to indicate that there was a current investigation. This type of delay could raise the risk that the registrant might 'lapse' from the register before the investigation is completed because there would be nothing to indicate that they were the subject of an FTP investigation
 - In a fourth case the 'under investigation' flag was not removed for five months after the case had been closed
 - In a fifth case the WISER record showed that the individual's registration had 'lapsed', which was inaccurate. We note that this inaccuracy did not prevent the investigation from continuing although the NMC no longer had jurisdiction to take any FTP action.
- 2.45 We were disappointed to find evidence in five cases of errors caused by failures in communication between the Registration and FTP departments as follows:

⁸ See footnote 7

- One case was not opened until nine months after the initial complaint had been made. By the time the NMC opened the case the individual's registration had 'lapsed' and the NMC could not therefore pursue an investigation. In addition, the NMC had failed to consider all aspects of the complaint (during the period before the FTP case was opened) in the context of considering the individual's application for readmission to the register. Fortunately that application was refused in any event, as the individual had a conviction for a drink driving offence. In response to our audit finding the NMC has said that the WISER system has been marked to prompt staff to check the FTP database so that in the event that this individual makes another application for readmission to the register in the future, staff will be aware of the outstanding complaint. Our concern is that it can be difficult to thoroughly investigate complaints once a considerable time has passed, as the quality of the evidence available is likely to diminish with the passage of time. The NMC said that it has now introduced a policy that will reduce the risk of recurrence of similar errors in other cases
- In a second case there was a record of a call to the Registration department from the FTP department querying why WISER incorrectly showed the registrant's status as 'lapsed' ie that the registrant had been removed from the register for non-payment. No response was ever received – which is particularly disappointing as it occurred in September 2012 at a time when the accuracy of the register was the NMC's top corporate priority
- In a third case WISER recorded a hospital address for the registrant and the FTP department did not seek a current residential address for the registrant when the case was opened. Our concern about this is that it raised the risk of correspondence about the investigation being sent to the hospital address – which would have been less secure than sending it to the registrant's residential address
- In a fourth case there was a data breach (see para 2.74 fifth bullet) which occurred because WISER had been incorrectly amended. The WISER record did not appear to have been corrected for one month after the error was identified
- In a fifth case the registrant had been readmitted to the NMC's register in 2011 (their registration 'lapsed' in 2008) after confirming that they had completed 450 hours of practice and 35 hours of learning activity in the previous three years. We were concerned that the Registration department referred the case to the FTP department on the basis that the registrant had been practising as a nurse when they were not on the NMC's register – although it was clear that the registrant had not been working as a nurse (or holding herself out as a nurse) while unregistered. We comment further on this case below (see para 2.111, third bullet).

2.46 We also identified two cases which indicated that improvements were needed in how the FTP department uses WISER:

- In one case the NMC wrote to the wrong registrant (who had the same name as the registrant who was the subject of the FTP complaint). Had the staff member concerned checked more of the details (eg the registrant's middle name, or whether the individual was a student or fully registered) it would have become apparent which registrant they should have been writing to
- In another case the NMC staff member said that they were unable to identify the registrant on WISER (and therefore they were unable to update the WISER record) as the complainant had only provided the first name and surname. When we searched WISER inputting an asterisk after the name, we identified the registrant without difficulty. This suggested to us that the staff member concerned had not been properly trained in using the WISER system. The NMC said the training provided to staff will be reviewed in light of our comment on this case.

2.47 We have therefore concluded that we have not yet seen consistent improvement in the interaction between the NMC's FTP and Registration departments and the use of relevant systems. The NMC said that since October 2012 it has been running daily reports to ensure that discrepancies between CMS and WISER are promptly identified and rectified. A further report was introduced in May 2013 to identify when flags are not removed from WISER. We will look for improvement in our next audit in 2014.

Customer care

2.48 Good customer service is essential to maintaining confidence in the regulator.

Adherence to the NMC's customer service standards

2.49 The NMC introduced customer service standards for fitness to practise in August 2011.⁹ We considered four aspects of these standards in our audit that we consider to be most relevant to the initial stages of the FTP process.

i) Providing updates to parties every six weeks

2.50 The NMC's customer service standards require updates to be provided to parties (ie the complainant and registrant) every six weeks. We found inconsistent compliance with this standard, as follows:

- Updates were not provided to the complainant every six weeks in two of the 27 cases we audited which had been closed by the screening team
- Updates were not provided to either the complainant or the registrant or both in 19 of the 25 cases we audited which had been closed by the IC following an 'in-house' investigation
- Updates were not provided by the NMC to either the complainant or the registrant or both in four of the five cases we audited which had

⁹ NMC's FTP customer service standards: http://www.nmc-uk.org/Documents/FtP_Information/FtP-customer-service-standards.pdf

been closed by the IC following an investigation by external lawyers. In one of these cases the complainant complained that they had not received an update on the case and had not been corresponded with for 20 weeks, although they had made written enquiries twice in this time. An update was subsequently provided, but this did not apologise for the delay

- Updates were not provided to the registrant and the complainant in one of the two cases we considered that was closed following a Rule 33 application to cancel the hearing. While we acknowledge that the complaint in this case had been received *before* the introduction of the customer service standards, we note that updates were not provided every six weeks *after* the introduction of the customer service standards
- Updates were not provided to either the registrant or both the registrant and the complainant in 14 of the 21 cases we audited which had been closed following successful applications for voluntary removal. In seven of these cases the initial complaints had been received *after* August 2011 and therefore updates should have been sent in accordance with the customer service standards. In the other seven, while the complaints were received *before* the customer service standards were introduced, we noted that updates were not provided every six weeks *after* the standards came into effect in August 2011. In one of these cases the registrant's representative had to send three requests for an update before one was provided by the NMC, which we consider is an example of very poor customer service.

2.51 Our findings demonstrate that the NMC is only inconsistently achieving its own customer service standard for updating parties every six weeks and that it is either not effectively monitoring compliance with this standard or it is not taking effective action to improve compliance. In response to our audit finding, the NMC has said that it does not routinely provide updates to parties every six weeks and that it is reviewing its customer service standards. We encourage the NMC to set customer service standards that are realistic as well as reasonable.

ii) Acknowledging correspondence

2.52 The NMC's customer service standards do not require every piece of correspondence to be acknowledged, which we did not consider to be unreasonable. However we were concerned to find in our audit that, in five cases receipt of correspondence was not acknowledged even though the sender had specifically requested an acknowledgement. In response to our audit findings the NMC has agreed that if an acknowledgement has been requested, one should have been provided.

iii) Failure to respond to correspondence

2.53 The NMC's customer service standards also states that correspondence will be acknowledged within five working days, stating the date by which the person can

expect to receive a substantive response and that a substantive response will be provided within 20 working days, unless a later date is agreed.

2.54 During our audit we identified six cases where there was either a delay in responding to correspondence, or a complete failure ever to respond. These issues were spread over the period from December 2011 to June 2013. The details are as follows:

- In one case closed by the screening team there was a failure to respond to the complainant's request for a meeting
- In two cases there was no record that correspondence from a registrant or their representative was ever responded to by the NMC
- In a fourth case the registrant's representative wrote to the NMC stating that the registrant remained unfit to work and expressing the hope that the investigation would soon be concluded. No response or acknowledgment was sent by the NMC, nor was the letter included in the information put before the IC – which led to a complaint from the registrant's representative
- In a fifth case there was a delay of 15 weeks in responding in full to an email from the registrant's representative. We acknowledge that once the representative chased for a response, a reply was sent the same day (although we note that the reply misspelled the representative's name)
- In a sixth case the registrant wrote to the NMC to enquire about the outcome of the IC's consideration of their case (it appears they had not received the decision letter) – to which the NMC did not respond for seven weeks. We note that an apology was made for the delayed response.

2.55 We think the failures to reply to queries from complainants in these cases may have damaged their confidence in the regulatory process.

iv) Customer service feedback forms

2.56 The NMC's customer service standards include a requirement that customer service feedback forms should be provided to the registrant and complainant in all cases that were either opened or closed on or after 1 August 2011. In response to our last audit report in 2012, the NMC acknowledged that its staff had not routinely been sending the forms out as required by the customer service standards and told us that this had been addressed by amending the IC decision letter so that it would act as a prompt for staff to send out the feedback forms.

2.57 In this audit we noted a continuing lack of consistent compliance with the requirement to send out customer service feedback forms, as required by the NMC's customer service standards. We found that forms were not sent:

- To either party in three cases that had been closed by the IC
- To the complainant in five cases that had been closed following successful applications for voluntary removal and to both the former

registrant and the complainant in one further case that had been closed following a successful application for voluntary removal.

- 2.58 The failure to gather feedback consistently may have implications for the NMC's ability to identify for itself the improvements in customer service it needs to make.

General customer care

- 2.59 During our audit we reviewed the NMC's customer service across the 81 cases which we audited.¹⁰ We identified customer service failings in 21 cases, broadly relating to three key areas where improvement is needed: supporting complainants and witnesses during the FTP process; communicating effectively with registrants and their representatives during the FTP process; and the accuracy of the NMC's written correspondence.

i) Supporting complainants and witnesses during the process

- 2.60 Ensuring that complainants and witnesses are properly supported throughout the investigation of an FTP complaint (and ultimately at an FTP panel hearing) is an important element of an effective FTP process. We identified six cases which demonstrated deficiencies in the support offered by the NMC to complainants and witnesses. These deficiencies occurred during the period 2011-2013. The details are as follows:

- In one case the NMC requested the same information from the complainant twice in three weeks. When the complainant did not respond, the NMC asked the complainant to respond the next day, or the case would be closed. The complainant wrote to the NMC caseworker to remind them that they had a disability and suffered from stress, which meant they had difficulty with compiling information. We were concerned about the inappropriate tone of the NMC's 'final demand' for the information
- In a second case the NMC sent seven pieces of correspondence to the complainant at their former employer's address, although the NMC had already been informed they no longer worked there. The last six pieces of correspondence (which included notifications about when the IC would be considering the case and the outcome, correspondence about the former registrant's voluntary removal application and confirmation that voluntary removal had been granted) were sent to this address although the complainant had written to the NMC to ask that correspondence was sent to their home address
- In a third case the NMC asked the complainant to provide the registrant's personal identification number, date of birth and address, although they were not the registrant's employer and therefore were unlikely to have that information. When the complainant queried the request, the NMC explained why the registrant's identity needed to be verified, but did not explain why it was seeking that verification from the complainant

¹⁰ See footnote 7

- In a fourth case the NMC did not notify the complainant of the date when the IC would be considering the case
- In a fifth case the complainant and witnesses were only notified in writing or by telephone that the final FTP panel hearing had been cancelled when the hearing date had already passed
- In a sixth case the NMC provided all the registrants involved in the case with a copy of the complainant's handwritten correspondence. The complainant had asked to remain anonymous and we consider that the NMC ought to have summarised the complainant's correspondence – both to protect their identity and also to ensure that each registrant only saw and responded to the allegations that directly affected them individually.

ii) *Communicating effectively with registrants and their representatives during the process*

2.61 We identified deficiencies in the NMC's communications with registrants and their representatives in 10 cases that we audited. The deficiencies occurred during the period from 2010 to 2013. The details are as follows:

- In two cases the registrant was not informed that they were the subject of an investigation for five months; in a third case the registrant was not informed for seven months
- In two cases the NMC did not respond to comments from registrants to explain to them that the FTP investigation would be continuing in the public interest, irrespective of their desire to no longer practise nursing
- In a sixth case the registrant's representative wrote to the NMC to inform them that the registrant was suffering from stress and needed to withdraw their active involvement in the FTP investigation. Five days later the representative wrote to the NMC complaining that the NMC had not corresponded with them, despite having notified the NMC that they were representing the registrant six months previously. The registrant's representative wrote again six weeks later, complaining that they had not received a response. In our view this represents extremely poor customer service, which will have damaged that individual's confidence in the NMC's processes for handling complaints about itself, as well as its FTP procedures
- In a seventh case the NMC's failure to appreciate that it had two cases open against the registrant led to delay, which caused further distress for the registrant, who already had fragile mental health. We noted a marked improvement in the NMC's customer care in this case after August 2012 (some four years after the case was opened) – from the point when the NMC pursued all contact through the registrant's chosen representative. The representative later thanked the NMC for taking this approach, which was aimed at minimising the distress of the FTP investigation for the registrant

- In an eighth case the IC requested a medical examination in February 2012, but the NMC did not act on this for five and half months. The NMC did not explain either the reason for the delay to the registrant or the reason why the medical examination was necessary
- In a ninth case the registrant telephoned the NMC to inform them that they were out of the country and had not had sight of the allegation, asking if they could be informed about the allegations by telephone. There is no record that the NMC provided the information requested by telephone, despite having a record of the registrant's telephone number
- In a tenth case the registrant's representative requested an early review of the interim order that had been imposed. The relevant IC meeting was scheduled to take place three weeks later, but was cancelled because the NMC omitted papers from the bundle. The NMC then scheduled the next review for three months' time, failing to take account of the request for an early review. We are concerned about the impact this must have had on the registrant's confidence in the fairness of the FTP process.

2.62 In our view these examples represent poor customer service, which will inevitably have damaged these individuals' confidence in the NMC's processes for handling complaints about itself, as well as its FTP procedures.

iii) Inaccuracies in correspondence

2.63 In our 2012 audit we identified some improvements in the quality of the NMC's correspondence. In this audit, while we saw evidence of improvement, we identified seven cases where there were inaccuracies in correspondence that occurred during the period from 2011 to 2013 (ie after the point at which the NMC introduced its quality checks). In particular we note the following four cases:

- In two cases letters were sent to registrants containing conflicting and potentially confusing information. One letter stated that an application for voluntary removal from the register had been granted and the other letter said that the final FTP panel would reach a final decision about the case
- In one case the NMC wrote to a medical adviser (who had provided a medical opinion on the case) to ask for an update about a registrant's health, but referred to the wrong registrant (see para 2.75 last bullet for our further concerns about this case)
- In one case the NMC sent the wrong standard letter to the registrant – the letter advised the registrant that if they did not respond, the case would be closed. This is the standard letter designed to be sent to complainants who have stopped responding. Sending it to the registrant in error could have caused the NMC significant procedural difficulties in continuing to pursue the case.

2.64 These cases demonstrate that the NMC has not yet achieved consistent accuracy in its correspondence and that the quality checks that were introduced in 2011 have not been entirely effective in resolving this issue.

Guidance

2.65 It is good practice to have staff guidance, documents and tools setting out the regulator's established policies and procedures, in order to ensure consistency and efficiency in case management.

