Council Meeting, 11 February 2016

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

Executive summary and recommendations

Introduction

In November 2015, the Professional Standards Authority (PSA) published its report following an audit of the initial stages of the fitness to practise process at the Nursing and Midwifery Council (NMC). This paper follows the Fitness to Practise Department's practice of reviewing such reports to assess what learning can be taken from them and applied to HCPC processes.

This paper is a summary of the key points made by the PSA in relation to the NMC. It also set outs what measures the HCPC has in place, as well as on-going and planned activities, to address the points raised.

Decision

The Council is asked to discuss this paper. No decision is required.

Background information

The last PSA report following an audit of the initial stages of the HCPC's fitness to practise process was published in September 2013. The report and a paper outlining our response was considered by the Fitness to Practise Committee at its meeting on 10 October 2013.

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

Resource implications

None.

Financial implications

None.

Appendices

Appendix 1 Audit of the Nursing and Midwifery Council's initial stages fitness to practise process

Date of paper

21 January 2016

1. Introduction

1.1 A review has been undertaken of the Professional Standards Authority's (PSA) audit report of the initial stages of the Nursing and Midwifery Council's (NMC) fitness to practise process. The key points made by the PSA are set out below. This paper also set outs what measures the HCPC has in place, as well as on-going and planned activities, to address the points raised.

1.2 A copy of the PSA's full report is attached to this paper.

1.3 It should be noted that whilst the PSA published its report in November 2015, the onsite audit was undertaken between July and September 2014 and the 100 cases audited were closed during the period 1 January 2014 to 31 July 2014. The report was therefore published over one year after the end of the audit, the PSA has acknowledged that it is an exceptional delay.

2. Fitness to practise casework framework

2.2 The PSA's casework framework provides a standard framework as an aid in reviewing the quality of regulators' casework and related processes. The framework comprises of four stage 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 progress.

3. Receipt of initial information

3.1 The key aspects of this part of the process include providing clear information to complainants, responding promptly to correspondence, and ensuring there are no unnecessary barriers to complaints being made.

3.2 <u>NMC report paragraphs 2.4 – 2.7</u>

The NMC's screening team has responsibility for handling complaints from the point of receipt until their first consideration by the IC. The screening team has a target of reviewing each complaint within five days. The PSA identified five cases where this time frame was exceeded, in one case by three months.

3.3 <u>HCPC response</u>

We aim to acknowledge receipt of all concerns and to inform complainants of the next steps within five working days of receipt. If we are unable to respond in this way in this time frame we will send an acknowledgment and will follow up with a substantive response within 10 working days. We have processes in place to assist in meeting these service standards, for example, when a case is opened an acknowledgement action is automatically added to the case.

There are also a number of work plan activities (on-going or completed) to improve the clarity of the information we provide to complainants and to improve the accessibility of our process. They include:

- 'Standard of acceptance explained' and 'Protecting titles' factsheets;
- enhancements to the member of the public information brochure;
- enhancements to the information sources available to employers; and
- updates to the fitness to practise pages of the website.

With regard to future developments, we are considering introducing a greater degree of specialisation within the case management process. This will include reviewing the arrangements and processes for dealing with cases upon initial receipt to ensure complainants continue to receive a high quality service at the beginning of the fitness to practise process.

4. Risk Assessment

4.1 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.

4.2 NMC report paragraphs 2.11-2.17

The requirement for NMC staff to document risk assessments was introduced in February 2012. The PSA found documented risk assessments in all cases they audited which had been opened after this requirement was introduced. As the casework framework has always required regulators to record decisions and the reasons for them, the PSA also audited five cases which had been opened before the NMC's requirement was introduced. In one case, there was evidence the case had been risk assessed however the records were incomplete. In the other four cases there were delays in documenting risk assessments, ranging from three to 13 months.

The PSA also checked that risk had been appropriately re-assessed during the lifetime of each case, and that all relevant information was properly taken into account. In respect of these areas the PSA identified:

- Six cases where risk assessments had not been updated on receipt of new or adverse information and instead retrospective entries were made on the risk assessment form.
- Five cases where there was a concern that information had not been properly assessed, for example, changes in registrant's health conditions. The PSA was concerned that these cases suggested that NMC staff did not always identify emerging risks or take the appropriate action promptly.

The PSA audited 19 cases where an interim order had been imposed and in general were satisfied the NMC was imposing interim orders without unnecessary delay. However, they did identify concerns about delays in five of these cases. In two cases the Panel adjourned the hearing at the

registrant's request; in another two cases it took two months for NMC staff to action the Investigating Committee's instructions that interim order applications were required; and in one case there was a delay of three months as the NMC did not identify that an interim order was necessary.

4.3 HCPC response

We risk assess all complaints on receipt to determine whether to apply for an interim order. We also risk assess new material as it is received during the lifetime of a case. A further risk assessment is also carried out at the point the allegations against the registrant are drafted. The risk assessment form requires Case Managers to rate the risk of cases as either A, B or C and to explain why an interim order may or may not be required. Operational guidance on Risk Profiling and Interim Orders is provided to Case Managers to explain what is required and how to assess and classify risk.

We have processes in place to ensure timely risk assessments are completed at all the required stages of the process, for example, when a case is opened a risk assessment action is automatically added to the case. A report of risk assessments actions which have not been completed by their due dates is run each week. This supports Case Team Managers in monitoring whether Case Managers are completing timely risk assessments.

The presence of risk assessments on case files is audited by the Quality Compliance team as part of the case file audit. The outcomes of which are fed into Quarterly Audit reports. These reports are considered at corresponding Quality Assurance meetings, attended by the members of the Fitness to Practise management team, where issues and trends are reviewed and actions in response agreed. In addition, small samples of risk assessments are reviewed on a monthly basis by the Investigations Managers to assess and monitor the content and reasoning provided. Learning from this review is fed back to individual Case Managers and captured as part of on-going training.

Refresher training for Case Managers on the risk assessment process was provided in June 2015.

In relation to the timely referral of interim order applications, in 2014–15, the average time from the risk assessment of the relevant information indicating that an interim order may be necessary to a Panel hearing the application was 17 days. We continually monitor this aspect of the process through monthly meetings and an audit by the Quality Compliance team which reviews: time taken from receipt of concern to interim order hearing; time taken to schedule hearing; length of time between issuing the Notice of Hearing and the hearing taking place; level of reasoning in decisions; and completeness in decision making.

In relation to the adjournment of interim order application hearings, like the NMC, we have some cases adjourned by Panels at this stage. From April 2015 to November 2015, there were 5 such adjournments. This is an area

where we have provided further training to our Panel members. We also ensure that the hearing is re-scheduled as soon as possible.

With regard to future developments, as stated above, we are considering introducing a greater degree of specialisation within the case management process. This may include a team specialising in dealing with cases upon initial receipt with an enhanced focus on risk assessment. It may also include all interim order cases being dealt with by one case team.

5. Gathering information and evidence

5.1 Gathering the right information and evidence is essential to ensure that appropriate action can be taken promptly and that decision makers are fully informed.

5.2 NMC report paragraphs 2.18-2.38

The PSA identified inadequacies in the NMC's approach to gathering information and evidence in four of the 35 cases audited which had been closed by the screening team and in 36 of 65 cases audited which had been closed at a later stage in the process.

The following issues were identified:

- Failure to gather relevant information/evidence.
- Failure to investigate relevant issues.
- Inadequacies in the charges drafted for consideration by the Investigating Committee.
- Inadequacies in the information and evidence presented to the decision maker(s).

5.3 HCPC response

We have a number of measures and safeguards in place to ensure the right information and evidence is gathered so appropriate case decisions can be made.

Case review meetings between Case Managers and their Case Team Manager are held at least once a month to discuss individual cases, their investigation and the approach taken. In addition, monthly Case Progression meetings are held to discuss strategies for cases which may be complex or which may be taking longer than average to progress through the process.

Once the allegation has been drafted and the papers are ready to be sent to the registrant for their response, the Case Team Manager will approve the allegation by reviewing the case. This occurs before the case is considered by a Panel of the Investigating Committee (ICP) and provides an opportunity for any missing information to be identified. The ICP also has the option of requesting further information if it considers it would assist in making a case to answer decision.

Where a decision is made to close a case prior to consideration by an ICP as it has been decided the case does not meet the Standard of acceptance, approval must be sought from a Case Team Manager. Our case management system has an automatic approval process attached to these closure actions which requires a manager to review the action before it can be closed. This prevents cases from being closed without the appropriate review being undertaken. A sample of closure forms are reviewed on a monthly basis by the Investigations Managers to assess the quality of the content and the reasons given for closure decisions. These cases are also audited by our Quality Compliance team to ensure all necessary actions have been completed and the case complies with the required process. The outcomes of this audit are also fed into the Quarterly Audit reports considered at the Quality Assurance meetings as set out above.

We revised our Standard of acceptance for allegations policy in June 2015. The revisions, such as further detail about what is meant by credible evidence and additional information about factors to take into account when deciding whether a matter has been resolved locally, were made to assist Case Managers and Case Team Managers in their decision making. Training on the revised policy was provided together with a programme of workshops during the first six weeks of its introduction.

Training for Case Managers on drafting allegations was provided in August 2015, with further training session due to take place in February and March 2016. Case Managers are also due attend training on ‘Law, Evidence, Procedure and Best Practice in Complaints Handling and Investigations’ from an external provider in the early 2016.

There are also a number of work plan activities (on-going or completed) in this area:

- We have developed criteria to categorise cases (reception, standard and advancement) to inform the allocation of work between Case Managers and to assist in developing specialisation in the investigation of different categories of cases.
- We have started to allocate cases which are currently under investigation by another organisation (for example, the registrant’s employer or the police) to specific case teams. This is to assist in progressing these cases but also in the allocation of work between Case Managers.
- As part of our approach to introducing greater specialisation in the case management process, we are piloting the separation of pre-ICP and post-ICP case work. Cases will be managed by dedicated pre-ICP and post-ICP Case Managers. The expectation is that this approach will further enhance the quality of evidence gathering and assessment; as well as general case progression.

6. Evaluation and giving reasons for decisions

6.1 Ensuring that detailed reasons are provided which 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.

6.2 NMC report paragraphs 2.39 to 2.53

The following issues were identified:

- Four cases where the Investigating Committee should have identified inadequacies in the information and evidence presented.
- 14 cases where the Investigating Committee decision about whether there was a case to answer was inadequately reasoned. The PSA's concerns related to the Investigating Committee's consideration of the evidence of the registrant's remediation and insight and the wider public interest; the failure to address all charges; and the degree of weight attached to evidence.
- In relation to interim order decisions, in three cases the PSA considered that the decision did not adequately manage risks to public protection and in two cases it was concerned that the conditions did not address all of the potential risks.

6.3 HCPC response

Our Case to Answer Determinations Practice Note and decision template provides guidance to ICPs on drafting decisions and giving reasons. The importance of detailed reasons for decision is also emphasised during Panel and refresher training. An ICP Co-ordinator is present at Panel meetings to ensure consistency and to remind Panels of the requirements to include sufficient reasons in their decisions. The Practice Note is currently being reviewed. This review will take into account the points raised by the PSA.

All ICP decisions are reviewed by the Quality Compliance team on a monthly basis and a report providing an analysis of these reviews is considered by Council on an annual basis. Any ICP decisions which raise concerns may also be reviewed by our Decision Review Group. Where improvements are identified via these reviews, this is fed into Panel training and future developments to practice notes and templates.

Our Interim Orders Practice Note provides guidance to Panels on when they may impose an order. The Practice Note was last reviewed in September 2015 and focuses on the need to manage risk in terms of protecting the public, the registrant or wider public interest grounds. It also specifies the importance of providing reasons. Both these factors are emphasised during Panel and refresher training. The level of reasoning in interim order decisions is continually monitored through our audit processes, including the Decision

Review Group, and any learning is fed into Panel training and developments to the Practice Note.

Where a decision is made to close a case prior to consideration by an ICP as it has been decided the case does not meet the Standard of acceptance, the reasons for that decision are clearly set out in a case closure form and in letters sent to the complainant and the registrant. The case closure forms are completed by Case Managers and approved by Case Team Managers. A sample of closure forms are reviewed on a monthly basis by the Investigations Managers to assess the quality of the content and the reasons given for closure decisions. Decision letters are drafted by Case Managers and are approved by Case Team Managers. These cases are audited by our Quality Compliance team. This audit checks that the correct approval has been sought and also looks at the quality of the content of the letters. The outcomes of the audit are also fed into the Quarterly Audit reports considered at the Quality Assurance meetings as set out above.

As stated above, we revised our Standard of acceptance for allegations policy in June 2015 to assist Case Managers and Case Team Managers in their decision making. Training on the revised policy was provided together with a programme of workshops during the first six weeks of its introduction.

7. Customer care

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

7.2 NMC report paragraphs 2.57 to 2.71

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

- The NMC's service standard at the time of the cases audited was that registrants and complainants should be updated every 6 weeks. The PSA found that the NMC had not conformed to this service standard in 59 of the 100 cases audited.
- The NMC's service standard at the time of the cases audited did not require every piece of correspondence to be acknowledged. The PSA identified 17 cases where it considered it would have been better customer service for an acknowledgement to have been provided. For example, letters which should have been treated as corporate complaints or important communications, such as the registrant's representations for consideration by the Investigating Committee or applications for voluntary removal.
- Customer service failings relating to supporting complainants and witnesses during the process; communicating effectively with registrants and their representatives during the process; and inaccuracies in correspondence.

7.3 HCPC response

We aim to inform complainants and registrants of the progress of cases at least once a month. Case Managers are assisted with this via the case management system which prompts monthly case reviews. If a case has been referred to a hearing, we aim to update those involved bi-monthly.

We aim to send decisions to registrant within 5 working days of ICP meetings; 3 working days of final and review hearings; and 2 working days for interim order applications. Complainants and witnesses in all types of Panel hearings are sent the decision within 5 working days.

Case Managers are not expected to acknowledge every piece of correspondence received, however they are expected to assess whether it would be more appropriate to send an acknowledgement than not. To assist with this assessment, we have a number of standard letters in our case management to ensure that important communications, such as registrant's responses to ICPs are acknowledged. We also have processes in place to assist Case Managers in dealing with correspondence which is a complaint about fitness to practise (decisions, processes, services or external suppliers). Where an acknowledgement is sent, we aim to do so within 5 working days.

Other areas of work related to this are set out above, for example, our review and audit activities. We also aim to keep individual caseloads at a level that allows Case Managers to properly manage their case load and to ensure accuracy. Since June 2015 the average caseload per Case Manager has been in line with or less than the forecast (the forecast is set out in the Fitness to Practise management commentary which is reported to Council at each meeting.

There are a number of work plan activities (on-going or completed) to improve our interactions with those involved in fitness to practise cases:

- The use of criteria to categorise cases (reception, standard and advancement) to assist in managing caseloads and developing specialisation in the investigation of different categories of cases.
- The action plan following the peer review undertaken by the Patients Association.
- The on-going review of our standard letters in terms of use, content and tone.
- From January 2016, we will be gathering feedback, via a feedback form, from complainants and registrants on the service they have received from the fitness to practise department following the closure of cases by ICPs or final hearings. The feedback received will be reviewed on a regular basis and any learning will be fed into staff or Panel training; future developments for internal or external guidance or policy documents; and the management of any performance issues.
- The development of factsheets to clearly explain certain aspects of the fitness to practise process.
- Enhancements to the member of the public information brochure.
- Enhancements to the information sources available to employers.
- Updates to the fitness to practise pages of the website.

8. Guidance

8.1 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.

8.2 NMC report paragraphs 2.72 to 2.76

The PSA were concerned about the NMC's compliance with its existing processes and guidance in the following areas:

- Recognising and acting upon complaints about the process and/or the handling of a case.
- Updating and ensuring the accuracy of the NMC's registration database.
- Customer service standards.
- Confidentiality and data breaches, including identifying and investigating breaches once they occur.

The PSA also identified that it might be beneficial for the NMC to develop guidance, or to strengthen its existing guidance, to improve its consistency and clarity of approach in three areas:

- How to handle new concerns arising during an investigation.
- Confirming details of criminal cautions/convictions.
- Confirming registration details before investigating.

8.3 HCPC response

We have comprehensive policies and procedures in place and all Fitness to Practise team members are trained on these as part of their induction and on-going training. All our policies, operating guidance and practice notes are subject to a cycle of on-going review overseen by the Fitness to Practise management team. Updates and changes to operational guidance are communicated to the Fitness to Practise team through the weekly email bulletins, team meetings and workshops, and to Panel members through the quarterly newsletter and refresher training.

We also have mechanisms in place to assist the Fitness to Practise team in complying with our policies and procedures. For example, actions in our case management system actions and check lists. Where our quality audit and compliance activities identify where policies and procedures may not have been correctly followed or errors made measures are taken to provide feedback and training to individuals or the Fitness to Practise team as a whole in order to minimise the risk of similar errors occurring again in the future.

With regard to future developments, the introduction of greater specialisation within the case management process as previously mentioned should mean

that Fitness to Practise team members will have to focus on fewer policies and procedures.

9. Record keeping

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

9.2 NMC report paragraphs 2.77 to 2.87

The PSA found no concerns in the cases audited that had been closed at the NMC's screening stage. However, concerns about record keeping were found in 49% of the remaining cases that were audited. Specific concerns included misfiling, missing records and confidentiality and data breaches.

9.3 HCPC response

We use an electronic paperless case management system. All in-coming correspondence is scanned on receipt and allocated to individual cases by the Administration team and there are processes in place to minimise the risk of correspondence being allocated to the incorrect case. All out-going correspondence is produced in the case management system and either printed (letters) or sent (emails) from it. This minimises the risk of misfiling and missing records.

Monthly file audits completed by the Quality Compliance team provide additional assurance that case records are maintained correctly.

Our operational guidance on 'Confidentiality and Information Security' was last updated in August 2015 and during 2015 the Fitness to Practise team members received both department specific and organisation wide data security training. Where data security issues are identified these are investigated by the Quality Compliance Manager and an Information Incident report is completed in accordance with the organisation's information governance arrangements. This process includes identifying learning points and proposed remedial actions.

Data security issues are considered both by the Fitness to Practise management team and by the Executive Management Team as part of the organisation's data security reporting arrangements.

10. Timeliness and monitoring of progress

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

10.2 NMC report paragraphs 2.88 to 2.107

The NMC has a key performance indictor for 90% of investigations to be completed within 12 months of receipt of the complaint. Of the 65 cases audited that progressed past the screening stage, 13 did not meet this key performance indicator and unnecessary delays were identified in five cases. The delays related to issues such as periods of inactivity; notifying relevant parties of decisions; and responding to requests for information from other organisations.

The PSA also identified delays in the processing of voluntary removal applications and in conducting interim order review applications. It also raised concerns about delays in progressing cases leading to the NMC having to seek court extension to interim orders.

10.3 HCPC response

The length of time it takes to progress cases is reported to Council at each meeting in the Fitness to Practise management commentary. It is also reported to the Executive management team on a monthly basis.

We have a number mechanisms in place to help prevent against unnecessary delays. For example, when correspondence is received it is scanned into the case management system and allocated to the relevant member of the Fitness to Practise team. The case management system alerts the team member that correspondence has been received and needs to be actioned. Chase actions are automatically generated in the case management system. Reports of the number of outstanding actions and chases are produced and monitored on a weekly basis.

We have internal service standards, which are set out in one service standard guidance document but are also included in all other relevant guidance documents. The service standards are therefore regularly cascaded to the teams.

In terms of length of time, we use a risk-based reporting system to identify red, amber and green cases and use a targeted approach to Case Progression meetings. For example, a Case Progression meeting may concentrate on all pre-ICP cases which are older than a certain period of time and are rated as either red or amber.

Pre-ICP case (and post-ICP) progression is monitored at the Fitness to Practise Managers meetings on a monthly basis.

There are also a number of work plan activities (on-going or completed) in this area:

- We have developed criteria to categorise cases (reception, standard and advancement) to inform the allocation of work between Case Managers and to assist in timely case progression.