2.66 We did not have any comments about the guidance that the NMC has in place for use by the FTP staff, other than some significant concerns about the NMC's voluntary removal guidance and its application. For more details about those concerns see section 3.

2.67 We have highlighted in earlier sections of this report our concerns about compliance with existing processes and guidance in the following areas:

- Delays with completing risk assessments (see para 2.16 to 2.17)
- Failures to accurately update WISER (see para 2.44)
- Failures to adhere to the customer service standards (see para 2.49 to 2.58)
- Failures to adhere to processes related to information governance to prevent confidentiality and data breaches from occurring and failure to identify and investigate those incidents once they occur (see para 2.60 last bullet, 2.74 last bullet, 2.75 last bullet, 2.76 last bullet).

2.68 In addition, our audit identified a further two cases demonstrating staff non-compliance with process and guidance. The details are set out below:

- In one case that was closed by the screening team no referral had been made to the Care Quality Commission, which breached the NMC's standard operating procedure. In response to our audit finding the NMC said that it has strengthened the relevant processes and that the form that is completed on closure of cases at the screening stage now requires referral to another regulatory body to be considered
- In one case the NMC incorrectly followed its Rule 33 procedure to cancel a hearing, in circumstances where it should have allowed the hearing to go ahead. The NMC's hearings manager had decided to use the Rule 33 process even though it was not appropriate in the circumstances, as it would mean that the witnesses could be released from attending the hearing (if the hearing was cancelled). It is not clear why neither the panel chair nor the legal assessor identified that Rule 33 could not be used in the circumstances of this case. In response to our audit finding the NMC said that it published guidance on offering no evidence and cancelling hearings in July 2013 and this has been communicated to NMC staff, legal assessors and panels. We were also concerned that a decision had been taken to notify the Authority of the

error (this was recorded in a file note) but that notification was never made.

- 2.69 While we saw evidence of compliance with procedures and guidance documents, we have concluded that this is not consistent and that further improvement is needed in this area.

Record keeping

- 2.70 Poor record keeping can lead to inappropriate decision making and poor customer service. Maintenance of a single comprehensive record of all actions and information on a case is essential for proper management of cases and for good quality decision making.
- 2.71 In our 2012 audit we found inconsistency in the approach taken to record keeping, with the result that information on individual cases was either not always easily accessible or not held in one place. We recommended in both that report and the previous report that the NMC should expand its quality assurance in order to improve its performance in this area. In responding to our audit findings in 2012 the NMC said that it had introduced new procedures in November 2010 to improve consistency in record keeping.
- 2.72 We are pleased to report that this audit there were no concerns about record keeping in any of the 27 cases we audited that had been closed at the screening stage.
- 2.73 Unfortunately we did identify concerns about record keeping in 13 of the remaining 54 cases that we audited.¹¹ We noted record keeping concerns that arose between 2008 and 2010 in four cases. We noted additional concerns in all 14 cases that occurred in 2011, 2012 and 2013.
- 2.74 Record keeping concerns that occurred during 2011 were as follows:
- In one case there were no records relating to the 'in-house' investigation
 - In another case there was misfiling of a police transcript that related to a different (unrelated case)
 - In one case there were no records on file of the receipt of information/evidence requested by the NMC, although that information/evidence had clearly been provided, as the NMC included it in the bundles of documents put before the IC
 - In one case the registrant was not sent notification about the date on which the IC would consider their case or a copy of the investigation report that would be considered by the IC. The NMC was only alerted to this issue two months after the IC had concluded the case, when a caseworker found the relevant documentation in a cupboard. The implications of this error are serious – the registrant was treated unfairly and the IC was potentially deprived of relevant information (ie

¹¹ See footnote 7

the registrant's representations, having read the investigation report). The NMC addressed this problem by arranging for the case to be considered by a fresh IC panel

- In another case there was a data breach when the notification about the IC's consideration of a case was sent to the wrong registrant (they had the same name as the registrant concerned in the case). In addition, the NMC did not take immediate action to address the problem – it was nine days after staff had been alerted to the error before they checked the registrant's address. We were also concerned about the NMC's approach once it had been established that a data breach had occurred. The NMC asked the wrongful recipient of the documents to destroy them (they were too heavy to return) but did not obtain confirmation that the documents had been destroyed appropriately (eg confirmation that they had been shredded). The NMC did not notify the registrant whose information had been disclosed that a data breach had occurred.

2.75 Record keeping concerns that occurred during 2012 were as follows:

- In one case no record was kept of a written request for an adjournment of the IC's consideration of the case
- In another case there were no records of responses to emails between internal teams
- In another case some correspondence from the registrant's representative appears to have been lost, as it was not kept on file
- In two cases correspondence was misfiled on unrelated cases
- In another case the NMC wrote to its medical adviser asking for an update but provided the name of the wrong registrant. This was a data breach and it is not evident that the NMC identified this for itself or took any remedial action.

2.76 Record keeping concerns that occurred during 2013 were as follows:

- In one case correspondence was misfiled on an unrelated case
- In another case, documents sent by the NMC to the registrant by mail had to be re-sealed during transit by the Royal Mail due to damage. This caused the registrant to raise concerns about breach of confidentiality. In response to our audit finding on this case the NMC has said that following this incident it was agreed that in future the senior management team would take a view on whether documents ought to be couriered and staff have been reminded to use sturdier envelopes
- In a further case there was a data protection breach when a registrant's personal data was sent to another registrant in error. The NMC appropriately advised the registrant concerned that a request had been made for the document's immediate return. However, it does not appear that the NMC reported this matter internally as an adverse

incident and when we reported our audit finding to the NMC (in November 2013) no remedial action had yet been identified, although the breach had occurred eight months previously. The NMC finally reported this as an adverse incident to identify learning in February 2014.

- 2.77 We will follow up on the NMC's management and handling of data and confidentiality breaches in our performance review. Based on our findings, it is not yet possible for us to conclude that the NMC has achieved consistent improvement in record keeping across its caseload. We will follow up on this in our next audit in 2014.

Timeliness and monitoring of progress

- 2.78 The timely progression of cases is one of the essential elements of a good FTP process. It is essential to manage workflow evenly, because delays in one part of the process that cause backlogs can stress the system unless relieved quickly.
- 2.79 In our 2012 audit we found delays in the progression of cases, as well as a lack of active case management and we identified the need for marked improvement in the NMC's performance in these areas. In order to reduce delays and to assist in identifying any periods of inactivity of longer than six weeks the NMC has introduced full case audits every two to four weeks, as well as monthly reviews of its older cases. In this audit we specifically looked for improvement in the following five areas:
- i) Gathering information to commence or progress an investigation
 - ii) Progressing cases once new information is received
 - iii) Periods of inactivity
 - iv) Chasing outstanding information
 - v) Notifying parties of the IC's decision.

i) Gathering information to commence or progress an investigation

- 2.80 In this audit we identified avoidable delays in gathering information or progressing the investigation in 11 cases. The delays related to i) the efficiency of investigations carried out by external lawyers; and ii) the omission of key documents from the bundle to be considered by the IC.

Investigations conducted by external lawyers

- 2.81 We noted two cases where investigations carried out by the NMC's external lawyers contributed to unnecessary delays in case progression:
- In the first case the external lawyers did not identify in advance of the IC considering the case that one page of a document was missing or that evidence had not been obtained about the procedures the registrant should have been complying with. In addition the investigation report indicated that the key witness could not be contacted, without taking into account the fact that this witness was an

NMC registrant and therefore could have been contacted at their registered address. These issues were only identified by the NMC's internal lawyer on a review of the case three months after the external lawyers' investigation report was completed but before the IC had made its decision

- In the second case the investigation report was incomplete as only one of two relevant incidents had been investigated. This omission was not identified by the NMC during the investigation and this led to delay in completing the investigation. The NMC said that there is a general expectation that staff handling cases which are being investigated by their external lawyers will check that all appropriate matters are being investigated.

2.82 In a further four cases we noted failures to investigate particular issues which had been identified at the outset. These omissions had not been identified by the NMC. Ultimately these failures led to avoidable delays in progressing the cases. The details of these four cases are as follows:

- In the first case the NMC did not seek to obtain any medical evidence about the registrant's alleged neuropsychological condition (to which it had been alerted by their representative) and this led to a delay once the case had been referred for a final FTP panel hearing, as the chair of that panel postponed the hearing for three months so that a medical report could be obtained
- In the second case there was no investigation of the registrant's ill health until 32 months after receipt of the initial complaint. The IC was made aware that the registrant's representative had suggested that the matter be treated as a health case but did not recommend that this aspect be investigated. The health issues were not investigated by the NMC until the second IC panel meeting which took place 20 months after the initial complaint
- In the third case, although the registrant alerted the NMC to their ill health in their representations to the IC, there was no investigation of the ill health aspect of the case until 29 months after the complaint was first received (that investigation was later ordered by an FTP panel at a hearing) This was of particular concern as the IC had initially recommended the NMC obtain a GP report covering the registrant's clinical history, but that recommendation was not followed and when the IC considered the case at the end of the investigation the only information it had about the registrant's health was more than five years old. In our view if the investigation into the registrant's ill health had been conducted more promptly, the case might have been concluded within a reasonable timeframe (in fact it was open for 42 months, before being closed following a successful application for voluntary removal)
- In the fourth case the initial investigation report to the IC said that ill health issues were to be investigated, but the final investigation report made no reference to those issues and the IC's attention was only

drawn to the ill health issues in an addendum to the report, produced by the NMC's internal lawyers. In addition, when the IC then requested the NMC obtain two medical reports, there was a delay of a year in requesting one of those reports.

2.83 In addition to the delays in the cases identified above (see para 2.81 and 2.82) (which we acknowledge were all cases opened before 2011) our audit identified two more recent examples of cases where avoidable delays were caused by deficiencies in external lawyers' investigations:

- The first case concerned a complaint received in November 2011. A gap in the evidence was not identified by the external lawyers who conducted the investigation or by NMC staff – it was only identified when the IC considered the case in February 2013. This led to delay of three and a half months while further investigation then had to be conducted (and meant that the NMC did not achieve the relevant key performance indicator in this case). In response to our audit finding on this case, the NMC commented that it does not require its internal lawyers to review investigation reports completed by its external lawyers prior to consideration by the IC. The NMC also noted that the IC did not ultimately make such a referral in this case
- In the second case a failure to obtain a key witness statement and the fact that another witness statement had not been signed or dated was not identified until after the lawyers' investigation had been completed. This led to a delay of 14 weeks while the missing statement was obtained (we acknowledge that the witness' ill health at the time contributed to the length of that delay).

2.84 We identified five cases where the NMC had not actively monitored progress of external lawyers' investigations and where we considered that its failure to do so had contributed to avoidable delays. The details of these cases are as follows:

- In the first case once the investigation was complete, it was not reviewed by the NMC's internal lawyers for a further three months, at which point it was found that a witness statement from a key witness had not been obtained. The need for that statement should have been recognised at the outset of the case
- In the second case the external lawyers' regular five week progress update indicated that no action had been taken on the case, other than making initial contact with the employer. The external lawyers' regular nine week progress update indicated that no further action had been taken, other than making initial contact with the complainant and receiving information from the employer
- In the third case the external lawyers were not chased by the NMC either for updates or for the investigation report – which was delayed by two months. The NMC said that there is an expectation amongst NMC staff handling cases investigated by external lawyers that they will proactively chase case updates

- In three cases there was a delay in instructing the external lawyers – by one month in one case and by two months in the other two cases.

The omission of key documents from the IC bundle

2.85 We audited three cases in which key documents were missing from the bundle for consideration by the IC. The outcome was that the IC had to reschedule its consideration of each case, which led to an avoidable delay in each case being concluded. The details are as follows:

- In the first case the IC’s meeting to review an interim order had to be adjourned because the bundle of documents for consideration by the IC was missing a medical report as well as the minutes and transcript of an earlier IC meeting
- In the second case the investigation report was missing from the bundle for consideration by the IC, which led to a delay of three months. The NMC said that case owners are required to conduct a quality check of the bundle for accuracy
- In the third case there was a document missing from the bundle prepared for the IC, which meant that its consideration of whether or not to impose an interim order had to be adjourned (for a third time, in the particular circumstances of the case).

ii) Progressing cases once new information is received

2.86 In one of the 11 cases that we audited which had been opened before January 2011, there was a delay by the NMC of three and half months in reviewing the investigation report from the external lawyers once it was received.

2.87 We also noted delay in progressing cases once new information was received in four of the 70 cases that we audited which had been opened after January 2011. These delays ranged from seven and 15 weeks in length in three cases and over five months in the fourth case.

iii) Periods of inactivity

2.88 In six of the 11 cases that we audited which had been opened before January 2011 there was no activity documented on the file for periods of between two and 19 months.

2.89 In five of the 70 cases that we audited which had been opened after January 2011 we found the following:

- In one case (a case closed by the screening team) there was no activity on the case for four months, which meant that the case was not closed within the target of 16 weeks
- In three cases there was no activity for periods of between five and eight weeks and in a fourth case there was no activity for a period of five months.

iv) Chasing outstanding information

- 2.90 In two of the 11 cases that we audited which had been opened before January 2011 there were avoidable delays as a result of the NMC failing to chase up information it had requested:
- In one case the NMC took three months to chase up a consent form that was required to progress the case. While this case had been opened prior to January 2011, this particular failure occurred after December 2012
 - In another case the NMC took three months to send a first 'chaser' for consent forms. That had no effect, but it took the NMC a further two and half months to send a second 'chaser'. When the consent forms were received, they had not been completed properly, but the NMC did not request this to be corrected for a further four and a half months. When the second set of consent forms were returned incomplete, it took the NMC a further four months to send out a third set for completion and a further two months to send a 'chaser'. One month later (and nearly 18 months after it had first sent out the consent forms for completion), the NMC identified that it had been using an incorrect address. It then took a further month for the NMC to contact the registrant's representative to request alternative contact details.
- 2.91 We also had concerns in two of the 70 cases that we audited which had been opened after January 2011:
- In the first case it was not until four months after a consent form had been received that the NMC noticed that it had not been properly completed. There was then a further delay in chasing up completion of a new consent form
 - In the second case it took 26 weeks for the NMC to obtain an independent medical adviser's final report. During this time the NMC only chased for the report on two occasions. Some of the delay was attributed to elements outside of the NMC's control (such as the registrant and the relevant expert cancelling appointments for sickness and other reasons). In response to our audit finding the NMC said it has improved the template letters it uses to obtain the relevant clinical records (because delay in obtaining those records is often the cause of delay in obtaining a medical report). We will review the impact of this in our next audit in 2014.

v) Notifying parties of the IC's decision

- 2.92 The NMC has an internal target that letters notifying the parties of the IC's decision in their case should be sent within five working days. If a decision letter is not sent within 10 days and there is not an appropriate reason for the delay, the NMC considers this to be an 'adverse incident'.
- 2.93 In two of the 11 cases that we audited which had been opened before January 2011 there were delays in notifying parties of the IC's decision – in the first case

there was a delay of three weeks; and in the second case there were three instances of decision letters being sent out more than five days after the IC's decision had been made.

- 2.94 We also identified delays in notifying the parties of the IC's decision in five of the 70 cases that we audited which had been opened after January 2011. The details are as follows:
- In four cases there were delays in notifying either the registrant or the complainant of the IC's decision – those delays ranged from one week to three months in length
 - In the fifth case there were three instances of decision letters being sent more than five days after the IC's decision had been made.
- 2.95 We were pleased to find that the decision to close the case was sent within five days in all 81 cases that we audited.¹² This represents an improvement in this area compared to our previous audit findings.
- 2.96 We do not consider that this audit has demonstrated consistent improvement in the areas highlighted above. We are particularly concerned about the need for improvement in the gathering of information to commence or progress an investigation in cases investigated externally. We will follow up on this in our next audit in 2014.

Timeliness in the completion of investigations

- 2.97 The NMC has introduced a number of key performance indicators to speed up its case progression. We checked on the NMC's performance against one of its internal targets and one of its key performance indicators in this audit that we consider to be most relevant to the initial stages of the FTP process.
- 2.98 The NMC has an internal target for all cases to be progressed by the screening team (either by referring the case for further investigation or by closing it) within 16 weeks introduced on 11 January 2011. We audited 70 cases where the complaint had been received after the introduction of the screening team in January 2011 and we noted only four cases in which this target had not been achieved.
- 2.99 The NMC introduced a key performance indicator on 1 August 2011 for 90% of investigations to be completed within 12 months of receipt of the complaint. The details are set out below:
- It took more than 12 months to complete the investigations in 12 of the 14 cases that we audited involving complaints that were received *before* 31 July 2011
 - We audited two cases involving complaints received *after* 1 August 2011 where the investigations took 12 and half months in one case and

¹² The decision letters referred to in para 2.94 refer to decision letters following IC meetings where decisions are taken about the case such as asking for expert advice, requesting further investigation, referring the case for consideration of an interim order and deciding whether there is a case to answer.

19 months in another. In response to our audit findings on these cases the NMC said that the delays occurred due to difficulties in obtaining witness evidence and documentation and we consider that to be a reasonable explanation, in the particular circumstances of these two cases

- In all 25 of the cases that we audited which had been closed by the IC following an 'in-house' investigation, the 12 month indicator was achieved.

2.100 Based on these findings we are pleased to be able to report that the NMC has improved the timeframes for the conclusion of its investigations, prior to each case being considered by the IC. This appears to be the result of the NMC's initiative to bring the bulk of its investigations 'in-house' and its use of investigation plans. (Please see para 2.27 for our further comments about this).

Conducting review meetings of interim orders in accordance with the NMC Order 2001

2.101 The NMC Order 2001 requires interim orders to be reviewed within six months of them first being imposed; and then every three months.¹³ We audited 33 cases where interim orders had been imposed. In 12 of those cases interim orders had not been reviewed within the required timescales. This was often because the panel ran out of time on the day and had to adjourn to a later date. In other cases failures to review interim orders within the required time limits occurred as a result of administrative failures by the NMC. In one of these cases proper notice had not been served on the registrant in accordance with the NMC's Rules.¹⁴ In another of these cases the NMC had scheduled the review to take place in Scotland although the registrant did not live there (which meant that there was no jurisdiction to deal with the case in Scotland).

2.102 In response to our audit findings the NMC said that its usual practice following an adjournment of an interim order review is to wait for the next required review hearing – unless the registrant requires an earlier review or unless information is received which indicates that an earlier review is required.

2.103 We consider this to be unacceptable practice as the NMC is failing to comply with its own legal framework.

Extension of interim orders by the courts

2.104 The NMC Order 2001 only permits interim orders to be imposed for a maximum of 18 months. If the NMC cannot conclude the case before that period has expired it has to apply to the relevant court for the interim order to be extended.

2.105 In six of the 33 cases that we audited in which interim orders had been imposed, the NMC had to seek extensions of those interim orders from the relevant court.

¹³ 31 (6) NMC Order 2001

¹⁴ 8(4) NMC (Fitness to Practise) Rules 2004 as amended

We considered that in all six cases this resulted from avoidable delays by the NMC in progressing the cases.

2.106 In three of these six cases we were also concerned to note the following:

- In the first case the NMC told the court that the delays that had occurred were 'in large measure due to a lack of engagement'. The NMC told us that the registrant had failed to cooperate with the NMC's independent testing company on three occasions. When we audited the case we concluded that the registrant had tried to engage as best as they could for the first 24 months and that the failure to cooperate with the independent medical testing company had only contributed to one month's delay, towards the end of the case. The NMC said that there is an expectation amongst NMC staff handling cases investigated by external lawyers that they will proactively chase progress
- In the second case the NMC sought extensions to the interim order on five occasions. On the first occasion (in December 2010) the NMC's request for an extension of the interim order was based on the need to obtain a statement from a 'newly identified witness'. In fact, there is a file note which records that the NMC's internal lawyer had requested the external lawyers investigating the case to contact this witness four months before the request for an interim order extension was made to the High Court. That suggests that a statement could have been taken from the witness before the interim order expired. We acknowledge that even if the statement had been obtained promptly, it would still have been difficult to schedule a hearing before the expiry of the interim order
- In the third case the court criticised the NMC's delays in progressing the case and said it was minded not to grant the extension.

2.107 We are concerned about the NMC's on-going need to seek court extensions of interim orders. We consider that our audit findings about this aspect of the NMC's approach have the potential to damage public confidence in the NMC as a regulator.

Protecting the public

2.108 Each stage of the regulatory process should be focused on protecting the public and maintaining public confidence in the profession and the regulatory system.

2.109 We are pleased that, in this audit that there were no concerns about public protection arising from the final decisions to close in the 81 cases we audited.

2.110 We are concerned however that we audited nine cases involving delays in applying for interim orders when there was sufficient information available to justify an earlier interim order application. In four of those cases we concluded that, had the NMC carried out a full risk assessment more promptly (following the introduction of the requirement to document risk assessments in February 2012) the delays in applying for interim orders might have been reduced (see para 2.12 to 2.13 and 2.16 to 2.17).

2.111 Our audit also identified seven cases where our concerns about the NMC's case handling calls into question its effectiveness as a regulator:

- There were two cases involving data breaches and it was not evident that the NMC identified the breach for itself or had taken any remedial action
- In a third case the caseworker's request for the IC's consideration of a case to be postponed so that further investigation could be undertaken was not communicated to the IC (although the caseworker was assured that the IC *had* postponed its consideration of the case). The IC considered the case before the additional investigation had been conducted and decided to close it. Fortunately, in the circumstances of this case, no risk to public protection arose, as the matter that was not investigated was not serious enough to have altered the IC's decision. The NMC also made the registrant's employer aware of the situation and advised them to raise a concern should further fitness to practise concerns come to light. We are however concerned that a procedural error of this type could have resulted in the IC reaching the wrong decision, because it did not have sufficient information
- In a fourth case the registrant had been readmitted to the NMC's register in 2011 (their registration 'lapsed' in 2008) after confirming that they had completed 450 hours of practice and 35 hours of learning activity in the previous three years. The NMC was subsequently contacted by the registrant's employer with information that the registrant had not been working as a registered nurse, but had been working in a care role. The IC ordered the inclusion of an allegation that the registrant had acted dishonestly in order to gain admission to the NMC register and referred the case for an FTP panel hearing. The NMC's internal lawyers raised concerns that this demonstrated a misunderstanding by the IC of the legal framework (which provides that in the circumstances that applied in this case,¹⁵ the IC could decide the matter itself without referring it to a hearing in front of an FTP panel). The NMC addressed this issue by interpreting the IC's decision as a 'minded to' decision rather than a final decision and, after amending the allegations to remove the reference to dishonesty that the IC had inserted, asked a different IC panel to consider the case. We understand that the NMC was trying to ensure that the original decision was corrected. Our concern about the case (other than about the IC's apparent lack of knowledge about the relevant legal framework and its analysis of the evidence) was that it was not clear from the file why the NMC had decided the action taken was within its legal powers (see para 2.45 last bullet)
- In a fifth case (see para 2.7 second bullet) due to administrative errors a case was not opened until nine months after the initial complaint had been received and only when the complainant contacted the NMC to find out about progress of the case. By that time, the individual's

¹⁵ Rule 5(6) of the NMC (Fitness to Practise) Rules 2004

registration had 'lapsed', which meant that it was no longer possible for the NMC to investigate their fitness to practise

- In a sixth case the NMC failed to notify the HCPC that it was investigating allegations against a nurse who had also qualified as an occupational therapist (one of the professions regulated by the HCPC) until we brought this to the NMC's attention. The consequence of this was that the registrant involved had been registered with the HCPC for seven months by the time the HCPC became aware of the NMC investigation – the registrant had also failed to declare the existence of the NMC investigation or the fact that the NMC had imposed an interim conditions of practice order on them. In addition, the NMC did not add to the allegations the registrant's dishonest non-disclosure to the HCPC of their status with the NMC
- In a seventh case we were concerned that the NMC had decided to close an investigation as a result of confusion caused by a closure letter it had sent to the registrant about a different case. Unfortunately the closure letter had not made it clear that a separate matter (relating to safeguarding issues) was being investigated on an on-going basis. When the registrant challenged the continuation of that investigation, the NMC accepted that it should be closed on the basis that the NMC's letter had given the registrant a legitimate expectation that it was no longer under investigation. This means that the issues were never fully investigated.

2.112 We recommend that the NMC's reviews its handling of the cases we identified that we considered posed risks to the maintenance of confidence of the NMC's system of regulation and takes steps to prevent a recurrence of these issues.

3. Detailed findings – voluntary removal

- 3.1 On 14 January 2013 the NMC introduced a voluntary removal process to enable registrants who are subject to fitness to practise proceedings to apply to have their names permanently removed from the NMC's register without a full public hearing.
- 3.2 The decision about whether or not to grant a request for voluntary removal is made by the NMC's Registrar¹⁶, on the basis of a recommendation made by FTP staff.
- 3.3 We set out the NMC's FTP Framework for voluntary removal at paragraph 1.27. The NMC's guidance about voluntary removal states that its primary purpose is to allow registrants who admit that their fitness to practise is impaired and who do not intend to continue practising to be permanently removed from the register without the need for a full public hearing when there is no public interest to warrant such a hearing and the public will be best protected by their immediate removal from the register.
- 3.4 We audited 21 cases which had been closed by the NMC between 1 January 2013 and 31 July 2013 following the grant of requests for voluntary removal from the register. We chose to include these cases in our audit as this was the first year that the NMC had operated this new process. Our findings about compliance with the casework framework (see Annex 1) in these cases are contained within section 2 of this report. This section of the report deals with our specific concerns related to the NMC's voluntary removal process. We identified concerns in all 21 of the cases that we audited.
- 3.5 We consider that decisions to grant an application for voluntary removal from the register during an ongoing FTP investigation require a careful balancing of the various purposes of fitness to practise: public protection, declaring and upholding standards and maintaining public confidence in the profession and its regulation. We would therefore expect to see any regulator that operates a voluntary removal mechanism demonstrating that it has assessed the public interest and demonstrating that it has properly applied its guidance as well as producing thoroughly reasoned decisions which specifically take the public interest into account in decisions on voluntary removal applications.

Application of the NMC's voluntary removal guidance

- 3.6 Our audit identified concerns about the contents of the NMC's guidance on voluntary removal decision making¹⁷ and/or about the way in which the NMC has applied that guidance. Our concerns relate to the following five areas:

¹⁶ In practice one of the NMC's assistant registrars often takes the decision on behalf of the NMC's Registrar. Where we have referred to "the Registrar" in this section we are referring to the decisions taken by either the Registrar or one of the assistant registrars.

¹⁷ NMC's Guidance on voluntary removal decision making: http://www.nmc-uk.org/Documents/FtP_Information/VR/Guidance%20on%20voluntary%20removal%20decision%20making.pdf

- The Registrar's assessment in granting voluntary removal
- Cases involving misconduct allegations
- Cases involving health and misconduct allegations
- The revocation of interim orders to enable voluntary removal to be granted
- Cases where voluntary removal was granted after the final FTP hearing had commenced.

The Registrar's assessment in granting voluntary removal

3.7 The NMC's guidance on voluntary removal states that the Registrar must not grant a voluntary removal application unless satisfied that it is appropriate to do so in all the circumstances. In reaching a decision about a voluntary removal application the Registrar must have regard to three factors: the public interest, the interests of the nurse or midwife and any comments from the maker of the allegation (ie the complainant). We consider the Registrar's decision in respect of each of these three factors below.

i) The public interest

3.8 The NMC's guidance sets out that the public interest includes: the protection of patients and the public from registrants whose fitness to practise is impaired; the maintenance and promotion of public confidence in the professions, including declaring and upholding of professional standards; and the maintenance and promotion of public confidence in the NMC's performance of its statutory functions.