- We are starting to allocate cases which are currently under investigation by another organisation (for example, the registrant's employer or the police) to specific case teams. This is to assist in progressing these cases but also in the allocation of work between Case Managers.
- We are also piloting splitting pre-ICP and post-ICP case work to be undertaken by dedicated pre-ICP and post-ICP Case Managers to develop greater specialisation in these areas.

11. Protecting the public

11.1 Each stage of the regulatory process should be focused on protecting the public and maintaining public confidence in the profession and the regulatory system. Protection of the public includes not only directly protecting them from harm but also declaring and upholding professional standards and maintaining public confidence in the profession and the regulatory system.

11.2 NMC report paragraph 2.108 – 2.118

The PSA identified two interim order decisions, and one Investigating Committee decision, which raise concerns about public protection. It also identified two cases in which the failure to review interim orders raised similar concerns.

It also identified a number of cases where, in its view, the approach taken by the NMC might damage registrants' and other stakeholders' confidence in the operation of the regulatory profession. The PSA's concerns related to:

- operating a fair process;
- inadequacies in case handling;
- action taken following internal case reviews prior to final FTP hearings; and
- comments made to and by the High Court when applying for extensions to interim orders.

11.3 HCPC response

Our Case to Answer Determinations Practice Note, which provides guidance to ICPs on decision making, emphasises the need to take account of the wider public interest, including protection of the public and public confidence in both the regulatory process and the profession concerned. All ICP decisions are reviewed by the Quality Compliance team on a monthly basis and a report providing an analysis of these reviews is considered by Council on an annual basis. Any ICP decisions which raise concerns may also be reviewed by our Decision Review Group. Where improvements are identified via these reviews, this is fed into Panel training and future developments to practice notes and templates.

Our Interim Orders Practice Note, which provides guidance to Panels on when they may impose an order, also emphasises the importance of

considering public protection and wider public interest grounds. The level of reasoning in interim order decision is continually monitored through our audit processes, including the Decision Review Group and any learning is fed into Panel training and developments to the Practice Note.

Our approach to delivering public protection through our fitness to practise process is set out in our policy 'Fitness to Practise: What does it mean?'. The policy emphasises fairness and issues such as public confidence. We aim to reflect this approach at all times in the operation of the fitness to practise process.

12. Voluntary removal

12.1 In 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 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 fitness to practise staff in accordance with the process set out in the NMC guidance document.

12.2 In the PSA's 2013 audit report it expressed serious concerns about all the cases it audited which had been closed following decisions to grant voluntary removal. Following publication of that report, the NMC made amendments to its voluntary removal guidance.

12.3 NMC report, section 3 pages 53 – 70

The PSA reviewed six cases that had been closed following decisions to grant voluntary removal where the original guidance applied as well as 11 cases where the revised guidance applied.

The PSA identified concerns with the NMC's application of its voluntary removal guidance in four areas:

- The Registrar's assessment in granting voluntary removal.

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'. The PSA had concerns over the sufficiency of weight given to the public interest in five cases; the evaluation of the registrant's interests and plans in six cases; and the process for seeking comments from the 'maker of the allegation' in four cases.

- Cases involving misconduct allegations.

Both the NMC's original and revised guidance indicate that in cases primarily involving serious misconduct or a conviction and where the realistic prospect test is met in terms of proving the facts alleged, voluntary

removal is less appropriate. The PSA had concerns with the NMC's assessment of the seriousness of misconduct in six cases; that voluntary removal was granted in five case despite the fact allegations had not been proved and full admissions had not been made by the registrant; and the NMC's acceptance of registrant's full admissions despite questions over their sincerity.

- Cases involving both ill health and misconduct allegations.

The PSA had concerns, in cases involving both ill health and misconduct allegations, whether the misconduct allegations were considered in decisions to grant voluntary removal and also the assessment of the seriousness of those misconduct allegations.

- Cases where voluntary removal was granted after the final fitness to practise hearing had commenced.

One of the public policy reasons for why voluntary removal is considered to be a valuable mechanism is that it results in a cost saving for the regulator and may speed up the timeframe for conclusion of the case. These benefits are not achieved when voluntary removal is granted partway through a final fitness to practise hearing. The PSA found two cases where voluntary removal was granted after the final fitness to practise hearing had commenced.

The PSA also identified the following:

- Failure to provide reasons or adequate reasons

In all six of the cases audited where the original guidance applied, the PSA expressed concern that the Registrar had not provided 'standalone' reasons for the decisions to grant voluntary removal. This was not an issue in the 11 cases audited where the revised guidance applied however the PSA identified other concerns, for example, in one case additional reasoning could have been included and in three cases the adequacy of reasons could have improved.

- Maintaining confidence in regulation

The PSA concluded that the approach adopted in three cases would not maintain public confidence in regulation if it were adopted more generally. In particular, the PSA were concerned that the cases may be construed as the NMC actively encouraging registrants who have shown no interest in voluntary removal to make voluntary removal applications.

12.4 HCPC response

The Health and Social Work Professions Order 2001 does not explicitly provide for the consensual disposal of cases. However, the Council has approved consent arrangements as a means of allowing registrants, in

suitable cases, to be removed from the Register, or to dispose of a case by an agreed sanction without the expense and time a full hearing requires.

Our approach to consensual disposal is outlined in a Practice Note and associated operational guidance. Both documents have been reviewed recently. However, they will be reviewed again to take into account the PSA's report and also any learning or changes to process resulting from the current pilot separating pre-ICP and post-ICP case work.

Both our Practice Note and operational guidance are clear that consensual disposal should only be used when the appropriate level of public protection is being secured and when doing so will not be detrimental to the wider public interest.

Our approach to the disposal 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. All consensual disposal decisions, including voluntary removal decisions, are published on our website in line with our Fitness to Practise Publication Policy. The decisions contain the allegation, a brief background of the case and the Panel's reasons for agreeing to the consensual disposal.

We have procedural safeguards in place to ensure that only appropriate cases are considered for consensual disposal. As outlined in our Practice Note, we will only consider resolving cases 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 allegation in full; and
- where any remedial action is 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.

In addition, the Director of Fitness to Practise is required to approve all applications to dispose of a case by consent, following legal advice, before the matter is put before a Panel.

An audit of the cases disposed of by consent is conducted on a quarterly basis by the Quality Compliance team. This audit provides 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 the remainder of 2015-16 and throughout 2016-17 which address many of the issues identified by the PSA in relation to the NMC's initial stages of the fitness to practise process. To this

end, additional significant development activities are not necessarily required. However, in order to mitigate the risk of similar issues being identified in respect of the HCPC's fitness to practise process in future, it would be prudent to:

- Maintain focus on risk assessment and case progression.
- Continue with our audit activities, especially those relating to risk assessment and interim orders.
- Evaluate the impact of improvement measures introduced, for example, staff and Panel training and process developments.
- Evaluate the impact of the pilot separating the pre-ICP and post-ICP case work.
- Undertake a review of our disposal by consent process to ensure it is fit for purpose and reflects any learning from the PSA's report.

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

November 2015

professional standards authority

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care[1] 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 When considering a complaint about a health and care professional's fitness to practise the health and care professional regulators decide whether complaints should be referred for a hearing in front of a final fitness to practise (FTP) hearing panel, or whether they should be closed. We refer to this as the initial stages of their fitness to practise process. As part of our role in overseeing the regulators we audit a number of these cases to see whether they have handled them effectively. We assess them against our *Fitness to practise casework framework* (Annex 1)

1.2 Between 28 July 2014 and 5 September 2014 we audited 100 cases handled by the Nursing and Midwifery Council (NMC) and closed at the initial stages of its FTP process during the period 1 January 2014 to 31 July 2014.

1.3 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 2013 audit (published in March 2014[3]) we identified some areas of improvement compared to previous years, particularly in the initial handling of complaints but at that time, it had not been achieved consistently across all of the initial stages of the NMC's FTP process.

1.4 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 were such that, if this approach were adopted in future cases, it might result in patients not being protected, or confidence not maintained in the system of regulation.

1.5 In this audit we also looked for evidence of improvement across all areas of our casework framework (see annex 1) with a particular focus on those aspects of the NMC's case handling which were criticised in our previous audit report. The drafting and publication of this audit report has been delayed as a result of the resourcing demands of the Authority's additional investigatory work during the period from January – July 2015. We are grateful to the NMC for their cooperation.

1.6 We set out below a summary of our findings and recommendations.

Summary of findings

1.7 We are pleased that we had no concerns about the handling of nine of the 100 cases. We identified one or more failings against the casework framework in the remaining 66 cases and only low level concerns in a further 25 cases.

1.8 We identified three areas, as we did in our 2013 audit, in which the NMC has

[3] The Professional Standards Authority 2013 Fitness to practise audit report: Audit of health professional regulatory bodies' initial decisions. Available at http://www.professionalstandards.org.uk/docs/default-source/audit-reports/nmc-ftp-audit-report-2013.pdf?sfvrsn=0

continued to perform well. The three areas were:

- Documenting risk assessments. In all 95 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) we found that risk assessments had been documented – demonstrating good compliance with the procedure
- Record keeping by the screening team – we did not identify any concerns about record keeping in any of the 35 cases that we audited that had been closed by the screening team
- Case handling and customer care. We identified good case handling and customer care by caseworkers in several cases that had been closed by the screening team, such as by tailoring standard letters and by taking a proactive approach to making enquiries prior to closing cases.

1.9 There were also several areas where the NMC had maintained the good performance identified in our 2013 audit, although not consistently across all of the cases we audited. We found:

- Acknowledging and assessing complaints on receipt – we noted delays in five cases. This can lead to unnecessary and avoidable delays in commencing an investigation as well as potentially impacting on complainants' confidence in the process (See paragraphs 2.4-2.7)
- Inadequacies in 11 cases related to the need to re-risk assess cases during their lifetime on receipt of new or adverse information and the need to ensure that all relevant information is taken into account. We are concerned that the findings in these cases suggest that NMC staff do not always identify emerging risks and take appropriate action promptly (see paragraphs 2.11-2.15)
- Delays in applying for and imposing interim orders in five cases which had the potential to expose the public to unnecessary risks. In general, based on our audit we were satisfied that the NMC was imposing interim orders without unnecessary delay, however, we considered that the NMC should review our comments in the five cases we identified to satisfy itself that these issues cannot recur in future cases (see paragraphs 2.16-2.17)
- In our 2013 audit we identified no concerns about the closure decisions made by the screening team in 27 cases. In this audit we identified concerns about the closure decisions in two out of 35 cases that were closed by the screening team (see paragraph 2.41)
- Inconsistent compliance with internal process and guidance documents (see paragraphs 2.73)
- Inconsistent improvement related to timeliness (see paragraphs 2.88-2.101).