3.9 We considered that the NMC had given insufficient weight to the public interest in granting voluntary removal in five cases that we audited. The details are set out below:

- The first case concerned a registrant who had borrowed money from a vulnerable patient. The Registrar accepted the recommendation to grant voluntary removal, on the basis that the registrant's misconduct did not involve serious harm to the patient or sexual misconduct and therefore the public interest would be best served by the individual's immediate removal from the register. We concluded that the Registrar had reached the wrong decision about the seriousness of the misconduct. It was also not clear to us that the Registrar had appropriately considered or weighed up the wider public interest in the case proceeding to a final FTP panel hearing. We comment further on the other aspects of the Registrar's decision making in this case below (see para 3.18 second bullet)
- In a second case we noted that the IC had based its decision to refer the matter for a hearing in front of an FTP panel on the public interest because the case concerned the care being provided to vulnerable patients in a residential setting. However the Registrar who took the decision to grant voluntary removal concluded that there was little

public interest in the matter proceeding to a hearing, as the complainant was content for the voluntary removal application to be granted. We were concerned that the Registrar's reasoning focused on the individual complainant's expectations and did not properly reflect the wider public interest

- In a third case the voluntary removal recommendation stated, 'as the fitness to practise case relates to misconduct and lack of competence allegations and given the restrictions on striking off orders in lack of competence cases the public interest may be best served by the registrant's immediate removal from the register.' It was not clear to us that the Registrar had taken due account of the fact that a striking off order is a possible outcome in relation to misconduct allegations, ie that had this case continued to a hearing in front of an FTP panel, the outcome might have been suspension or striking off. We comment further on this case below (see para 3.18 third bullet)
- In a fourth case we were concerned that the Registrar placed inadequate weight on the public interest in the case going forwards to an FTP panel hearing. We noted that the case concerned allegations that were considered sufficiently serious at an earlier stage of the FTP process for an interim order to be imposed on the registrant. We also noted that the case concerned the registrant's conduct as a senior manager, but that the Registrar appeared to regard that factor as making it less, rather than more, serious
- In a fifth case we were concerned that the Registrar's decision to grant voluntary removal was based on several assumptions that were not supported by the evidence, as well as an inappropriate weighing up of the public interest. The case concerned the registrant failing to administer medication and falsifying records to cover up their medication errors. The registrant was applying for voluntary removal due to their ill health. The NMC staff, in recommending voluntary removal, made an assumption that the registrant's failure to administer medication had not led to patient harm, however this was not verified. In addition, reliance was placed on there being no clear evidence that the registrant had sought to cover up the medication errors. Reliance was also placed on the registrant's remediation activity, without any account being taken of the fact that medicines administration training had been provided to the registrant six months before the relevant events occurred, which had not prevented those events from taking place. Finally, it was not clear how the Registrar had weighed the wider public interest (in allegations involving dishonesty and clinical failings proceeding to an FTP panel hearing) against the registrant's interests in voluntary removal being granted due to their ill health.

ii) The interests and future plans of the nurse or midwife

- 3.10 The NMC's guidance states that the relevant factors to be considered under this heading may include, the state of health of the registrant, the likelihood of them seeking readmission to the register, the length of time since they last practised,

the genuineness of their desire to permanently remove themselves from the register and any evidence that they have no intention to practise in the UK or elsewhere in the future.

3.11 We identified concerns about the assessment of these factors in four of the cases that we audited, as detailed below:

- In two cases we considered that the NMC staff ought to have sought further information to verify each registrant's stated intention to retire before recommending that the voluntary removal application was granted. In both cases the recommendation to the Registrar referred to 'strong evidence of retirement' although the only evidence was a statement of the registrant's intention to retire and information as to their ages (61 and 64 respectively). In our view it would have been appropriate to obtain confirmation from the registrant's employer of their intention to retire (or a copy of their resignation letter if they had already resigned from employment). In response to our audit finding about these cases the NMC said that it now requires applicants to provide relevant supporting evidence
- In a third case we were concerned that the Registrar had not taken due account of information from the maker of the allegation that the registrant might seek to practise as a nurse abroad once voluntary removal was granted and in fact the recommendation form stated that there was no such evidence (based on the fact that the registrant did not tell them they had any such intention). This was relevant because the NMC's guidance states that voluntary removal is generally not appropriate if the Registrar believes that the registrant intends to practise anywhere in future. We acknowledge that it appears that the registrant may not have been capable of continuing to work as a nurse due to their ill health, nevertheless, we consider that the NMC ought to have sought direct confirmation from the registrant that they had no intention of working abroad before granting the voluntary removal application
- In a fourth case the recommendation to grant voluntary removal was made on the basis that the registrant was 52 (and had been practising for 32 years) and therefore they were considered to be at a late stage of their career and were unlikely to seek readmission to the register. We did not consider it inappropriate to grant voluntary removal in the circumstances of the case, given the registrant's longstanding ill health. However we were concerned that the NMC took the registrant's age into account in taking the decision as age is not a valid reason for voluntary removal in our view. The NMC said that its own quality assurance of this case also picked up this issue and as a result the age of the registrant is no longer referred to in isolation of other factors.

iii) Any comments received from the maker of the allegations (the complainant)

- 3.12 In all cases where a voluntary removal application has been made the NMC is required by its legislative framework to seek comments from the ‘maker of the allegations’ (ie the complainant) on the application before it is considered by the Registrar. That person is defined as ‘the person who will be most affected by the decision to remove the registrant from the register without a public hearing.’ There is no requirement for that person (whom we refer to below as the complainant) to give their consent to the voluntary removal, but the NMC’s guidance requires the Registrar to have regard to any comments received from them.
- 3.13 We had concerns about the NMC’s consideration of comments from the complainant in the following six cases:
- In two cases the NMC did not seek comments from the complainant. The first case concerned a complaint about lack of competence that had been made by the registrant’s employer. By the time that registrant’s voluntary removal application was submitted, the NMC were treating the case as one concerning only impairment of fitness to practise arising from ill health. In those circumstances, the NMC did not ask the registrant’s employer for their comments on the application for voluntary removal. In the second case there was no complainant as such (the registrant had referred themselves to the NMC), although their employer had provided some relevant information. We considered that, while they were not the maker of the allegations, the NMC could have asked the employer if they had any comments in relation to the voluntary removal application. These two cases highlight practical difficulties with applying the legislative framework
 - In a third case we were concerned about the degree of weight that had apparently been given to the comments made by the registrant’s previous employer about the potential damage to their reputation and public confidence in them which might result from any final FTP hearing of the registrant’s case. This was an irrelevant consideration and should have carried no weight in considering the wider public interest. A further concern highlighted by this case is that it is impossible to evaluate the reasoning behind the decision to grant voluntary removal and the weight given to these factors, as the Registrar who made that decision did not document their reasons
 - In a fourth case the comments provided by the complainant were not taken into consideration by the Registrar, due to an administrative error. While the complainant had not objected to the grant of voluntary removal, they had raised a number of relevant concerns (which were not considered by the Registrar, as a result of the administrative error) including the possibility that the registrant might seek readmission to the register or work abroad as they were still at an early stage in their career. An additional concern was that the NMC neither responded to the concerns that the complainant had raised (for example by explaining that the fitness to practise allegations would be taken into account should the individual apply for readmission to the register in future), nor reveal that their comments had not in fact been taken into

account. We did not consider this to be good customer care and we were concerned that it was unlikely to have maintained that individual (who was also an NMC registrant)'s confidence in the regulatory process

- In a fifth case the voluntary removal recommendation form stated that the complainant had no objections to the voluntary removal. In fact they had only said that, 'the organisation action [sic] to refer [the registrant] was as a result of the importance of the investigation. Therefore we do not wish to further comment.' We consider that the recommendation should have set out complainant's comment in full, rather than stating that they had no objections as the decision maker could have been misled in our view
- In a sixth case the complainant objected to the grant of voluntary removal on the basis that it would be in the interest of public protection for the case (which concerned a lack of competence that compromised patient safety) proceeding to a hearing in front of an FTP panel. It was not evident that this concern had been taken into account by the Registrar who granted the application as no standalone reasons were provided for the decision to grant voluntary removal. We were also particularly concerned about the potential impact on confidence in the NMC of the statement that was made to the complainant that voluntary removal was highly recommended as there was a public interest in the cost saving that would be achieved if a four day hearing were avoided.

Cases involving misconduct allegations

- 3.14 The NMC's guidance states that the Registrar must consider both the extent of harm caused to patients and the potential impact on public confidence if voluntary removal is granted. It highlights that the nature of some cases may be a strong indicator that granting voluntary removal would not be appropriate because voluntary removal would mean that information about the case would not go into the public domain. The guidance places cases concerning actions that led to the death of a patient and any other significant harm (such as sexual misconduct) in that category of cases where voluntary removal may not be appropriate.
- 3.15 The guidance also draws distinctions between cases involving 'serious' misconduct or convictions and cases involving less 'serious' misconduct or convictions. The distinction drawn between the two appears to be based on the likely outcome at an FTP panel hearing.
- 3.16 The guidance indicates that in cases primarily involving 'serious' misconduct or a conviction (ie cases where suspension or striking off *may* be the appropriate sanction at an FTP panel hearing) and, where the 'realistic prospect' test is met in terms of proving the facts alleged, voluntary removal is less likely to be appropriate. In fact the guidance states that in such cases, voluntary removal is only likely to be appropriate in 'exceptional circumstances' which it states 'might include situations in which medical evidence from an independent source gives a

clear indication that the nurse or midwife is seriously ill and would be unfit to defend him or herself before a public hearing’.

3.17 The guidance states that it is only likely to be appropriate to grant voluntary removal in less serious misconduct/conviction cases if the case is not serious enough to result in a suspension or striking off if the facts alleged were found proved at an FTP panel hearing. We consider the NMC’s application of its guidance in each of these two areas in more detail below.

i) Cases where the allegations are of a ‘serious’ nature

3.18 We audited seven cases involving misconduct that we considered should have been categorised as ‘serious’ for the purpose of applying the guidance on voluntary removal. However, not all of those cases were categorised as involving ‘serious’ misconduct by the NMC staff or the Registrar. In those cases that were categorised by NMC staff or the Registrar as involving ‘serious’ misconduct, voluntary removal was granted on the basis that there were ‘exceptional circumstances’ which meant that voluntary removal was appropriate, despite the serious nature of the registrants’ misconduct. In our view, the seriousness of the misconduct in each case, combined with weaknesses in the mitigating evidence, meant that voluntary removal was not appropriate in any of these cases and they should have proceeded to final hearings in front of an FTP panel. The details of the misconduct and the mitigating features in these cases are as follows:

- In the first case the registrant admitted failing to complete an assessment, failing to contact the patient’s doctor or the out of hours medical service and difficulty in calculating a dosage. The registrant’s application for voluntary removal described the incident as a ‘psychosis type event when working with a patient that led to poor practice’. The NMC staff recommendation to the Registrar to grant voluntary removal referred to the registrant’s ‘minor misconduct’, described the allegations as not of a particularly ‘serious’ nature and highlighted the fact that they arose out of a single incident. Our first concern was that there was no recognition that the patient in question was terminally ill and that they had died. We identified an additional concern, which was that the NMC had not investigated the registrant’s statement that they had destroyed controlled drugs because they had been asked to do so. We were concerned that, in evaluating the seriousness of the case, the Registrar who granted voluntary removal placed a degree of reliance on the fact that no interim order had ever been imposed on the registrant. Our concern was that there was no evidence on the file to show that a risk assessment had ever been carried out or the need for an interim order had been considered and therefore it was not safe to place any reliance on the fact that one had never been imposed. We concluded that the case should have been categorised as one involving ‘serious’ misconduct. It was not clear from any of the documentation on the file that there were any ‘exceptional circumstances’ in this case that would have justified a decision to grant voluntary removal in those circumstances

- In a second case the IC referred the case for a hearing in front of an FTP panel, described the registrant's admitted misconduct (in obtaining a loan from a patient) as 'serious' and stated that it concerned a serious breach of professional boundaries with a vulnerable patient and potentially called into question the registrant's professional judgement, honesty and integrity. We were concerned that the Registrar granted voluntary removal, given the serious nature of this case and given the lack of any genuinely 'exceptional circumstances'. The recommendation on which the Registrar relied referred to: the fact that the registrant had largely repaid the loan they had accepted from the patient (although we noted that there was no independent evidence to verify the registrant's account that they had repaid it); the registrant's prompt admissions; a positive reference about the registrant; and the registrant's stated intention not to return to nursing. We did not consider that any of those factors amounted to 'exceptional circumstances'. We were further concerned that the Registrar had not (apparently) taken account of either the registrant's lack of insight into their misconduct, as demonstrated by their assertion that they did not regard the patient as vulnerable but as more of a 'close friend', or the comment made by the provider of the reference that they were not surprised by the allegations about the registrant (see para 3.9 first bullet)
- When the IC referred the third case for a final FTP hearing in front of the CCC, it described it as 'serious' and noted that the registrant's misconduct could have led to life threatening consequences for some patients and in fact did lead to serious harm for some patients. As set out above (see para 3.9 third bullet) the Registrar granted voluntary removal on the basis that striking off is not an available sanction for allegations about lack of competence and this meant that the seriousness of the misconduct element of the case was never considered. Given the IC's assessment, we consider that the Registrar should have reached a judgement about whether the allegations in this case were 'serious' and applied the guidance appropriately
- In a fourth case the NMC's internal lawyer originally decided that the misconduct involved was too serious for voluntary removal to be appropriate. However two months later the same individual agreed that voluntary removal was appropriate. We noted that there was no documented reasoning on file to explain the change of view. We were also concerned that the recommendation to the Registrar stated that the individual had shown insight from the outset, in circumstances where there was no evidence of insight into two aspects of the misconduct
- We considered that the fifth case concerned serious misconduct (relating to the registrant's management and leadership in a residential care home, allowing a culture to develop which allowed abuse and physical harm to occur to residents and failing to raise safeguarding issues) and we noted that an interim conditions of practice order had been imposed. We were therefore concerned that the recommendation

considered by the Registrar described the case as one of 'minor' misconduct and that the reasons given for the decision to grant voluntary removal referred to 'misconduct at the lower end of the spectrum.' In our view this case should have been treated as one involving serious misconduct, ie voluntary removal should only have been granted if 'exceptional circumstances' existed

- We considered that the sixth case concerned matters that should have been categorised as 'serious' misconduct, but which were in fact treated as 'less serious' misconduct by NMC staff and the Registrar. The case arose from a complaint from an employer about the registrant's clinical errors (which created risks to patient safety) and about their drug administration. These concerns were considered sufficiently serious for an interim order to be imposed while the case was under investigation and in these circumstances we concluded that both the staff who wrote the voluntary removal recommendation and the Registrar who decided to grant the voluntary removal application should have explained why the case was considered not to fall into the 'serious' misconduct category
- The seventh case concerned the registrant's administration of medication and record keeping, as well as dishonesty. We noted that the NMC staff making the recommendation about voluntary removal had (correctly in our view) categorised the case as one involving 'serious' misconduct. The first internal legal opinion was that the case was too serious for voluntary removal to be appropriate. However two days later a second internal legal opinion reached the opposite conclusion. There was no clear explanation on file about why a second opinion had been sought, or why that opinion was preferred to the first opinion. The basis for the recommendation that voluntary removal should be granted appeared to rest on a judgement made by NMC staff that, if the matter was dealt with by an FTP panel at a hearing, it would not result in the registrant's suspension or striking off. We were concerned that the NMC staff's judgement about this was flawed and did not take due account of the NMC's indicative sanctions guidance or the relevant case law about the appropriate sanction in relation to dishonesty. We were further concerned that the reasons given by the Registrar for granting the voluntary removal application included a statement that the dishonesty involved was not serious, because it did not involve planning or personal gain. That reasoning did not appear to reflect the relevant case law or the NMC's indicative sanctions guidance. Overall, we were concerned that the NMC's decision making in this case failed to maintain confidence in its regulatory processes.

3.19 In response to our audit findings about the handling of serious misconduct matters in cases where voluntary removal has been granted, the NMC said that following its own quality assurance exercise it has identified that it was not providing sufficient evidence or references and that amendments have been made to the application and recommendation forms to prevent this occurring again. The NMC also said that it will review its guidance in light of our findings to

ensure that it is sufficiently clear. We will follow up on the NMC's categorisation of 'serious' misconduct and also the application of the relevant guidance in this area (see para 3.14 to 3.19) in our next audit in 2014.

ii) Cases where the allegations of impairment have not been admitted

3.20 The NMC's guidance states that its primary purpose is to allow registrants who admit that their fitness to practise is impaired and who do not intend to continue practising to be permanently removed from the register, without the need for a full public hearing when there is no public interest in holding such a hearing. The section of the guidance that addresses cases involving lack of competence or less serious misconduct and convictions also states that 'it is only ever likely to be appropriate to grant an application for voluntary removal when the allegations of impairment have been admitted or proved.' Our audit identified four cases where the allegations had not been proved and the registrant had either not admitted all the allegations, or it is questionable whether or not they had done so:

- While the registrant in the first case did tick boxes on the voluntary removal application form to state that they admitted the alleged facts and admitted that their fitness to practise was impaired, they did also raise issues that suggested a lack of insight into their own responsibility for what occurred and a lack of acceptance that their fitness to practise was impaired. We considered that the NMC should have sought a clear admission from the registrant that they accepted that their fitness to practise was impaired, before treating this case as one where voluntary removal was appropriate
- We were particularly concerned that the decision to grant voluntary removal in the second case was based in part on a factual error. The reasons for the decision referred to the registrant having admitted all the allegations, but in fact, the registrant had not admitted the most serious aspect – dishonesty (please see para 3.18 last bullet for our other concerns about this case)
- Similarly in a third case, both the recommendation for voluntary removal and the Registrar's decision to grant voluntary removal referred to the registrant's admission of all the allegations, but in fact the case file demonstrated that the registrant had consistently denied one of the allegations
- In a fourth case the registrant applying for voluntary removal had ticked the 'don't know' box in response to the question 'do you admit the facts of the allegation against you; do you admit your practise is impaired' on the form requesting voluntary removal. However the recommendation made by NMC staff to grant voluntary removal wrongly recorded that the registrant had admitted the allegations and the decision to grant removal therefore appears to have been taken on the basis of a factual inaccuracy.

3.21 Having reviewed the operation of the NMC's voluntary removal application process across the 21 cases we audited, we consider that the Registrar making the decision about whether or not to grant voluntary removal would be better

informed if the application form required registrants to set out in their own words why they are applying for voluntary removal and their views about the allegations against them, rather than just requiring them to tick various boxes. In response to our audit findings the NMC has said that it has amended the application form so that applicants are required to sign at the end of it and make a declaration that they admit the facts of the allegation and admit that their fitness to practise is impaired. While this represents an improvement, it is in our view inadequate to enable the NMC to assess insight.

Cases involving both health and misconduct/conviction allegations

- 3.22 The NMC's guidance states that where allegations are 'multi-factorial' the Registrar will consider whether voluntary removal is appropriate in all the circumstances. The guidance around the treatment of 'serious' misconduct or conviction cases also applies in multi-factorial cases (ie if a suspension or striking off order may be an appropriate sanction, voluntary removal 'will not generally be appropriate and the case should normally proceed to a full panel adjudication, save in 'exceptional circumstances').¹⁸ Unfortunately the guidance does not explain how this applies in practice – particularly given that the NMC's legislative framework (unlike that of some other health professions regulators) means that in multi-factorial cases involving the registrant's ill health, any misconduct/conviction matters often "fall away" once a case is referred to the HC. This is because cases that involve both allegations of impairment due to ill health and allegations of misconduct/convictions are usually referred for a hearing by the HC (which does not have jurisdiction to consider misconduct matters) – *unless* the misconduct involved is so serious that suspension/striking off may be required.
- 3.23 Our audit identified a number of cases involving 'multi-factorial' allegations, which had been referred for a hearing in front of the HC and where the Registrar granted voluntary removal. In taking the decision to grant voluntary removal, the Registrar considered only the ill health matters and did not take into account additional misconduct allegations. In our view, that approach does not accord with the guidance on voluntary removal which states that in 'multi-factorial' cases the Registrar 'will look at all the allegations and consider whether in all the circumstances voluntary removal may be appropriate.' This issue arose in five cases, the details of which are set out below:
- In the first case arose following notification from the police that the registrant had been convicted of drink driving and speeding offences. In our view the misconduct issues were particularly relevant to the decision in this case as the HC had taken a decision to remit the case to the CCC and this decision was taken only two days prior to the application form for voluntary removal being submitted. The case also involved other issues of misconduct as the registrant had failed to co-operate with the NMC's investigation however neither this nor the registrant's criminal convictions were taken into consideration by the Registrar. The Registrar took the decision to grant voluntary removal partly on the basis of information that the case concerned only the

¹⁸ Paragraph 44

registrant's ill health. In response to our finding in this case the NMC said that, in its view, a well-informed member of the public, in full possession of the relevant information about this case would not perceive that the registrant had sought voluntary removal to avoid misconduct proceedings. In our view however, in the absence of the Registrar's consideration of these issues it could appear that the NMC allowed the former registrant to be removed from the register to avoid the misconduct allegations being properly dealt with

- In a second case the Registrar granted the voluntary removal application in relation to impairment of the registrant's fitness to practise due to ill health. No account was taken of the background of misconduct allegations which were no longer being pursued
- In a third case, the CCC decided to transfer the case to the HC (for reasons that were unclear to us when we audited the file). Before the HC could hear the case (and decide whether or not the allegations were so serious that it should be transferred back to the CCC) voluntary removal was granted. We were concerned that the recommendation that was made to the Registrar, on the basis of which they decided to grant voluntary removal, made no reference to the fact that misconduct allegations had already been found proved – instead stating that there were no 'outstanding' misconduct matters which was factually inaccurate. The recommendation also stated that the allegation concerned only the registrant's ill health. We also noted that that the NMC's internal lawyers had noted that it was not 'completely clear' whether the registrant admitted impairment of their fitness to practise. Our main concern was that the misconduct aspect of the case was not taken into account by the Registrar
- In a fourth case the FTP panel that was invited to revoke the interim order (so the voluntary removal could take effect) was not provided with all the details of the allegations against the registrant (this was a 'multi-factorial' case and the panel was only provided with information about the registrant's alleged ill health). We consider that the panel ought to have been made aware of the entirety of the allegations
- The registrant concerned in the fifth case had reported a conviction for drink driving and their employer also informed the NMC that they had attended work under the influence of alcohol on more than one occasion (which the registrant denied). The recommendation made by staff to the Registrar addressed only the ill health aspect of the case and did not refer to the potential impairment of the registrant's fitness to practise by reason of their conviction or their misconduct, nor did it address whether or not the registrant had admitted those aspects of the case. The recommendation also described the registrant as having 'insight from the outset'. We consider that the Registrar ought to have considered all aspects of the case before granting voluntary removal.

3.24 In addition to the concerns raised above (and at para 2.36 to 2.37) about the granting of voluntary removal applications on the basis of incomplete information,

we are also concerned about the potential public protection risk should any of these individuals apply for readmission to the register, as it appears that they would only need to provide evidence that their fitness to practise is no longer impaired by ill health. In response to our concerns about these cases the NMC has assured us that if the individuals applied for readmission to the register, their full FTP history would be taken into account. We recommend that the NMC puts a written procedure in place to ensure that this happens in practice, as well as taking steps to ensure that the entirety of the case background is taken into account. The NMC said it will review its guidance to ensure that it is sufficiently clear.

Revocation of interim orders prior to granting voluntary removal

- 3.25 The NMC's guidance about voluntary removal reflects the restriction of its legislative framework, which prevents voluntary removal while the registrant is the subject of an interim suspension or conditions of practice order. The NMC have interpreted this to mean that if the Registrar decides that voluntary removal should be granted where there is such an order in place, that order must be revoked before the voluntary removal can happen. In practice this means that once the Registrar has decided to grant a voluntary removal application, an FTP panel will be asked to revoke any existing interim order. We note that the NMC's guidance about voluntary removals does not deal with this issue at all. The NMC said that it will review its guidance and we will follow up on this in our next audit in 2014.
- 3.26 Of the 21 cases we audited which had been closed following a successful application for voluntary removal, 16 involved registrants who were subject to interim suspension or conditions of practice orders at the time.
- 3.27 As a result of our audit we have also identified that panels being asked to revoke interim orders so voluntary removal can go ahead did not always appear to understand whether it is open to them not to revoke the interim order, or the basis on which they might decide that is appropriate. There was also an apparent lack of clarity about the extent to which a panel should give detailed reasons for its decision about revoking the interim order.
- 3.28 We noted concerns in the following four cases:
- In the first case the panel referred to the NMC's guidance on voluntary removal, noting that voluntary removal is only granted in cases involving 'serious' misconduct if there are 'exceptional circumstances'. The panel therefore asked to be provided with more information about why the decision to grant voluntary removal had been taken. NMC staff initially refused to provide that information and by the time that refusal was reconsidered the panel had already reached its decision. We were surprised that the panel had revoked the order, given the lack of information before it. We also concluded that the reference in the panel's decision to the problem caused by the lack of information may have damaged the various parties' confidence in the NMC

- In the second case, the panel that was asked to revoke the interim order (so that voluntary removal could take place, following a Registrar's decision to grant the registrant's application) confirmed the order rather than revoking it. This appears to have been an error and unfortunately the NMC have not provided an explanation about why it occurred, or any assurance as to how repetition will be prevented
- In the third case we were troubled to note that the panel revoking the interim order stated as part of its reasoning that it was not in the public interest to hold a four day hearing in relation to a registrant who did not wish to continue practising. That reasoning suggests that it would always be appropriate to grant voluntary removal if it is applied for, which is not consistent with the NMC's guidance about voluntary removal. It also suggests that this particular panel considered that they had a role in reviewing the Registrar's decision to grant voluntary removal and that they could, if they considered it appropriate, prevent that decision taking effect by refusing to revoke the interim order. This case raises a concern about the lack of clarity about the FTP panels' role in the process and what factors they should consider in reaching decisions about revoking interim orders
- In the fourth case the only reason provided for revoking the interim order was that the Registrar had decided that voluntary removal ought to be granted. The panel took a different approach in this case and it raises a concern about the lack of clarity about the FTP panels' role in these circumstances and the extent to which a reasoned decision is required.

3.29 We consider that the NMC should provide guidance and training to its panels about handling these types of application and that it should routinely provide standardised documentation about the voluntary removal decision to a panel that is being asked to revoke an interim order in order to facilitate voluntary removal. In response to our findings in these four cases the NMC said that since the decision to grant the request for voluntary removal is taken by the Registrar (who has statutory responsibility for taking this decision) the panel's decision about whether to revoke the interim order is administrative. The NMC acknowledged that initially this was not clear to some IC panels asked to revoke interim orders but this is now clearer and the NMC will review its guidance and provide refresher training to clarify further if necessary. We will follow up on this in our next audit in 2014.

Cases where voluntary removal was granted after the final FTP hearing had commenced

3.30 One of the public policy reasons why voluntary removal is considered acceptable in some circumstances is that it means that a final FTP hearing need not take place, which results in a cost-saving for the regulator and may speed up the timeframe for conclusion of the case. That benefit is not achieved to the same extent where voluntary removal is only granted partway through an FTP hearing.

- 3.31 Our audit included six cases where voluntary removal was granted after the final FTP hearing had commenced.

Protecting the public and maintaining confidence in regulation

- 3.32 Our audit identified four areas where we considered that the impact of the NMC's handling of these cases had implications either for public protection or the maintenance of public confidence in the system of regulation operated by the NMC. These are as follows:

i) The age of the allegations

- 3.33 We acknowledge that the age of an allegation can impact on the likelihood that an FTP panel will find that the registrant's fitness to practise is currently impaired as a result of that allegation.
- 3.34 However we were concerned that one of the reasons given for the decision to grant voluntary removal in two cases was the age of the allegations. In these two cases NMC staff stated in their recommendation to the Registrar that there was little to no public interest in the cases being heard by an FTP panel because of the age of the allegations. In one case the allegations were one year old and in the other they were seven months old at the time the NMC opened these cases. We were concerned about the age of both cases being used as a justification for granting voluntary removal in these circumstances, given the majority of any delay occurred after the relevant complaints were received by the NMC. Neither case was more than two years old in any event.

ii) Informing the registrant about the option of voluntary removal part way through the FTP process

- 3.35 Voluntary removal from the register while an FTP case is ongoing only became an available option in January 2013. The NMC sought to publicise the new process to relevant stakeholders, including those registrants who were already the subject of FTP cases, in what it called 'appetite' calls. We have no criticism of the NMC advising relevant stakeholders of new FTP initiatives. However, we consider that using FTP staff to contact registrants who are the subject of FTP cases, in order to effectively invite those registrants to apply for voluntary removal sends out a confusing message.
- 3.36 It is also not clear to us that the NMC gave due consideration to the impact its activity might have on the Registrar's evaluation of the sincerity of each registrant's desire to remove themselves from the register (a factor that the Registrar is required by the guidance to assess). We note that the guidance makes it clear that, while evidence that the registrant had already taken steps towards retirement or reduce their scope of practice *before* any concerns were raised with the NMC may be a strong indicator of their sincerity, caution should be applied in assessing the genuineness of the registrant's desire for voluntary removal where an application for voluntary removal appears to have been triggered solely by FTP proceedings. We saw no evidence in our audit that NMC staff making recommendations or the Registrar deciding whether to grant

voluntary removal had considered this in light of the fact that the NMC had invited registrants to apply for voluntary removal.

iii) Procedural errors

3.37 We identified one case in which three serious procedural errors had occurred. We concluded that the NMC's handling of this case was extremely poor and raised concerns about its overall fitness to practise process. The three procedural errors were as follows:

- The NMC mistakenly opened a second case about a registrant, involving substantially the same issues as the original case. It appears that when the second case was opened, no-one checked the registrant's registration status which would have indicated that they were already under investigation. In addition, an assumption was made by the NMC staff member working on the original case that the registrant had ceased co-operating with the NMC – when in fact the registrant had simply been corresponding with the staff member working on the second case. This error only came to light when the registrant applied for voluntary removal (following the advice of the NMC staff member working on the second case). That application for voluntary removal had to be rejected because the registrant had been made subject to a 12 month suspension order as a result of a hearing in the original case, which the staff member working on the second case had not known about
- The FTP panel that reviewed the suspension order in the first case publicly apologised for the NMC's errors. It allowed the suspension to expire in June 2013 in the knowledge that the registrant wished to apply for voluntary removal. Once the second application for voluntary removal was received, the NMC staff recommended that the Registrar grant the request for voluntary removal. Unfortunately, the decision that was subsequently made to grant voluntary removal by the Registrar was legally invalid because the NMC had not complied with its legal framework. The legal framework sets out that if a voluntary removal application is received after an FTP panel has begun to consider the case, the recommendation to the Registrar about the voluntary removal application must be made by the FTP panel itself and not NMC staff. The NMC attempted to correct the mistake by asking each FTP panel member, by email, to consider the voluntary removal application. There is no record on the file of the legal advice taken however the NMC said it obtained legal advice as to the appropriate process to follow in these circumstances. There is no record of whether the NMC considered convening a meeting/hearing of the FTP panel, as opposed to seeking each panel member's view individually. The NMC explained that this error had occurred due to the voluntary removal process being relatively new however at the time of the error, the process had in fact been operating for five months
- As noted, the original decision to grant the registrant's voluntary removal application was invalid. This led to a delay of several weeks

before the registrant's name was actually removed from the register. That was significant because a previous suspension order had been allowed to expire, on the basis that the registrant was applying for voluntary removal. The outcome was that there was no restriction on the registrant's practice between the expiry of the suspension order and their removal from the register, three months later. The NMC said that there was no public protection risk from this error as the register showed that the registrant was voluntarily removed and we also note that the registrant was not well enough to work during that period in any event. Nonetheless, the NMC as the regulator had failed to ensure that they were restricted from doing so.