1.10 We were disappointed that we were unable to identify much improvement in the NMC's performance compared to the 2013 audit in the following areas:

- Compliance with the NMC's 2011 customer service standards (which were in place at the time of our audit). Compliance was inconsistent which may have reduced the relevant individuals' level of confidence in the NMC (see paragraphs 2.57-2.71)
- Record keeping has been a feature of our previous audits and despite the NMC's improvement activities and expansion of its quality assurance mechanisms. We have been unable to conclude that the NMC has achieved consistent improvement in record keeping across its caseload. Poor practices for information governance and poor record keeping led to confidentiality or data breaches in 11 cases (see paragraphs 2.84-2.87)
- Unnecessary delays in case progression that have led to the NMC continuing to seek court extensions of interim orders. We also found documents that had been presented to the High Court in support of interim order extension applications containing summaries of the factual background that were not always complete. While we have no reason to suggest that any errors or admissions were anything other than inadvertent, we nevertheless consider that our audit findings about this aspect of the NMC's case handling has the potential to damage public confidence in the NMC. A regulator, as a body exercising public functions, would be expected to be scrupulous to ensure the complete accuracy of any information presented to the courts (see paragraphs 2.104-2.107 and 2.116-2.118)
- Inadequacies in the handling of the process for the reviewing of interim orders which repeats a finding from our 2013 audit report (see paragraphs 2.102-2.103).

1.11 We were disappointed to identify weaknesses in the NMC's gathering of information and evidence which we had not found in our 2013 audit. These weaknesses were evident in four screening cases (see paragraphs 2.20-2.21) together with 36 cases that had progressed beyond screening. We found failures to gather relevant information/evidence, failures to investigate relevant issues, inadequacies in the charges that were drafted by the NMC for decision-makers to consider. We also found inadequacies in the information/evidence presented to the various FTP panels (the Investigating Committee (IC), the panels taking decisions to apply for and review interim orders and the final FTP hearing panels). While we recognise that the inadequacies we identified in these cases did not create any public protection risks, nevertheless it is unacceptable for decision makers not to be provided with relevant evidence. We consider that a pattern of such failings could lead to a loss of confidence in the regulator's processes (see paragraphs 2.22-2.37).

1.12 We also identified inadequacies in the NMC's case handling in six cases, and concerns related to the NMC's operation of its FTP process which we considered led to unfairness to one or more individuals in another six cases. We considered that if the approach taken in these cases was adopted more widely there would be the potential to adversely affect public confidence in the NMC's system of regulation (see paragraphs 2.112-2.115)

1.13 Inadequacies in the decision making at the early stages of the NMC's FTP process has been a consistent feature of our audits reports in the last five years.

We concluded after each of those previous audits that we had not yet seen sufficient levels of improvement, despite the steps the NMC has taken, such as making procedural changes, providing training for IC members and staff, and amending its guidance. We are concerned that this audit has also highlighted deficiencies in the NMC's evaluation and decision making processes and in some decisions and/or the reasons for them. In particular we identified:

- Two cases closed by the IC where we identified concerns about whether the correct decision was taken and 14 other cases where we considered that the IC had provided inadequate reasons for the decisions taken (see paragraph 2.44-2.50). In one further case we had concerns about the impact on public protection of the decision by the IC to close the case (see paragraph 2.110)
- Deficiencies in the decisions made by panels imposing and reviewing interim orders in two cases which meant that risks to public protection were not adequately managed. In addition, deficiencies in the NMC's handling of the process for reviewing interim orders in two further cases which we considered damaged confidence in the NMC's system of regulation (see paragraph 2.109)
- Two cases closed by administrative removal which we concluded had been closed by the chair of the Conduct and Competence Committee (CCC) on the basis of information which the NMC presented inaccurately, and that is a matter of some concern. We had concerns about the use of the Rule 33 procedure for cancelling final FTP panel hearings as well as the decisions themselves. We note that the NMC disagrees with our analysis of these cases (see paragraph 2.38 and paragraph 2.52-2.53).

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:

- Reviews its approach to gathering information and evidence to ensure that cases are not prematurely closed by the screening team before all necessary information and evidence has been obtained (see paragraphs 2.20-2.21)
- Ensures that all relevant information and evidence is placed before decision makers – particularly the IC and panels imposing and reviewing interim orders (see paragraphs 2.22-2.37)
- Reviews its quality assurance of records management, to ensure that it is effective in helping the NMC to reduce the number of data, confidentiality and information breaches occurring (see paragraphs 2.77-2.87)
- Ensures that staff comply with internal processes and guidance. This should include the customer service standards – with a particular focus on ensuring that the (reasonable) expectations of stakeholders are met, correspondence is responded to, and complaints about its FTP process are identified and handled appropriately (see paragraph 2.73)
- Considers the three areas where we suggested the development of additional guidance or strengthening of existing guidance for staff to

improve the consistency and clarity of its approach (see paragraphs 2.74-2.76)

- 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 (see paragraphs 2.112-2.118).

1.15 We set out in Section 3 our detailed findings, conclusions and recommendations about the 17 cases that we audited that were closed following the grant of applications for voluntary removal from the register. In summary, we identified some improvements in the NMC's approach to voluntary removal cases during 2014 compared to our 2013 audit findings, including improvements in the recording of reasons. We did not identify any concerns about the decisions to revoke interim orders in order to facilitate voluntary removal. We concluded that the NMC's revisions to its guidance in relation to revoking interim orders and recording reasons had led to improvement.

1.16 However, while there is evidence of some improvement in the NMC's approach to its handling of voluntary removal cases the NMC has not successfully addressed all of the concerns we identified in our 2013 audit. We recommend that the NMC reviews our concerns in relation to its handling of cases closed by voluntary removal, and considers whether further amendments to its guidance or processes are needed.

1.17 The areas where we think the NMC should consider if it can improve its handling are as follows:

- The Registrar's analysis of the public interest, particularly around the assessment of harm. We recognise that our concerns about this related to only three of the 11 cases that we considered which had been handled under the NMC's revised voluntary removal guidance (see paragraphs 3.11-3.15 and 3.32-3.35)
- The quality of the recommendations made to the Registrar about registrants' future plans and interests (see paragraphs 3.13-3.15)
- The quality of the NMC's assessment of the seriousness of misconduct during the voluntary removal process – we audited cases where the NMC decided that voluntary removal was appropriate, despite the case being categorised as involving serious misconduct earlier in its lifetime (see paragraphs 3.24-3.31 and 3.36-3.41)
- The Registrar's assessment of the registrant's insight and the credibility of their admissions – both of which are factors that would affect the type of sanction that would be imposed if the case were to proceed to a final FTP panel hearing (see paragraphs 3.32-3.35)
- Ensuring adequate reasons are recorded for the decisions to both reject and grant voluntary removal, particularly where cases fall outside the circumstances envisaged by the NMC's published guidance (see paragraphs 3.41 and 3.44-3.48).

1.18 We were particularly concerned about two aspects of the NMC's handling of voluntary removal cases.

- Our first concern is that the extent of the NMC's involvement in 'encouraging' or facilitating applications for voluntary removal may

impact on public confidence in the NMC as a regulator. We have some anxiety about the regulator actively encouraging registrants who have previously shown no interest in voluntary removal to make a voluntary removal application if they are the subject of FTP proceedings. We also consider that the Registrar should take account of the history of the correspondence between the NMC and the registrant/their representative when evaluating the sincerity of the registrant's statement about their wish to be voluntarily removed from the register in such circumstances (see paragraphs 3.49-3.50)

- Our second concern is about the NMC's approach to granting voluntary removal even when a final FTP panel hearing is under way. In cases where voluntary removal is granted after the final FTP panel hearing has begun, none of the efficiency benefits arising from an early resolution by voluntary removal are achieved, and the decision to grant voluntary removal in those circumstances therefore requires more careful consideration. We considered that the approach demonstrated in one case may fail to maintain public confidence in the regulatory process (see paragraph 3.42-3.43).

1.19 We also identified that the NMC does not currently seek comments about a voluntary removal application from anyone other than the 'maker of the allegations' (i.e. the original complainant) and, if they are not available, no comments are sought at all from anyone other than the registrant. We suggest that the NMC considers whether there are other individuals (such as current employers) who might have relevant comments that the NMC could obtain in some/all cases before deciding whether or not to grant voluntary removal (see paragraphs 3.17-3.18).

1.20 We have set out our full assessment of the cases we audited in section 2 of this report. The particular concerns we identified about the NMC's closure of 17 cases following the grant of voluntary removal are set out in section 3. Our general conclusions and recommendations are set out in section 4.

Method of auditing

1.21 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.

1.22 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.

1.23 In this audit we reviewed a sample of 100 of the cases which had been closed by the NMC without a hearing in front of a final FTP panel[4] (either the Health

[4] Two cases were closed at pre-meetings of a final FTP panel

Committee (HC) or the Conduct and Competence Committee (CCC) in the period from 1 January 2014 to 30 June 2014. We drew our audit sample from:

- 831 cases closed by the NMC's screening team
- 613 cases closed by the IC
- 21 cases closed by administrative removal.[5]

1.24 In addition our audit sample included cases which had been closed following the grant of voluntary removal from the register in the period from 1 January 2014 to 31 July 2014 (there were 43 such cases in that period).[6]

1.25 We selected 50 cases from across all 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 that we considered were more likely to be 'higher risk' were ones that had been closed following successful applications for voluntary removal from the register, cases closed either at the screening stage or by the IC where the registrant was subject to an interim order (including cases where there had been an extension of that interim order by the High Court), and cases which had been investigated by another body or organisation (including cases investigated by the NMC's external lawyers).

Overview of the NMC's FTP framework

1.26 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 a final FTP panel:

By NMC FTP staff without referral to the IC

1.27 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 IC

1.28 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:

1.29 '…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

[5] See paragraph 1.38-1.40

[6] We agreed to extend our sample period to include an additional 11 cases closed under the NMC's new voluntary removal process which was in place from 20 June 2014.