- 3.38 In response to our audit findings about this case the NMC has said that it has now trained its staff on the procedure to follow when FTP hearings are under way at the time when a voluntary removal application is received. It has not explained why senior staff within the FTP department did not follow the correct process in this case.

iv) The failure to provide reasons

- 3.39 We noted that the Registrar did not record their own reasons for the decision to grant voluntary removal in any of the 21 cases that we audited. While the decision letters that were sent to the registrants provide reasons for the decisions to grant their applications, these letters in fact simply repeat what was stated in the relevant recommendations made by staff to the Registrar.
- 3.40 In response to our audit finding on this issue the NMC has said that the Registrar adopted the detailed reasons provided in the recommendations in every case and that there were no separate reasons for the decisions the Registrar made.
- 3.41 We are concerned that there is no evidence to demonstrate that the Registrar conducted appropriate scrutiny of each application before granting voluntary removal, as no separate rationale for their decisions was recorded. This approach represents poor practice in the exercise of a public body's decision making function and in our view is likely to damage public confidence in the NMC. It is particularly troubling in the circumstances where the recommendations made by the staff were based on incorrect interpretations of the relevant guidance and/or the facts, as highlighted in our report and therefore any decisions based on those recommendations were likely to be unsound.
- 3.42 In response to our concerns, the NMC has amended the voluntary removal recommendation form so that it contains a summary box in which the Registrar is to explain the reason for their decision.

4. Cases involving registrants employed by the Mid Staffordshire NHS Foundation Trust

Background

- 4.1 In 2010 the Mid Staffordshire NHS Foundation Trust Public Inquiry report ('the first Inquiry report') was published. The first Inquiry report focused on the care provided by the Mid Staffordshire NHS Foundation Trust¹⁹ ('the Trust') between January 2005 and March 2009. The first Inquiry report focused on individual cases of patient care, so that further lessons not already identified by previous investigations could be learnt.
- 4.2 Following the publication of the first Inquiry report, the NMC opened a number of cases about registrants who had been employed in senior positions on the wards at the Trust that had been the subject of criticism in the first Inquiry report, including several cases where the NMC had not received a complaint from an external source.²⁰
- 4.3 In February 2013, the final report of the second Mid Staffordshire NHS Foundation Trust Public Inquiry ('the second Inquiry report') was published. The second Inquiry report examined why the serious problems at the Trust had not been identified and acted on sooner by the relevant bodies, including the NMC. Following the publication of the second Inquiry report the NMC reviewed 38 of the cases concerning registrants who had been employed at the Trust which it had previously closed.²¹ Following its review, the NMC concluded that the records 'need to be improved' in 11 of the 38 cases; and that an additional six cases required 'further review'.
- 4.4 In our performance review of the NMC in 2012/13 we said that we would consider in our next audit a number of cases involving registrants who had been employed at the Trust ('Trust cases'). In fact we considered 19 Trust cases during this audit, including:
- The 11 cases referred to above where the NMC's review identified that records 'need to be improved' (that records improvement exercise was carried out in July/August 2013, during our audit)
 - The six cases referred to above, which the NMC had categorised as requiring 'further review' (that review was completed in July 2013)
 - Two cases that had been closed at the screening stage in July 2013.
- 4.5 Given the level of public interest in the accountability of health professionals involved in the care of patients at the Trust, we decided it would be helpful to address our findings about the NMC's handling of these cases in a separate section of this report.

¹⁹ Formerly the Mid Staffordshire General Hospital NHS Trust

²⁰ Under Article 22 (6) NMC Order 2001

²¹ 10 of those cases had originated from external complaints; the other 28 had been initiated by the NMC itself

- 4.6 We therefore set out below our findings in relation to the 19 Trust cases that we audited, using the headings referred to in the casework framework.²² Please see section 2 of our report (or Annex 1) for more detail about the requirements under each heading of the casework framework.

Receipt of information

- 4.7 The majority of the Trust cases that we audited had been initiated by the NMC, rather than by complaints from an external source. Only four of them related to complaints made by members of the public or the Trust (the remaining 15 were cases that the NMC had itself initiated). In three of the four cases that involved external complaints we found that the NMC had acknowledged the complaints appropriately. However in one case the employer's complaint was not acknowledged for three months and the witness (also the patient) was not contacted for seven months.

Risk assessment

- 4.8 In nine of the cases we audited we saw no evidence that a risk assessment was ever conducted. We acknowledge that these cases were opened and closed before February 2012 when the NMC introduced its amended procedure to document risk assessments.
- 4.9 In seven cases there was evidence that a risk categorisation exercise had been carried out (these cases pre-dated the NMC's introduction of a requirement to do a documented risk assessment in February 2012) which demonstrated that an interim order had been considered and ruled out, but there were no reasons provided for the decisions taken not to apply for interim orders. This means that there is no explanation of the NMC's reasoning at the time those decisions were made, which is not good practice and does not represent compliance with the casework framework.
- 4.10 We were pleased to note that risk assessments had been completed in the three cases we audited which concerned complaints received after the NMC introduced the requirement for risk assessments to be documented in February 2012.

Gathering information / evidence

i) Cases opened under Article 22 (6) NMC Order 2001

- 4.11 We considered 15 cases that had been opened under Article 22 (6) NMC Order 2001 (ie cases where there was no external complainant). We had concerns about the quality and robustness of the investigation carried out by the NMC in 10 of these 15 cases.
- 4.12 The decisions to close 10 of the cases were taken by senior NMC staff without referral to the IC, on the basis that the evidence did not demonstrate 'significant,

²² Our findings in respect of these 19 cases are not referred to elsewhere within our report, other than in section 1 and 5 of this report.

persistent fitness to practise issues against the registrant.’ These cases were therefore closed at the screening stage.

- 4.13 File notes that were added to each file in July 2013 referred to an email that was not on file but which apparently outlined external legal advice that had been provided to the NMC, on the basis of which the NMC decided not to investigate these cases any further. The file note said, ‘at our meeting, you will recall that we discussed whether we needed to take any further steps to investigate these complaints and it was decided that sufficient enquiries had been made. Accordingly a decision was made that the case should be closed.’ There was no record on the file of the advice that was actually given by the NMC’s external lawyers about the types of further investigation that could potentially be undertaken or about the consequences of taking those steps (or not doing so). There was also no record of the factors the NMC decision makers considered in deciding to close the cases without undertaking further investigation. We consider that the approach that was taken by the NMC in these cases (as recorded on the files we audited) was inadequate to assure the public that the regulator had acted appropriately, particularly in light of the extent of public concern about misconduct by registrants at the Trust.
- 4.14 We have a concern about staff closing cases on the basis that they did not demonstrate ‘significant, persistent fitness to practise issues against the registrant’. This does not appear to us to be the relevant test to apply. As set out in paragraph 1.22 of our report, the relevant part of the legislative framework says that the NMC **must** [our emphasis] refer to the relevant committee or person any allegation that is made to it ‘in the form required’. The NMC has defined ‘in the form required’ to mean that an allegation must identify the registrant (with contact details and PIN if possible), describe the incidents and be ‘supported by appropriate evidence’ although there is no legal definition of that phrase. In response to our concern about the closure of these cases in the circumstances set out above, the NMC has said that it would not have been proportionate to have conducted further investigation and that it was unnecessary to record its deliberations about other possible avenues of investigation. This response is particularly unsatisfactory, given the level of public concern about the regulatory response to Trust cases.
- 4.15 We set out more detail about these 10 cases and our concerns below:
- It appeared from the files in four cases that the NMC had assumed there was no evidence calling the registrants’ fitness to practise into question on the basis that there were no specific complaints made to the Trust about these registrants (each of whom was employed as a nurse manager on wards where multiple failings in patient care were identified). In our view, the NMC should have enquired into whether any other sources of relevant evidence existed, eg by making enquiries of the Healthcare Commission²³ about the evidence relied on in its investigation and/or by making a request to the Inquiry for access to any relevant evidence it had gathered

²³ Now the Care Quality Commission

- In a fifth case, we noted that the nature of the allegation against the registrant was not clear and the evidence that had been gathered was not kept in the case file. Our most serious concern about this case was that the decision to close it had been reached on the basis that a linked case (involving a senior nurse) related to the care of the same patient had been closed and following a review of the relevant patient's clinical records by the NMC's external lawyers. In our view (based on the documentation available on the case file) that decision was taken before sufficient investigation had been conducted
- In a sixth case we noted that the relevant complaints file (which the NMC obtained from the Trust) contained the complainant's contact details. We were therefore concerned that the NMC had not contacted the complainant to obtain evidence from them, nor sought information from the Trust about whether or not the registrant was the nurse in charge of the relevant ward on the relevant dates. The NMC had also not obtained expert evidence about whether or not the registrant should properly be held responsible for ensuring the accurate completion of the patient's care plan (the subject of the complaint). We therefore concluded that the NMC had closed this case without undertaking adequate investigation
- In a seventh case the registrant was involved with the care provided to five patients who were the subject of separate complaints. The NMC closed the case, apparently on the basis of legal advice that there was unlikely to be a finding of impairment of the registrant's fitness to practise and therefore it would not be proportionate to undertake further investigation. We were concerned that the NMC did not pursue various relatively straightforward lines of investigation before deciding to close this case: it did not make enquiries of the local coroner about whether or not an inquest into one patient's death took place (the NMC was aware that the patient's family had contacted the local coroner) and if so what the outcome was; and it did not seek information from the Healthcare Commission²⁴ about the outcome of its complaints team's investigation
- In an eighth case a referral to the IC was made on the basis of general allegations and this was later withdrawn in order to enable more specific allegations to be drafted. The NMC then obtained information from the Trust about seven complaints that had involved the registrant. The NMC then decided that there was insufficient evidence to call the registrant's fitness to practise into question and therefore the case was not considered by the IC. We considered that decision was at odds with the earlier decision to refer the case to the IC, on the basis of just general allegations. We disagree with the view that the NMC expressed to us in response to our audit finding on this case – which was that had it obtained further information about the seven complaints, that would only have reinforced its decision to close the case. We do not consider that it was possible for the NMC accurately

²⁴ Now the Parliamentary Health Service Ombudsman

to predict what the outcome would have been had it obtained additional information in this case

- In a ninth case the IC was unable to decide whether or not to impose an interim order due to the discrepancies in the NMC's witness evidence. The NMC said it had taken the correct approach in this case because it had not delayed in applying for an interim order. We were concerned however that the NMC had not itself identified the issue the IC had identified and taken steps to address the discrepancies and make it clear to the IC which piece of evidence was relevant to which of the allegations before asking the IC to consider the case
- In a tenth case there was a document on file linking the registrant, who was the manager of the ward concerned, to eight complaints about patient care (the outcome of those complaints was unclear). The NMC did not have any information from the Trust to confirm what the registrant's role was in relation to each of these complaints – and the way in which the Trust recorded information about complaints at the time meant that the registrant's only involvement in each complaint might have been as a witness or investigator, rather than as the person responsible for any failings in care. In one of these complaints, the registrant was responsible for investigating the complaint to enable the Trust to respond. The outcome of the Trust's investigation of that complaint was an acceptance of the staff's denial that they would ever behave in the way alleged, a statement that the Trust had adequately addressed the concerns raised and an apology for any areas where the standard of care fell below that expected. In our view that information provided sufficient basis for the NMC to undertake further investigation of the case. It was unclear why the NMC did not seek to obtain evidence from the patient or complainant in these circumstances. We noted that the registrant in this case had been removed from the role of ward manager by the Trust – and in our view that was a factor that the NMC should have taken into consideration when deciding whether or not to undertake further investigation. We concluded that the NMC's decision to close the case was taken prematurely, before it had undertaken adequate investigation.