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

1.30 The NMC's IC is made up of members of the nursing and midwifery professions and lay people.

1.31 In order to carry out its role, the IC assesses whether or not there is a 'realistic prospect' of a final FTP panel deciding that the registrant's fitness to practise is currently impaired, should the matter be referred to a final 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 a final 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.

1.32 Following an investigation, either the NMC's external lawyers or the NMC's internal investigation team produce a report for consideration by the IC, which sets out the charges against the registrant. Where the NMC's external lawyers produce that report, it is reviewed by the NMC's internal legal team. If the IC decides that there is a case to answer (i.e. it decides that there is a realistic prospect that the registrant's fitness to practise is impaired) the charges are reviewed again by the NMC.

1.33 IC meetings take place in private and neither the registrant nor their representative attends. The IC panel considers all the information and evidence gathered in relation the allegations as well as any response to the allegations provided by the registrant.

1.34 The IC will need to have regard to the approach that the panel at a final FTP panel hearing would take to assessing impairment of the registrant's fitness to practise. A registrant's fitness to practise may be found to be impaired at a final FTP panel hearing because of the risk of repetition of their behaviour, or because the wider public interest requires there to be a finding of impairment (for example, in order to declare and uphold professional standards or to maintain confidence in the professions or the system of regulation). In considering the risk of repetition of the registrant's behaviour, final FTP panels have to take into account the extent of any insight or remorse the registrant has demonstrated as well as any remediation of their failings.

1.35 In the event that the IC decides not to refer a case for a hearing by a final 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.[7]

Closure following voluntary removal from the register

1.36 The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Amendment Rules Order of Council 2012 allows a registrant who is the

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

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 such applications will not be granted until a full investigation into the allegation has been completed.

1.37 The application form is assessed by NMC staff who produce a recommendation form for the NMC's Registrar. It is the NMC Registrar's decision whether or not to grant the application.[8] If, however, the application for voluntary removal is received during the course of the final FTP panel hearing, then the final FTP panel must assess the application and make a recommendation to the NMC's Registrar. Once a voluntary removal application is granted, the individual concerned is no longer registered and the FTP case about them is closed.

Closure following a referral for a final FTP panel hearing

1.38 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 dies or where the registrant is struck off the register as a result of a separate FTP panel hearing. In addition, Rule 33 of the NMC (FTP) Rules 2004 permits the chair of an FTP panel to decide at a preliminary meeting to close a case without a final hearing taking place, once they have considered the reasons put forward by the NMC about why the final hearing should not go ahead. The NMC describes all these different types of case closures as 'administrative closures'.

1.39 The NMC's guidance states that Rule 33 should be used to close a case where there is no public interest in the case proceeding to a final FTP panel hearing. The guidance highlights three sets of circumstances in which it may be appropriate to use Rule 33 to close a case. The first set of circumstances is where: the registrant's registration would have expired (the NMC use the term 'lapsed') if the NMC had not maintained their registration until the conclusion of the FTP proceedings against them; and the registrant has no intention of practising in the future; and there is no public interest in pursuing the charge to a conclusion. The second set of circumstances is where, in a 'serious' case, evidence is not available to prove the factual allegations (although it may become available in the future). The third set of circumstances is where there is 'some other compelling reason' for not holding a final FTP panel hearing.

1.40 An application under Rule 33 must be made at a preliminary meeting before the Chair of the CCC who takes the final decision as to whether Rule 33 should be applied and the circumstances under which Rule 33 applies.

Interim orders

1.41 Decisions about whether or not to put in place an interim order which either prevents the registrant from practising or which restricts the registrant's practice until the final FTP panel hearing has adjudicated on the case are made by the NMC's IC, CCC or HC, depending on the nature of the case and the stage of the FTP process it has reached. The panel can only impose an interim order if it is necessary to do so to protect the public or where it is otherwise in the public

[8] 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 report we are referring to the decisions taken by either the Registrar or one of the assistant registrars.

interest or the registrant's interests.

1.42 A referral for an interim order may be made at any point during the investigation. The panel may decide to impose either an interim suspension order, or an interim conditions of practice order.

1.43 Hearings to consider whether an interim order should be imposed take place in public. Registrants are given the opportunity to attend the hearing and/or to be legally represented at the hearing, and they can provide evidence at the hearing about whether or not an interim order should be made. Notice that an interim order will be considered must be served on the registrant in such time in advance of the hearing as may be reasonable in all the circumstances of the case.

1.44 Article 31 (6) Nursing and Midwifery Order 2001 requires that any interim order that is imposed must be reviewed within six months, and that it must be subsequently reviewed every three months. An interim order may also be reviewed if new and relevant information or evidence becomes available.

1.45 Interim orders may only be imposed for 18 months and if it becomes necessary for an interim order to be imposed for longer than 18 months the NMC must make an application to the High Court (or Court of Session, or High Court of Justice in Northern Ireland, where appropriate) for an extension of the interim order.

2. Detailed findings

2.1 In this section we set out our findings related to the 100 cases which we audited, including:

- 35 cases that were closed by the screening team
- 46 cases that were closed by the IC – five of which had been investigated by the NMC's external lawyers
- Two cases that were closed by the NMC after they had been referred for a final FTP panel hearing (in front of either the HC or the CCC).

2.2 All of the above cases were closed during the period from 1 January to 30 June 2014. In addition, we audited:

- Six cases that were closed following successful applications for voluntary removal from the register during the period from 1 January 2014 until the day before the NMC published its revised guidance relating to voluntary removal applications (19 June 2014)
- Eleven cases that were closed following successful applications for voluntary removal from the register between the date when the NMC published its revised guidance relating to voluntary removal applications (20 June 2014) up until 31 July 2014.

2.3 Details of our findings about these 100 cases are provided below, under the headings used in the casework framework (see Annex 1).

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.

2.5 The NMC's screening team has responsibility for handling complaints from the point of receipt until their first consideration by the IC. The screening team has a target of reviewing each complaint within five days. We identified four cases where this was exceeded because it took over five days for an acknowledgement of the initial complaint to be sent. In one of these cases the complaint was initially received by the Head of Office for the Chair and Chief Executive two weeks prior to the case being opened by the screening team, which meant there was a two-week delay in opening the case. In another of these cases it took three months to acknowledge the initial complaint about the registrant's police caution.

2.6 In a fifth case the caseworker only identified a fax which had been sent from a patient (in connection with an existing case) as containing a new complaint that required separate investigation four weeks after it was received. We do not agree that that is the right approach.

2.7 Delays in acknowledging and assessing complaints on receipt can lead to unnecessary and avoidable delays in commencing an investigation, as well as potentially impacting on complainants' confidence in the process. We will look for consistent good performance in this area in the future.

Risk assessment

2.8 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. The casework framework (see Annex 1) requires that decisions are recorded and reasons given for actions or no action being taken.

Documenting risk assessments

2.9 In February 2012 the NMC introduced a requirement for staff to document their risk assessments. We are pleased to report that we found documented risk assessments in all 95 cases that we audited that had been opened on or after 1 February 2012, demonstrating good compliance with the new requirement.

2.10 We also audited five cases which had been opened prior to the NMC's introduction of a requirement for documentation of risk assessments in February 2012. As the casework framework has always required regulators to record decisions and the reasons for them, we looked for documentation of risk assessments in these five cases, even though the NMC's own requirement was not in place at the time. Our findings are:

- In one case there was evidence that risk was considered during the lifetime of the case, however, the records were incomplete. While we did not consider that an interim order should have been applied for, we were concerned to note that the NMC had not followed up on an internal email (sent in July 2012, i.e. three months after the requirement was introduced to document risk assessments) which suggested that an interim order referral might be necessary should adverse medical test results be received (see paragraph 2.91, second bullet which sets out our concerns about delays in obtaining medical test results)
- In the other four cases there were delays in documenting risk assessments – those delays ranged from three months to 13 months in length. We were reassured to see that in two of these cases interim orders were in fact imposed promptly, despite the delay in completing the risk assessment forms.

Re-assessing risk during the lifetime of the case

2.11 We checked that risk had been appropriately re-assessed during the lifetime of each case, both at the stages of the NMC's processes require risk to be formally re-assessed and on receipt of new or adverse information.

2.12 We identified six cases where risk assessments had not been updated on receipt of new or adverse information – instead retrospective entries were made on the risk assessment form. In response to our audit feedback about this issue, the NMC told us that the purpose of making retrospective entries on the risk

assessment forms was to ensure that the case records contained an account of all the risks present in each case. We saw little value in retrospectively recording risks in five of these six cases. In four of those cases the interim orders were continued on the basis that there had not been any material change in circumstances since the previous review hearings, in circumstances where relevant information had not been brought to the panels' attention (see paragraph 2.36). Reviewing the risk assessments contemporaneously might have prompted staff to alert the panels to that new information. In the fifth case the NMC's own internal audit identified that the risk assessment had not been updated on receipt of new information and at key stages of the case throughout the last year before its closure.

2.13 In another case we noted that risk was not re-assessed when new information was received from the complainant – who told the NMC that the registrant had been dismissed by their employer. As the conditions of practice interim order that was already in place restricted the registrant to working for that employer, their dismissal meant that they were then unable to work as a nurse in compliance with those conditions. We concluded that receipt of the information about the registrant's dismissal from employment should have prompted the NMC to consider seeking a review of the interim order. (See paragraph 2.51 first bullet for our concerns about the adequacy of the conditions imposed)

Ensuring all relevant information is properly taken into account

2.14 We checked to see that all relevant evidence and information was taken into account in the risk assessment and/or in decisions about whether to apply for interim orders. We identified concerns in five cases:

- In the first case the NMC concluded that an interim order application was not necessary, on the basis that the registrant's employer had not raised any concerns about them and was prepared to support the registrant's return to work. We were concerned that the NMC did not appear to have considered the possibility that the registrant might change employer and any risks that might arise if they did so. Such risks could have been addressed by an interim conditions of practice order restricting the registrant to working for their current employer and/or by putting appropriate reporting/supervision requirements in place. In addition, it was not apparent whether the NMC had taken into account the most recent information from the registrant (which had been received only four days prior to the decision not to apply for an interim order) that they had suffered a lapse of their health condition three weeks previously. While we did not consider that it was essential to apply for an interim order in the circumstances of this case, we were concerned that the NMC had not taken these matters into account in reaching its decision
- In a second case the NMC acknowledged on the risk assessment form that the case needed to be closely monitored because any deterioration of the registrant's health could necessitate an interim order. The registrant's GP said they could not comment on the registrant's fitness to practise, because they had not seen the registrant for six months (although they were not aware of the registrant having health problems at that time). We were concerned

that the NMC took no further action to obtain information about the current state of the registrant's health – the only other information the NMC obtained was from the employer's occupational health team and that pre-dated the incident being investigated

- In a third case after the initial risk assessment had been completed, the NMC's clinical adviser took the view that if the registrant changed employer an interim order application should be made. However, when the NMC received information that the registrant had changed employer no application for an interim order was made, on the basis that there was no evidence of patient harm. When we audited the case we noted that the registrant's employer had not investigated the incident i.e. rather than there being no evidence of harm, there had been no investigation into whether or not harm had occurred
- In a fourth case the NMC was in receipt of information from the registrant's GP that the registrant was not fit to work due to their ill health. This was new information that was not specifically addressed by the interim conditions of practice order that was already in place. We noted that the NMC did not take account of the information from the GP and concluded that an early review of the interim order was not needed. In response to our comments on this case the NMC said that the public was adequately protected by the interim order that was in place
- In a fifth case the charges were that the registrant was registered as a mental health nurse, but had claimed to be qualified as a general nurse, and had accepted a role that required general nursing registration which also involved the supervision of nursing staff. We concluded that the NMC should have considered the possibility that the case involved the specific risk factor of 'serious dishonesty' when deciding whether or not to apply for an interim order.

2.15 We are concerned that the findings in these cases suggest that NMC staff do not always identify emerging risks and take appropriate action promptly.

Delays in applying for or imposing interim orders

2.16 A delay in putting an interim order in place can expose the public to unnecessary risk while the registrant remains free to practise unrestricted. We audited 19 cases where an interim order had been imposed – and we identified concerns about delays in applying for the interim orders in five, as follows:

- In two cases there was a delay of three weeks in putting an interim order in place due to the panel adjourning the interim order hearing at the registrants' request (so that they could represent themselves or obtain legal representation). In response to our audit feedback, the NMC said that its guidance advises panels not to adjourn interim order hearings. However, the panels in these cases exercised their statutory discretion to adjourn, balancing the submissions about adjournment from both the registrants and the NMC and having taken legal advice and having weighed the evidence
- In another two cases it was not until four months after receipt of the complaints that interim orders were put in place, even though the IC

had identified the need for interim order applications two months after receipt of the complaints (it took two months for NMC staff to action the IC's instructions). We note that these cases pre-dated the introduction of both the NMC's internal target for imposing interim orders within 28 days of a complaint being received and the new process for documenting risk assessments in every case

- In a fifth case there was a three-month delay in applying for an interim order. On receipt of the complaint the NMC should have identified the need for an interim order to be considered, as set out in the NMC (Midwives) Rules 2012 (which require a Practice Committee to determine whether or not to impose an interim order whenever a midwife registrant has been suspended by their local supervising authority). However the NMC did not identify this until three months after receipt of the complaint.

2.17 In general, based on our audit we were satisfied that the NMC was imposing interim orders without unnecessary delay, however, we recommend that the NMC reviews our comments in the above cases to satisfy itself that these issues cannot recur in future.

Gathering information/evidence

2.18 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.

2.19 We identified inadequacies in the NMC's approach to gathering information and evidence in four of the 35 cases which we audited that had been closed by the screening team and in 36 of the 65 cases we audited that had been closed at a later stage of the NMC's process.

Cases closed by the screening team

2.20 In our 2013 audit report we were pleased to find no failures by the screening team in gathering information and evidence. However, in this audit we identified four cases which we considered demonstrated the need for improved evidence and information gathering by the screening team:

- In the first case the allegations were that the registrant had failed to adequately care for their child. An interim care order had been granted to the local authority due to concerns that the registrant had failed to work with medical professionals in relation to the child's diagnosis, and an additional recovery order was granted when the registrant absconded with the child instead of taking them to a medical appointment. When the complainant (the local authority) did not provide consent for disclosure of the complaint, the NMC closed the case. The NMC was satisfied that closure was appropriate, because in the absence of the complainant's consent, the case was not 'in the form required' (see paragraph 1.27). We consider that, due to the seriousness of the case, the NMC should have taken steps to obtain further information before deciding to close the case, such as by using its legal powers (Article 25 (1)) to require disclosure of information, or by following up with social services. We are pleased to note that in

response to our audit feedback the NMC has amended its processes to ensure that Article 25(1) is considered in every case prior to closure by the screening team

- The allegations in the second case were also serious – it was alleged that the registrant had assaulted a patient on a psychiatric intensive care unit. While the screening team obtained some information from the employer about its investigation, the NMC did not ask for relevant documents or reports. It did not ascertain the nature of the 'lessons to be learned for the staff involved' referred to by the employer, and no enquiries were made of the police (who had investigated the matter and interviewed key witnesses) or of the Care Quality Commission.[9] This was despite correspondence from the employer offering to provide further information and clarification about its decision to permit the registrant to return to work. We considered that, given the seriousness of the allegations, the NMC ought to have obtained further information before closing the case
- The NMC closed the third case prematurely, without following up a request for information from the police. We concluded that the NMC ought to have verified this information before closing the case
- In the fourth case the NMC did not ask the registrant's employer to confirm whether they had any concerns about the registrant's FTP, as required by its own process. The only information that the employer had provided was that they were aware of the particular incident under investigation.

2.21 We consider that the NMC should review the approach that was taken in these cases, in order to ensure that cases are not prematurely closed by the screening team before all necessary information and evidence has been obtained.

Cases closed at later stages of the NMC's FTP process

2.22 We audited 65 cases that were closed later in the NMC's initial stages FTP process. Twelve cases had been closed following an investigation by the NMC's external lawyers, and the other 53 cases were closed following investigation by NMC staff.

2.23 We identified concerns about gathering information and evidence in 36 of the 65 cases. Those concerns relate to the following areas:

- Failure to gather relevant information/evidence
- Failure to investigate relevant issues
- Inadequacies in the charges drafted for consideration by the IC
- Inadequacies in the information and evidence presented to the decision maker(s).

2.24 We found no link between the type of investigation being conducted (i.e. whether it was conducted by NMC staff or by the NMC's external lawyers) and the

[9] The Care Quality Commission (CQC) monitors, inspects and regulates hospitals, care homes, dental and general practices and other care services in England to make sure they meet fundamental standards of quality and safety.

frequency with which any of these issues arose. We set out our findings in each of the four areas below.

Failure to gather relevant information/evidence

2.25 When inadequate information is gathered, it raises risks that cases are closed too early, that the wrong decision is reached and that there will be a loss to stakeholders' confidence in the regulatory action taken. In this audit we identified 23 cases[10] where there were failures by the NMC to gather relevant information and evidence before closing the case and we set out some examples below.

- In eight of the 23 cases there were no recorded reasons to explain why the investigation plan had not been followed, and it appeared that relevant information had not been obtained. In one case the approach set out in the investigation plan was to await the outcome of the employer's investigation. However the NMC closed the case before the employer's investigation had been completed
- In six of the 23 cases the NMC did not try to obtain further information about the police cautions/convictions the registrants had received (the NMC could have requested interview transcripts or the records of caution or certificates of conviction). In one of these cases there was doubt about whether the registrant had punched or pushed the victim, and we concluded that obtaining more information from the police might have clarified the seriousness of the incident. In another of these cases the registrant notified the NMC that they had received two police cautions. When the NMC conducted a Police National Computer[11] (PNC) check to find out whether the registrant had any previous convictions or cautions, it only referred to one caution, rather than two. The NMC took no further action to clarify whether the registrant had received one or two police cautions. In a third case the NMC relied on the PNC check – which in fact provided inaccurate information about the wrong person. Had the NMC requested the background information, this inaccuracy might have come to light (see paragraph 2.82 fourth bullet)
- In eight of the 23 cases the NMC did not obtain relevant information/evidence from the registrants' former or current employers before closing the cases. In one case, obtaining the medication administration record sheets from the employer would have confirmed whether or not the registrant had administered in breach of an interim order. In a second case the NMC had not obtained any information from the registrant's most recent employer (or established who their most recent employer was) despite the IC's instructions to do so two years previously. In a third case the report for consideration by the IC said that it had not been possible to obtain evidence relating to the incidents from 2008/2009 which had resulted in the registrant receiving a written warning, and that that was due to the employer's failure to respond to the NMC's external lawyers' request. In fact, the NMC's

[10] In the section below, some cases are referred to more than once.
[11] Police National Computer: database containing information about people who have been convicted, cautioned or recently arrested

external lawyers had been writing to the wrong individual at the registrant's employer and, when they finally realised that (after several months) they only allowed the correct individual a week in which to respond to the request. While we consider that the NMC should have made a further attempt to obtain the information prior to the IC taking its decision in this case, we acknowledge that no risk to public protection resulted, as the IC referred the case for an final FTP panel hearing

- In five of the 23 cases the NMC did not obtain adequate/up to date information or evidence about the registrant's ill health
- In another four of the 23 cases the NMC failed to seek information or evidence to establish whether harm had occurred. In the first case the NMC failed to follow up on the outcome of a Health Protection Agency[12] investigation. In the second case the NMC was in receipt of information about potential patient harm but made no further enquiries. In the third case the NMC decided not to contact the patient and therefore did not obtain information about any harm caused to the patient or their baby. The fourth case concerned allegations that the registrant had failed to give a terminally ill patient antibiotics, thereby hastening their death. We considered that clinical advice could usefully have been obtained by the NMC to establish whether the failure to administer antibiotics had in fact led to patient harm and/or to the patient's readmission to hospital
- In another two linked cases no efforts were made by the NMC to contact two witnesses – the NMC instead relied upon hearsay evidence from someone who had been told about the patient's complaint, without, it appears, recognising that attempts should have been made to gather direct evidence. We acknowledge that the IC found a case to answer, despite the lack of direct evidence
- In another case the NMC did not establish why the Crown Prosecution Service (CPS) had decided not to prosecute the registrant, following a police investigation. It appears that the NMC simply assumed that the CPS's decision not to prosecute also meant that there was no case to answer that the registrant's fitness to practise was impaired. This is of concern because while there might be insufficient evidence to meet the legal threshold for a criminal prosecution to proceed (and in any event the NMC did not know the background to the CPS's decision not to prosecute) it does not mean that there is insufficient evidence for regulatory action to be taken
- In one case we considered that the NMC should have taken additional steps to pursue its requests for information from third party organisations (including the police) such as by further explaining its statutory role and/or by escalating the requests within the organisation and/or by obtaining the necessary information in a different format (i.e. in a witness statement as opposed to by disclosure of meeting

[12] The Health Protection Agency's role was to provide an integrated approach to protecting UK public health through the provision of support and advice to the NHS and others. The Health Protection Agency became part of Public Health England in 2013.

minutes). The NMC said that it has amended the processes used by caseworkers to ensure that taking such steps is actively considered in future cases.