4.16 In a further two cases we identified the following concerns about the NMC's investigation:

- We were concerned that the NMC's reason for closure of an eleventh case was factually inaccurate. The stated reason for closure was the absence of Trust records of complaints about the registrant. However an email from the Trust that was on the NMC file referred to two complaints concerning the registrant and another document on the file set out the details of these complaints. The NMC staff wrongly closed the case on the basis that there were no complaints about the registrant, when information about two complaints was clearly on the NMC file
- The IC decided to adjourn its consideration of the twelfth case until it had received an employer reference from the Trust commenting on the

fitness to practise of the registrant and a reflective piece from the registrant. When the NMC requested the Trust to provide such a reference, it did not explain the meaning of fitness to practise or set out the allegations against the registrant (the NMC has confirmed that it was not its practice to do so at the time). We were therefore concerned that the Trust was not alerted to matters that would have been relevant to the requested reference. We also had concerns that the IC, when considering the case in February 2012, did not identify a discrepancy between the reference provided by the Trust and the other evidence about the outcome of the Trust's disciplinary investigation. The Trust's reference stated that the investigation had not demonstrated sufficient evidence at the disciplinary hearing to dismiss the registrant, but there was sufficient concern to remove the registrant from their leadership role and to issue a final written warning. In fact the Trust's investigation had concluded that the case *had* been proved, but the disciplinary panel did not feel that dismissal was an appropriate sanction and took into account the lack of support/training provided to the registrant.

ii) *Cases arising out of referrals made to the NMC by the Trust or out of complaints by members of the public*

4.17 Four of the 19 Trust cases we reviewed resulted from referrals to the NMC by the Trust or from complaints made by members of the public. Our audit identified concerns about the NMC's investigation of three of those four cases, as set out below:

- The first case resulted from a complaint made by Trust matron on behalf of a patient, following an incident that the Trust reported to the local adult safeguarding team. The NMC closed the case without investigating the allegations, on the basis that there was insufficient evidence (because the only evidence supporting the allegations was the patient's evidence). While the NMC's file recorded that the patient might be able to provide further information, no attempt was made to contact the patient. We were also concerned that in reaching the decision to close the case the NMC had placed considerable reliance on a reference from the registrant's employment agency, which consisted of the completion of tick box forms at the end of each temporary assignment rather than any description of the registrant's general abilities or approach. We concluded that it provided very limited assurance about the registrant's fitness to practise and we therefore considered that the case had been closed before due investigation had been completed
- The NMC failed to progress the second case for four months after receiving the relevant complaint from a patient's relative. Shortly after the NMC first sought further information about the case, the registrant 'lapsed' from the register, which meant that a fitness to practise investigation could no longer be pursued. This raised a number of concerns: first, about the initial failure to progress the case promptly, following receipt of the complaint; and second, about the failure to ensure that the registrant was prevented from 'lapsing' from the

register following receipt of the complaint. In addition, we were concerned to note that the NMC attempted to commence/continue its FTP investigation into the registrant following their 'lapsing' from the register, in circumstances when it should have been clear to the staff involved that the NMC no longer had any legal power to do so. An additional concern is that this registrant had a number of juvenile and adult convictions which they had failed to disclose to the Trust. Both the convictions and the non-disclosure of them are matters that might impair a registrant's fitness to practise and they (as well as the complaint) have been left unaddressed as a result of the NMC losing jurisdiction over this particular individual. Should the individual apply for readmission to the NMC's register at a future date, the NMC may encounter difficulties in obtaining reliable witness evidence on all the relevant issues, due to the passage of time

- The third case resulted from a complaint made by the Trust. In deciding to close the case, significant reliance was placed on a positive reference provided by the complainant (who was the relevant matron). Our concern was that the reference had not been signed and the NMC did not check its factual accuracy (because it was sent on letter headed paper). While we did not disagree with the decision to close the case, we considered that it was not good practice to take that step without having verified the reference.

Evaluation and giving reasons for decisions

4.18 We were concerned about the decisions taken in two Trust cases that had been closed by the IC:

- The IC decided to close the first case on the basis that the 'realistic prospect' test was not met (a conclusion that was not supported by the investigation report prepared by the NMC's external lawyers). The IC reached this conclusion on the basis of the passage of time since the event (four years), a number of positive testimonials and the registrant's continued career progression. We were concerned that the IC did not consider the registrant's lack of real insight (the only evidence of insight was the fact that they had cooperated with the Inquiry and accepted accountability for their own actions), or the lack of adequate remediation. We were particularly concerned that the IC did not appear to have considered the wider public interest in deciding whether or not the 'realistic prospect' test was met (ie the IC did not appear to consider whether a finding of impairment might be necessary in order to declare or uphold standards or to maintain public confidence in the profession). We concluded that the IC had placed too much reliance on the fact that four years had passed since the incidents giving rise to the allegations and that it was wrong to conclude in all the circumstances of the case that the 'realistic prospect' test was not met. We note that the NMC took legal advice about whether they could reopen this case

- The IC adjourned its original consideration of the second case, inviting the registrant to produce a reflective piece. However the IC then overlooked the reflective piece provided – that error was not identified until raised by the registrant’s representative. The IC chair then amended the decision letter, without consulting the other members of the IC so that it recorded that a reflective piece *had* been submitted by the registrant. It was not appropriate to amend the IC’s decision without all the relevant IC members. We do not accept the view that the NMC expressed to us that this amendment was ‘minor’ and therefore of a type that an IC chair can make unilaterally. It remains unclear from the file what the basis was for any conclusions the IC reached as to the registrant’s insight (and whether or not the reflective piece was taken into account by the IC). On our review of the evidence, we concluded that the registrant had shown little reflection about their failings and we therefore remained concerned that the IC had closed the case partly on the basis of an unsound evaluation of the likelihood of repetition.

Interaction between the registration and FTP departments

- 4.19 Our audit identified three cases which had been opened before the NMC established that the individuals in question had already ‘lapsed’ from the register (ie the NMC had not initially identified that it had no jurisdiction to open these cases). In response to our audit findings the NMC said that these cases were opened for two reasons. First as a ‘protective measure’ to stop anyone coming off the register while initial enquiries were underway and second to keep a record of the concern in case anyone who was no longer a registrant applied for readmission to the NMC’s register in future. We accept that it is appropriate to keep a record of this type of concern however we remain concerned that FTP staff did not check the registration status of the registrant as a first step before opening and progressing an investigation particularly given the difficulties the NMC has experienced in managing its resources effectively.
- 4.20 Our audit also identified one case where, as the result of an administrative error, an individual was permitted to ‘lapse’ from the register when an FTP investigation into them had already been opened, in breach of the NMC’s procedures as well as in contravention of good practice across the regulatory sector. While this did not result in any direct risk to public protection (once ‘lapsed’ from the register an individual is not permitted to work as a registered nurse), this type of procedural error is likely to damage public confidence in the regulatory process.

Customer care

- 4.21 There were no complainants in 15 of the 19 Trust cases that we audited, because those cases were initiated by the NMC itself, rather than as a result of an external complaint. We were therefore not able to assess the NMC’s customer care in respect of complainants in those cases. We were concerned that the NMC did not notify the registrants who were under investigation that cases had been opened against them in 11 of those 15 cases. It appeared to us that (unless there was a risk of such notification prejudicing the investigation) this represented poor practice. It also raised a query for us about how the NMC would have

responded to a request for fitness to practise information from a potential employer in relation to those registrants. We also noted a further concern in one of these cases about the NMC's approach to third parties – it made 16 requests to the Trust for information and documentation, which placed a significant burden on the Trust as the information dated back over the previous five years and the NMC imposed a two day deadline.

4.22 We noted concerns in a further five cases, as follows:

- In three cases updates were not provided to the registrant every six weeks, in line with the NMC's customer service standards
- In four cases we noted delays in sending decision letters compared to the NMC's target of sending decision letters within five working days. In one case it took two weeks to send the decision letter to the registrant. In a second case the closure letter was never sent to the patient. In a third case the complainant was not sent a decision letter and when they telephoned the NMC one week after the case had been closed to enquire about the outcome, a detailed note of the conversation was not recorded. In a fourth case the NMC was advised during a telephone call with the Trust that the registrant was not aware that the case had been closed, which prompted the NMC to contact the registrant. However the closure letter was not copied to the registrant's representative – who wrote asking for an update – to which the NMC made no reply
- We were concerned about the wording and tone of a decision letter sent to a registrant in July 2011 in one case. The letter stated, 'I am pleased to advise that this case has been closed. I hope this meets with your approval.' Our concern was that this language did not appropriately reflect the NMC's statutory purpose and its primary focus on public protection.

4.23 We noted the following customer care issues in the NMC's handling of the final two cases that were opened and closed during 2013 which we audited:

- In both cases updates were not provided to the registrant every six weeks in line with the NMC's customer service standards
- In one case it took three weeks to communicate the IC decision to two witnesses.

Record keeping

4.24 We identified 16 cases which had been linked to other Trust cases on the electronic case management system, although they did not involve the same registrants, incidents or patients. The NMC's explanation for the linking of these cases was that they had all been opened under Article 22 (6) NMC Order 2001; however that does not appear to be correct, as one of them resulted from a complaint from a patient's relative and one resulted from a complaint made by the Trust (we also noted that another case, involving a former director of nursing at the Trust, which had been opened under Article 22(6) was not linked). It is a matter of concern that the rationale for linking in Trust cases was not consistently

applied. We recommend that the NMC re-considers the findings from our last audit on the linking of cases.

4.25 We noted a number of record keeping concerns in five cases which we set out as follows:

- In two cases there were documents within the paper files which concerned other registrants. The NMC has said that each case involved multiple registrants and that any references to other registrants would have been redacted had these cases progressed. We consider this to be poor record keeping practice that created an unnecessary risk of inappropriate disclosure of confidential information (particularly as in one of these two cases there was sensitive employment information on the file)
- In a third case not all the documentation had been scanned onto the electronic case management system, which meant that not all the evidence on which the NMC's decision was based was on the case record. We also noted that there was reference to eight complaints being made to the Trust relating to this registrant but information relating to only four of those complaints was held on the electronic case record and that information was not complete. We were unable to assess the appropriateness of the outcome because not only was the electronic case record incomplete but the paper file had been destroyed prior to our audit
- In a fourth case although the decision letter that the NMC sent to the registrant said that the NMC had approached the Trust for information, there was no record on file about that information request (eg what information the NMC had asked for). In response to our audit finding the NMC said that this was standard practice and that in this case the information request would have been for 'any investigative or disciplinary meeting notes that relate to this matter'. We do not consider this good practice as it is not possible to see from the file what information was requested or obtained and therefore it is not possible to understand the full basis for the decision to close the case
- In a fifth case there was a case note stating that, 'this matter was accidentally overlooked and as a result it was only today that the public letter was sent. Before sending the letter I telephoned the complainant and explained.' We considered that it would have been better practice for the note to record the actual conversation (ie the information provided to the complainant) rather than simply recording its purpose.

4.26 These record keeping concerns relate to the NMC's handling of cases between 2009 and 2011. We had no concerns about record keeping in the two Trust cases which we audited that had been opened (and closed) by the screening team in July 2013. We are disappointed, however, that we identified a further three concerns about record keeping that arose as a result of the NMC's review of its handling of the Trust cases in 2013 as follows:

- In 12 cases (all of which were closed by the NMC between July 2010 – September 2011) we noted that a number of records and documents had been added to the electronic case records in August 2013. These records were copies of requests made to the Trust for information relating to various registrants, copies of documents relating to how enquiries were handled generally and copies of action plans and key decisions taken. Much of this information was not relevant to the individual cases and we were therefore concerned that the documents had been added to each file
- The paper records for six of the cases were destroyed six months after the cases were closed in line with the NMC’s retention policy. This is of concern because we identified that in one further case (which was closed in July 2011) there were documents missing from the electronic case record which should have been apparent to the NMC before the paper file was destroyed. While it would be unacceptable for the case record to be incomplete in any case, it is particularly troubling that this occurred in a Trust case, given the high level of public concern about these cases and therefore the need to maintain an adequate audit trail of decision making. We recognise that it is good practice in information governance to destroy paper records promptly. We are however concerned that the NMC is currently operating a policy of destroying paper records within six months in circumstances where the electronic case records are not always complete
- There was an inadequate record of the outcome of the review conducted by the screening team in July 2013 in relation to six cases. The only record on each file was a brief file note created by a lawyer in the team, confirming that no further action would be taken in these cases, without detailing the reasons for the review, who conducted the review (we noted that in two cases the review was in fact carried out by senior members of the FTP department), what was considered as part of the review, or the reasons for the review outcome.

4.27 We recommend that the NMC revisits its systems for checking that electronic case records are complete, taking account of the findings of our two previous audits as well as the findings from this audit. In our previous two audits in 2012 and 2011 we recommended that the NMC take steps to expand its quality assurance of records management, in order to ensure that its performance in record keeping improves. We recommend that the NMC reviews its current system for quality assurance of record keeping in light of the concerns highlighted above.

Timeliness and monitoring of progress

- 4.28 We noted inadequacies in the NMC’s case progression during the period from 2009 to 2011 in 10 of the 19 Trust cases that we audited as set out below:
- Six cases took eight months to conclude and the seventh took 12 months to conclude. All seven cases were closed without consideration

by the IC and there is therefore no explanation for these lengthy timeframes

- It took the NMC seven months to close an eighth case once it had identified that the individual's registration had already 'lapsed' (ie the NMC had no jurisdiction to investigate the case)
- In two cases there appeared to have been lengthy periods of inactivity by the NMC (five months and six months respectively). The NMC said that during this period these cases were under investigation by its external lawyers however there was no evidence that the NMC was monitoring the progress of these investigations during this time
- It took the NMC over five months to notify the registrant in one case that they were under investigation
- A file note on another case recorded that the case had been 'accidentally overlooked'. We noted that the NMC only began requesting basic information (such as consent from the patient to request their clinical records, information from the Trust's investigation and information to confirm the identity of the registrant) four months after the complaint had been received.

4.29 We were not able to carry out a meaningful assessment of timeliness in the remaining nine cases that we audited because no investigation was carried out. We acknowledge that the NMC has been taking steps to improve the timeliness of its case handling in the three years since the failures identified above and that there were no issues with case progression in the two cases we audited that had been opened (and closed) in 2013.

Protecting the public and maintaining confidence in regulation

4.30 As a result of its 2013 review of its handling of Trust cases the NMC identified 11 cases where it considered that the case records 'needed to be improved'. A number of records and documents were therefore added to each of the 11 cases during August 2013 (see para 4.26 first bullet).