Failure to investigate relevant issues

2.26 A failure to ensure that all relevant issues are investigated potentially leaves issues unexplored which may risk patient safety and undermine public confidence in the regulator.

2.27 We audited eight cases where we considered that the NMC should have ensured that all relevant issues were investigated within reasonable timescales. We had serious public protection concerns about one of these cases which we set out in detail at paragraph 2.109. Our concerns about the remaining seven cases are as follows:

- In the first case the NMC did not instruct its external lawyers to investigate an alleged medication error even though further errors had since been identified and even though the external lawyers specifically alerted the NMC to the fact that they had no instructions to undertake such an investigation. The errors therefore were never investigated by the NMC. In response to our audit feedback the NMC agreed that this matter should have been investigated
- In the second case concerns about the registrant's care of three other patients during the same shift were never investigated by the NMC – as its external lawyers said they would only investigate these matters if they had been investigated by the registrant's employer. The NMC agreed with our feedback about this case and said that it will ensure that this issue does not recur
- In the third case the NMC limited the medical testing of the registrant inappropriately, and also failed to enquire into a discrepancy between the explanations given to the police and the psychiatrist who conducted the health assessment about why 4000 tablets were found at their home
- In the fourth case one of the witnesses contacted the NMC to say that the registrant was working as a carer but had given out nursing information about a patient that they were not entitled to have access to or share. It was not apparent whether the witness was concerned about the registrant carrying out nursing work when they were employed as a carer or whether they were concerned about a breach of confidentiality. In any event, no further investigation into these issues took place
- In the fifth case information from the registrant's former employer included a reference to the registrant sleeping whilst on duty, which appeared to have been overlooked by the NMC as it was not referred to in the charges drafted for consideration by the IC
- In the sixth case we noted two inadequacies. First, while the report prepared by the NMC for the IC included a reference to behavioural issues (including lying about colleagues) there was no further detail provided about this in the report and no explanation about why those

issues had not been included in the charges for consideration by the IC. Second, although it was alleged that the registrant had dishonestly recorded administering steroids to a patient, none of the evidence that the NMC had obtained supported that charge

- In the seventh case witness statements were not obtained from staff members who had spoken to the registrant after the incidents, even though the need for such statements was highlighted in the investigation plans on file, and even though the NMC's investigation process requires staff to seek as much information as possible from those working at the time medication errors occur. In addition, the NMC failed to seek a further witness statement that had been identified by its own internal legal team as being necessary. The reason for that failure appears to have been that other cases were given priority in order to ensure that the NMC achieved its key performance indicators (KPIs). In response to our audit feedback, the NMC said that it was 'a perfectly reasonable' approach for the case investigation team to prioritise other work and for a different team subsequently to decide not to seek to obtain the statement at all. We noted that there was no record to explain the apparent change in approach or why the internal legal team's advice had not been followed. We identified related concerns about this case (see paragraph 3.48 first bullet) arising from the NMC's application at the final FTP panel hearing to offer no evidence as to the registrant's dishonesty. The NMC does not agree with our view that had adequate investigation been undertaken, that might have produced evidence to support the dishonesty aspect of the case.

Inadequacies in the charges drafted for consideration by the IC

2.28 Inadequacies in the charges drafted (including lack of adequate detail) can result in the decision maker failing to appreciate the overall seriousness of the case. We identified concerns about the adequacy of the charges considered by the IC in six cases:

- In the first case the NMC decided not to allege breach of confidentiality or an earlier medication error because the employer had not investigated/fully investigated these aspects of the case. In addition, the NMC did not allege that the registrant had failed to discuss the medication with the patient before discharging them, in breach of the employer's policy – on the basis that it was not known whether the registrant was familiar with the policy, and without (it appears) considering the registrant's duty to ensure that they were familiar with their employer's policies. We concluded that the NMC should have considered including additional charges, even if that meant conducting further investigation first
- We identified several failures on the part of the nurse that were not covered by the charges the NMC asked the IC to consider in the second case. These included failures: to recognise signs of deterioration; to recognise risk factors during labour; and to escalate the patient's care to medical colleagues. Overall we considered that the charges considered by the IC did not give a full picture of the seriousness of the registrant's failings. We were also concerned that

this had repercussions later in the case because it meant that these failings were not taken into account by the Registrar when taking the decision to grant voluntary removal (see paragraph 3.30 first bullet)

- In the third case the registrant had notified the NMC that they had received two police cautions. Despite the fact that the first caution had been received six months previously, and despite also having information that the registrant's employer was not aware of the registrant's criminal offences, the NMC did not give any consideration to alleging the registrant's failure to notify both itself and their employer of these matters
- In the fourth case the NMC did not include a charge that, once the registrant became aware that they had failed to give medication to a patient, they also failed to seek medical help
- In the fifth case the charges were inadequately detailed (in that they referred to 'numerous unknown dates' and 'residents including but not confined to residents A, B, C, D...'). In our view the NMC should have sought to obtain the evidence (medication administration record sheets) that might have provided the relevant details
- In the sixth case the NMC did not allege that the registrant had removed confidential data from their employer – on the irrelevant basis that although the registrant had removed the data, they had not shown it to a third party.[13] It appears that neither the NMC nor the IC considered the possibility that there had been an information breach and a breach of local information governance processes.

2.29 In one further case the IC commented that the registrant had 'falsely and dishonestly recorded' that medication had been administered. Dishonesty had not been alleged in respect of the false record made at the time, and had only been alleged in relation to the later amendment to the record. We considered that the NMC should have added such an allegation once the IC referred this case on that basis – but this was not done.

(i) Inadequacies in the evidence presented to the decision maker(s)

2.30 It is important that decision makers are in receipt of all relevant pieces of information and evidence to enable them to make robust decisions which are soundly reasoned.

2.31 In this audit we considered decisions to close cases made by the IC, decisions made by interim order panels and in two cases, decisions made by the chair of the CCC under the Rule 33 procedure. We set out our finding below in relation to the adequacy of the information presented to those decision makers at various stages of the FTP process. Our findings and conclusions in the 17 cases that were closed by the grant of voluntary removal are set out in section 3.

Information/evidence presented to the IC

[13] The NMC's Code – *Standards of Conduct Performance and Ethics for Nurses and Midwives* that was in place at the time required registrants to respect people's right to confidentiality and ensure people are informed about how and why information is shared by those who will be providing their care http://www.nmc.org.uk/globalassets/sitedocuments/standards/the-code-a4-20100406.pdf

2.32 We identified inadequacies in the information and evidence presented to the IC, including the analysis contained in the report prepared by the NMC for consideration by the IC, in eight of the 65 cases we audited that had been closed by the IC. We set out below the instances where we considered that those inadequacies may have impacted on the IC's decision.

2.33 In six of the eight cases we identified inaccuracies and inadequacies within the reports prepared by the NMC for consideration by the IC setting out the matters investigated:

- In the first case the report omitted reference to an additional medication administration incident that had taken place in 2010 (see paragraph 2.27, first bullet). This omission was the result of an error and it was significant as it meant that the IC did not appreciate that medication errors had occurred in 2010 as well as in 2008/2009 and 2011. The omission had repercussions later in the case's lifetime because the 2010 incident was not taken into account in the Registrar's decision about granting voluntary removal (see paragraph 3.30 first bullet)
- In the second case the report contained apparently contradictory statements about the registrant's GP's opinion on the registrant's history of alcohol problems without offering any explanation/attempting to resolve the discrepancies. It also referred to the registrant being supported by their current employer, but did not address the risk to the public if the registrant changed employer. The report also suggested that a referral to the CCC was not required because the two police cautions the registrant had received were at the 'lower end of the criminal spectrum' and had been self-referred in good time. We considered that the report to the IC should have clarified both the nature of the offences and the fact that (contrary to the statement made within the report for consideration by the IC) there had been a six-month delay by the registrant in notifying the NMC about one of them, so that the IC could fully evaluate the seriousness of these matters for itself. in response to our audit feedback the NMC has said that it accepts that the report to IC should have examined the wider public interest in more detail
- In the third case the report recommended that it would be disproportionate to pursue additional allegations of misconduct (record keeping errors) due to the registrant's insight. While we appreciate that the registrant had been diagnosed with a degenerative health condition, we were concerned about this recommendation, given that an NMC clinical adviser had confirmed that the record keeping errors were serious, and given that the registrant had not made full admissions or displayed insight into the importance of maintaining accurate medical records for public protection and for maintenance of public confidence in the nursing profession. It was also not apparent to us why it was appropriate for the registrant's completed voluntary removal application to have been placed in the bundle of documents to be considered by the IC in this case. We note that it is not the NMC's practice to include voluntary removal applications in IC bundles

- In the fourth case the report to be considered by the IC recommended a referral to the HC, on the basis that the misconduct alleged (making sexually inappropriate remarks) is a recognised side effect of the medication the registrant was taking and the medical report obtained confirmed that the registrant's behaviour was the result of taking that medication. However the report did not address whether, due to the seriousness of the charges, any final FTP panel hearing should be in front of the CCC rather than the HC
- In the fifth case the report inaccurately stated that there was evidence from the registrant's employer about the registrant's current fitness to practise, when in fact the registrant was not currently employed as a nurse, and their employer had made no comment about their fitness to practise as a nurse. Additionally, the report inaccurately stated that the NMC had received 'a declaration of good character' from their university. Finally, the report incorrectly said that at the time the registrant had registered with the NMC there was no specified deadline for declaring past convictions (in fact the registrant was obliged to declare their conviction when they registered). The IC adopted the NMC's incorrect analysis and as a consequence decided there was no case to answer
- In the sixth case the report identified the only matter for consideration as being the registrant's conviction. In fact the bundle of documents also contained papers related to the registrant's employer's investigation into an unrelated confidentiality issue. This clearly confused the IC, and led to some of its comments being incorrect.