4.31 We were concerned that the NMC's review did not identify the following issues in its handling of six cases, as set out below:

- In the first case (the one identified above in para 4.15 last bullet) the NMC review did not identify an action point which remained outstanding (to check what action was being taken by the Trust in relation to a particular registrant)
- In the second case (the one identified above in para 4.16 last bullet) the NMC review failed to identify the discrepancies that we identified in the evidence that had been relied on by the IC
- In the third case we noted that some records and documents appeared to be missing from the case file. Their omission would have impacted on the NMC review. We were concerned that this did not appear to have been identified as an issue by the NMC

- We were concerned about the NMC's decision not to re-open the fourth case, following its review. The review identified failings in the original investigation but concluded that in any event the case would not be taken forward if it were re-opened, in light of a positive reference from the registrant's employer. We did not agree with the NMC's evaluation (for further details of our concerns in this case please see para 4.17 first bullet)
 - The NMC's review failed to identify that the original investigation of the fifth case had not obtained information key information (for further details of our concerns in this case please see para 4.15 fourth bullet). In response to our audit finding about this case, the NMC has said that it will seek that information and consider whether action may be required as a result
 - In the sixth case the NMC's review identified a failure to mark a registrant's registration status as 'under investigation' on the registration database. The error was only identified three years later – had the individual applied for readmission to the register during that three year period, NMC staff would not have been able to identify the outstanding FTP concerns and readmission to the register may have been granted without those concerns being investigated. An additional concern raised by this case is that the NMC's failure to identify the error at an earlier stage raises questions about the effectiveness of the steps the NMC told us that it had taken to ensure consistency between the case management and registration systems.
- 4.32 We found no significant concerns in the two cases we audited that were opened and closed in 2013 and that did not relate to issues highlighted by the first or second Inquiry reports.
- 4.33 Our audit of the NMC's handling of the remaining 17 Trust cases identified a number of serious concerns about the relatively limited extent of the investigation that the NMC conducted. The failures to gather sufficient information or evidence, or failures to take that information/evidence into proper account when deciding whether or not to close cases meant that the evidential basis for some of the decisions made by NMC staff and the IC was inadequate. This meant that either the wrong decision was made and/or the decision that was made was based on unsound or inadequate reasons. The issues we identified in the NMC's handling of these cases are particularly serious, given the level of public concern about the accountability of registrants involved in incidents of poor patient care at the Trust during the relevant period.
- 4.34 Our audit of these cases also revealed a number of record keeping and administrative errors. We are however particularly concerned that the NMC's own relatively recent review of these cases, conducted in 2013, did not identify the majority of the concerns we identified in our audit. We consider that this demonstrates an on-going weakness in the NMC's quality assurance.

5. Conclusions and recommendations

Conclusions and recommendations related to detailed findings in section 2

- 5.1 In this section we set out our conclusions and recommendations related to 81 cases that the NMC closed at the initial stages of its FTP process during the period 1 January 2013 to 31 July 2013. This figure comprises:
- 27 cases closed by the screening team
 - 30 cases closed by the Investigating Committee (IC) – 25 of which were investigated ‘in house’ by NMC staff and five of which were investigated by the NMC’s external lawyers
 - Three cases that were closed by the NMC following a referral for a final FTP panel hearing – either the Health Committee (HC) or the Conduct and Competence Committee (CCC)
 - 21 cases that were closed following successful applications for voluntary removal from the register.
- 5.2 We identified areas of improvement in the NMC’s performance. The majority of the improvements are in the initial handling of complaints by the new screening team, which was introduced in January 2011. In summary the improvements we observed were:
- We saw acknowledgements of complaints in 69 of the 70 cases that we audited that were opened after the screening team was introduced in January 2011 (see para 2.6)
 - We are pleased to find documented risk assessments in all 58 cases that we audited which had been opened after 1 February 2012 when the NMC introduced an amended procedure requiring risk assessments to be documented demonstrating good compliance with this process (see para 2.14)
 - We are pleased that there were no delays in applying for interim orders in the 17 cases we audited that had been opened after the NMC introduced its amended risk assessment procedure (see para 2.15)
 - We are pleased to report that there were no concerns about record keeping in the 27 cases we audited that had been closed by the screening team (see para 2.72)
 - We are pleased to report that there were no concerns about the NMC’s evaluation and decision making in the 27 cases we audited that had been closed by the screening team (see para 2.32)
 - All 25 of the cases which we audited that had been closed by the Investigating Committee (IC) following an ‘in-house’ investigation by NMC staff had met the internal key performance indicator for completion within 12 months. This appears to be the result of NMC’s

initiative to bring the bulk of its investigations 'in-house' and its use of investigation plans (see para 2.99 last bullet)

- We noted that closure decision letters had been sent to all parties within five days in all 81 cases which we audited that had been closed between 1 January 2013 and 31 July 2013 (see para 2.95).

5.3 These areas of compliance, particularly the high number achieved by the screening team are positive.

5.4 We have, however, not yet seen consistent improvement in relation to:

- Timeliness and customer care in the NMC's handling of all 23 cases outsourced for investigation by external lawyers (See para 2.48 to 2.64 and 2.81 to 2.84). We also had record keeping concerns in 10 of these 23 cases (see para 2.70 to 2.77)
- Evaluation and decision making in cases referred to the IC (see para 2.33 to 2.37)
- Interaction between the FTP and registration departments (see para 2.42 to 2.47)
- Adherence to customer service standards (see para 2.49 to para 2.58)
- The accuracy of correspondence (see para 2.63 to 2.64)
- Compliance with internal process and guidance documents (see para 2.65 to 2.69)
- Record keeping (see para 2.70 to 2.77).

5.5 In relation to the interaction between the FTP and registration departments the NMC said that since October 2012 it has been running daily reports to ensure that discrepancies between CMS and WISER are promptly identified and rectified. A further report was introduced in May 2013 to identify when flags are not removed from WISER. We will follow up on this and the other areas of improvement we have identified in our next audit in 2014.

5.6 We are pleased that in this audit there were no concerns about public protection arising from the decisions to close the 81 cases we audited. We are, however, concerned that we audited nine cases involving delays in applying for interim orders when there was sufficient information available to justify an earlier interim order application (see para 2.109 to 2.110).

5.7 We consider that our audit findings about the NMC's court applications to extend interim orders have the potential to damage public confidence in the NMC as a regulator (See para 2.104 to 2.107). We are also concerned about the NMC's handling of reviews of interim orders which we consider to be poor practice (see para 2.101 to 2.103).

5.8 We recommend that the NMC reviews all our audit findings and implements remedial action where appropriate. In particular we recommend that the NMC:

- Ensures that all NMC staff are aware of the NMC's remit and do not act as barriers to complainants wishing to raise concerns about the fitness to practise of registrants by providing appropriate training across its entire customer facing staff
- Takes steps to improve the customer care it provides during the FTP process and in particular that when the NMC reviews its customer service standards for the FTP department it set standards that are realistic as well as reasonable
- Ensures that it takes action to improve the accuracy of its correspondence
- Expands its quality assurance of records management to secure improvements with record keeping
- Takes steps to monitor the handling of investigations by external lawyers to ensure that the investigations are thorough and to prevent avoidable delays
- Reviews its handling of the cases we identified that we considered posed risks to the maintenance of public confidence and takes steps to prevent a recurrence of these issues.

Conclusions and recommendations related to cases closed following the grant of voluntary removal applications (section 3)

- 5.9 We set out below our conclusions and recommendations relating to our detailed findings related to the 21 cases that we audited that were closed following the grant of applications for voluntary removal from the register.
- 5.10 We were disappointed to see an absence of proper consideration of the wider public interest in deciding whether or not to grant voluntary removal applications. The overwhelming impression from our audit of these cases is that the NMC has encouraged registrants who are already the subject of FTP cases to apply for voluntary removal, that it has failed to train its staff, decision makers and panellists adequately on the application of the guidance, that it has misinterpreted key aspects its own guidance, that it has misjudged the seriousness of various cases and that its decision makers have failed to demonstrate that they have considered all the relevant factors appropriately and reached sound decisions. In addition, it appeared that the NMC's own quality assurance had failed to appreciate and remediate the range of the problems with its operation of the voluntary removal process.
- 5.11 We recommend that the NMC reviews our concerns in relation to its handling of cases closed by voluntary removal and reviews its approach as a matter of urgency. We acknowledge that the NMC said it will review its guidance to ensure that it is sufficiently clear and we will be checking to see whether this has been successful in our next audit in 2014.
- 5.12 We would urge the NMC's Council to take steps to assure itself that these issues are effectively addressed within a short timeframe.

5.13 We also have a number of specific recommendations: We recommend that the NMC:

- Reviews our concerns relating to its categorisation of ‘serious’ misconduct matters in cases where voluntary removal has been granted and the application of the relevant guidance in this area and ensures that action is taken to address our concerns (see para 3.18 to 3.19)
- Makes the necessary amendments to its process to enable the Registrar to make an informed decision about why registrants are applying for voluntary removal and their views about the allegations against them, rather than just requiring registrants to tick various boxes (see para 3.20 to 3.21 and 3.35 to 3.36)
- Puts a written procedure in place to ensure that decisions about applications for readmission to the register from individuals who have been removed from the register while an FTP investigation is underway are taken on the basis of their full FTP history (see para 3.22 to 3.24 and para 2.36 to 2.37)
- Provides guidance and training to its panels about handling applications for the revocation of interim orders and that it should routinely provide standardised documentation about the voluntary removal decision to a panel that is being asked to revoke an interim order in order to facilitate voluntary removal (see para 3.25 to 3.29)
- Reviews our concerns and considers what further processes, guidance and training is required for staff and panel members to prevent procedural errors from occurring and to ensure that it operates a voluntary removal process that not only protects the public but also maintains public confidence in the system of regulation (see section 3)
- Implements enhanced recording of reasons for decision making in cases that are closed following the grant of applications for voluntary removal to enable better understanding of the reasons for the decisions made (see para 3.39 to 3.42).

5.14 In addition, we consider that the public policy reasons for allowing voluntary removal in cases involving misconduct/convictions do not apply to the same extent once an FTP panel hearing is already under way and we invite the NMC to reconsider its approach to such applications (see para 3.30 to 3.31).

Conclusions and recommendations related to cases involving registrants employed by Mid Staffordshire NHS Foundation Trust (section 4)

5.15 We found no significant concerns in the two cases involving registrants employed by the Mid Staffordshire NHS Foundation Trust that we audited that were opened and closed in 2013 and that did not relate to issues highlighted by the first or second reports of the Mid Staffordshire NHS Foundation Trust Public Inquiry.

- 5.16 Our audit of the NMC's handling of 17 cases that involved registrants employed by the Mid Staffordshire NHS Foundation Trust that did relate to issues highlighted by the first or second Inquiry reports identified a number of serious issues. These were about the relatively limited extent of the investigation that the NMC conducted. The failures to gather sufficient information or evidence, or failures to take that information/evidence into proper account when deciding whether or not to close cases meant that the evidential basis for some of the decisions made by NMC staff and the IC was, in our view, inadequate. This meant that either the wrong decision was made and/or the decision that was made was based on unsound or inadequate reasons. The issues we identified in the NMC's handling of these cases are particularly serious, given the level of public concern about the accountability of registrants involved in incidents of poor patient care at the Trust during the relevant period.
- 5.17 Our audit of these cases also revealed a number of record keeping and administrative errors. We are however particularly concerned that the NMC's own relatively recent review of these cases, conducted in 2013, did not address the majority of the concerns we identified in our audit. We consider that this demonstrates an on-going weakness in the NMC's ability to identify for itself where improvements are needed with its FTP process.

6. Annex 1: Fitness to practise casework framework

6.1 The purpose of this document is to provide the Authority with a standard framework as an aid in reviewing the quality of regulators’ casework and related processes. The framework will be adapted and reviewed on an on-going basis.

Stage specific principles

Stage	Essential elements
Receipt of information	<ul style="list-style-type: none"> • There are no unnecessary tasks or hurdles for complainants/informants • Complaints/concerns are not screened out for unjustifiable procedural reasons • Provide clear information • Give a timely response, including acknowledgements • Seek clarification where necessary.
Risk assessment	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> • Guidance for caseworkers/decision makers • Clear indication of the nature of decisions that can be made by caseworkers and managers, including clear guidance and criteria describing categories of cases that can be closed by caseworkers, if this applies • Tools available for identifying interim orders/risk. <p><u>Actions</u></p> <ul style="list-style-type: none"> • Make appropriate and timely referral to Interim Orders Committee or equivalent • Make appropriate prioritisation • Consider any other previous information on registrant as far as powers permit • Record decisions and reasons for actions or for no action • Clear record of who decided to take action/no action.

Stage	Essential elements
Gathering information/evidence	<p data-bbox="662 331 906 365"><u>Documents/tools</u></p> <ul data-bbox="662 369 1332 443" style="list-style-type: none"> <li data-bbox="662 369 1332 403">• Guidance for caseworkers/decision makers <li data-bbox="662 407 1161 443">• Tools for investigation planning. <p data-bbox="662 481 774 515"><u>Actions</u></p> <ul data-bbox="662 519 1406 817" style="list-style-type: none"> <li data-bbox="662 519 1273 555">• Plan investigation/prioritise time frames <li data-bbox="662 560 1359 633">• Gather sufficient, proportionate information to judge public interest <li data-bbox="662 638 1327 712">• Give staff and decision makers access to appropriate expert advice where necessary <li data-bbox="662 716 1406 817">• Liaise with parties (registrant/complainant/key witnesses/employers/other stakeholders) to gather/share/validate information as appropriate.
Evaluation/decision	<p data-bbox="662 869 906 902"><u>Documents/tools</u></p> <ul data-bbox="662 907 1343 981" style="list-style-type: none"> <li data-bbox="662 907 1343 981">• Guidance for decision makers, appropriately applied. <p data-bbox="662 1019 774 1052"><u>Actions</u></p> <ul data-bbox="662 1057 1412 1433" style="list-style-type: none"> <li data-bbox="662 1057 1412 1131">• Apply appropriate test to information, including when evaluating third party decisions and reports <li data-bbox="662 1135 1348 1171">• Consider need for further information/advice. <li data-bbox="662 1176 1204 1211">• Record and give sufficient reasons <li data-bbox="662 1216 1337 1252">• Address all allegations and identified issues <li data-bbox="662 1256 1040 1292">• Use clear plain English <li data-bbox="662 1296 1327 1370">• Communicate decision to parties and other stakeholders as appropriate <li data-bbox="662 1375 1327 1433">• Take any appropriate follow-up action (eg warnings/advice/link to registration record).

Overarching principles

Stage	Essential elements
Protecting the public	<ul style="list-style-type: none"> • Every stage should be focused on protecting the public and maintaining confidence in the profession and system of regulation.
Customer care	<ul style="list-style-type: none"> • Explain what the regulator can do and how, and what it means for each person • Create realistic expectations. • Treat all parties with courtesy and respect • Assist complainants who have language, literacy and health difficulties. • Inform parties of progress at appropriate stages.
Risk assessment	<ul style="list-style-type: none"> • Systems, timeframes and guidance exist to ensure ongoing risk assessment during life of case • Take appropriate action in response to risk.
Guidance	<ul style="list-style-type: none"> • Comprehensive and appropriate guidance and tools exist for caseworkers and decision makers, to cover the whole process • Evidence of use by decision makers resulting in appropriate judgements.
Record keeping	<ul style="list-style-type: none"> • All information on a case is accessible in a single place. • There is a comprehensive, clear and coherent case record • There are links to the registration process to prevent inappropriate registration action • Previous history on registrant is easily accessible.
Timeliness and monitoring of progress	<ul style="list-style-type: none"> • Timely completion of casework at all stages • Systems for, and evidence of, active case management, including systems to track case progress and to address any delays or backlogs.

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