2.34 In another three of the eight cases we identified inadequacies in the information and evidence that the NMC presented to the IC for consideration alongside the report:

- In the first case it was not clear to us why various witness statements produced in connection with the registrant's employer's disciplinary investigation were not included within the bundle of documents given to the IC. We disagreed with the NMC's view that it was appropriate to exclude these witness statements from the bundle
- In the second case we noted that the NMC did not check why an expected letter from the registrant had not been included in the bundle for consideration by the IC. The registrant expressed concern that their letter had not been provided to the IC
- In the third case it appeared from the records available that the NMC did not provide the IC with a letter from the registrant's employer confirming their dismissal or a medical certificate provided by the registrant.

Interim order decisions

2.35 We audited 19 cases where interim orders were imposed. Once an interim order has been imposed, it has to be reviewed regularly in line with the NMC's statutory framework and a decision made whether to continue, amend or revoke it (see paragraphs 1.38-1.42). In our audit we reviewed the information and evidence on

which the panel imposing or reviewing the interim orders based their decisions. We had concerns about the information and evidence presented to panels making such decisions by the NMC in the following two cases:

- In the first case the panel decided to revoke the interim order on the basis of a letter from the registrant stating that the criminal charges against them had been dropped. In our view the NMC should have obtained confirmation from the police about the status of the criminal investigation, rather than relying upon the registrant's letter
- In the second case we noted several inaccuracies in the information and evidence presented to various panels reviewing the interim order. It appeared from correspondence with the registrant that one reviewing panel was not presented with evidence the registrant had provided about their health and their wish to retire.

2.36 In addition we identified 10 cases where the panel continued interim orders on the basis that there had not been any material change in circumstances since the previous review hearings, but where relevant information was not brought to the panel's attention. We had particular concerns about six of these cases:

- In the first case the panel continued an interim order on three different occasions on the basis that there had been no material change in circumstances. In fact there had been a material change of circumstances in that, as the NMC was aware, the registrant had been convicted and sentenced for theft (and a referral for a final FTP hearing had been made). As an interim suspension order remained in place, no public protection risk arose
- In the second case the panel reviewing an interim order which had been imposed previously partly because of concerns about the registrant's health was not informed that those concerns did not form part of the referral to a final FTP panel hearing made by the IC. The panel continued the interim order on the same basis as previously (i.e. including reference to the ill health concerns). In response to our audit feedback about this case, the NMC said that the panel would have been aware from reading the documents presented at the review (which included the IC's decision) that the health aspect of the case was not proceeding
- In the third case an interim conditions of practice order restricting the registrant to working with their current employer in a non-clinical role had been imposed. The NMC did not provide the reviewing panel with information that had been received over 12 months previously about the registrant's ill health (including their detention under the Mental Health Act). As the panel changed the interim conditions of practice to an interim suspension order anyway, no public protection issue arose
- In the fourth case the panel decided to continue an interim conditions of practice order on three occasions without being informed by the NMC that the registrant said they had no intention of working as a nurse while the investigation was ongoing. We recognise that no increased risk to public protection arose in this particular case

- In the fifth case the registrant made valid complaints about the NMC's repeated failures to provide the various review panels with relevant papers (which led to adjournments which should have been unnecessary)
- In the sixth case the panel was not provided with a letter from the registrant – on this occasion this did not affect the panel's decision because the registrant provided a copy of the letter at the hearing.

2.37 While we recognise that the inadequacies identified above did not create any public protection risks, nevertheless it is unacceptable for decision makers who are responsible for making significant decisions about whether or not registrants should be restricted from practising not to be provided with relevant evidence, as that could affect their decisions. In addition, we consider that a pattern of such failings could lead to a loss of confidence in the regulator's processes.

CCC decisions to close cases by administrative removal

2.38 We audited two linked cases that had been closed by a CCC chair under the process known as 'administrative removal' (see paragraphs 1.34-1.36). We identified serious concerns about the accuracy of the information presented by the NMC in support of its application for the cases to be closed. The NMC's case presenter told the chair of the CCC that the principal witnesses were no longer available, that they had not responded to recent communications from the NMC, and that their whereabouts remained unknown despite the use of tracing services. In fact, one of the three witnesses had been traced (although they had not responded to the NMC's recent correspondence), another witness was in contact with the NMC and, while the NMC did not have contact details for the third witness, that individual was not a key witness in any event. We therefore concluded that these two cases had been closed by the chair of the CCC on the basis of inaccurate information presented by the NMC and that is a matter of some concern. We note that the NMC disagrees with our analysis of these cases.

Evaluation and giving reasons for decisions

2.39 A regulator's decisions must be able to stand up to scrutiny. Ensuring that detailed reasons are provided which 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.

2.40 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. We considered the NMC's process for evaluation and decision making, as well as checking to ensure that the decisions were taken in line with the NMC's remit, that they were based on all the relevant facts and evidence, and that sufficient reasons were recorded.

Decisions made by the screening team

2.41 We identified concerns in two of the 35 cases that we audited that had been closed by the screening team. We did not have concerns about the outcomes in these cases, just about compliance with an internal process (in one case) and one aspect of the reasoning (in the second case).

Decisions made by the IC

2.42 We identified concerns about whether the correct decision was taken in two of the 65 cases we audited which were considered by the IC, as follows:

- In the first case the IC's decision was unclear about whether the final FTP panel hearing should take place in front of the HC or in front of the CCC. The NMC decided to interpret the IC's decision as being a referral back for further investigation. In response to our audit feedback, the NMC told us that a similar issue has not arisen in other cases and that general training for the IC was therefore not required
- We considered that the IC had erred in its approach in the second case. We noted that the IC's decision did not explain why the realistic prospect test was not met in light of the seriousness of the misconduct (the registrant had received a caution for destruction of property). Also, while we noted that there was no evidence of insight, remorse or remediation, the IC appeared to place considerable weight on the fact that the registrant remained employed by the same employer and that there had been no repetition of the misconduct in the one-year period it had taken the NMC to investigate the case. We concluded that the realistic prospect test was met and that the case should have been referred for to a final FTP panel hearing

2.43 We also identified four cases in which we considered that the IC should have identified inadequacies in the information and evidence presented. See paragraph 2.33 second, fourth and fifth bullets and paragraph 2.34 first bullet.

Inadequately reasoned decisions about whether there is a case to answer

2.44 We identified concerns about the adequacy of the reasons for the IC's decisions in 14 cases (although we did not disagree with the actual decisions taken by the IC in these cases). Our concerns related to four areas: the IC's consideration of the evidence of the registrant's remediation and insight (see paragraph 2.45), the IC's consideration of the wider public interest (see paragraph 2.46), the failure to address all the charges (see paragraph 2.47) and the degree of weight attached to evidence (see paragraph 2.48-2.49).

2.45 In four cases we considered that the IC had made errors in its assessment of the registrant's remediation and insight (see paragraph 1.27 for an explanation of the test to be applied). Our concerns about these four cases were as follows:

- In one case we were concerned that the IC's decision did not address the risk of repetition, in light of the absence of evidence of insight or remediation or information about the registrant's current employment
- We were concerned that the IC had not adequately explained its conclusion about the registrant's insight in a second case – the registrant had not in fact demonstrated insight into the impact that drug taking whilst on duty could have on patients and on the reputation of the nursing profession
- In a third case the IC's decision did not appear to have taken account of information from the registrant's employer that they were unable to confirm that the registrant had met the NMC's Prep standards (the

continuing professional development standards that were in place at the time)[14]

- In a fourth case the IC concluded that there was no risk of repetition, despite information that an additional medication error had recently occurred. We were also concerned that the IC's decision did not address the registrant's lack of insight into the gravity of their misconduct.

2.46 We identified five IC decisions which, in our view, did not include adequate consideration of the wider public interest:

- In three cases there was no evidence that the IC had considered the wider public interest at all. We considered this to be significant because the registrants had criminal convictions or cautions for offences which engaged the public interest
- In a fourth case (which involved an allegation of assault) the IC's decision did not address the wider public interest and did not include a statement that the registrant's behaviour was unacceptable and must not be repeated (we saw such statements in other similar decisions)
- In a fifth case we were concerned that the IC's decision did not address the wider public interest at all, particularly as the registrant's misconduct had created risks to the safety of vulnerable patients.

2.47 In another two cases we considered that the IC's decisions would have been strengthened by addressing each specific element of the relevant complaints. In one of those cases the IC's decision suggested that it had overlooked the misconduct alleged, only focusing on the alleged ill health.

2.48 We identified a further three cases in which we considered that the IC should have clarified the degree of weight it attached to certain pieces of evidence.

- One case concerned serious charges and, consequently, the inadequacy in the IC's decision caused us a greater degree of concern.
- In another case our first concern was that the decision did not refer to the evidence about the seriousness of the misconduct (which placed patients at risk of harm) or to the lack of insight displayed by the registrant, or to the fact that the registrant had made inconsistent statements during their employer's investigation. Our second concern was that the IC's conclusion that the registrant's clinical deficiencies had been remediated was on the basis of training certificates that did not in fact show that all the relevant clinical deficiencies had been addressed. Our final concern was that the IC's decision did not make clear how much weight had been placed on various references, including one reference which pre-dated the relevant events, and other references which only required the referees to tick various boxes. It was also not apparent that the referees were aware of the NMC proceedings.

2.49 In response to our audit feedback the NMC has told us that the IC felt discouraged from clarifying the weight attached to evidence in case it could be

[14] The Post-registration education and practice standards

criticised for conducting a fact finding exercise. The NMC also told us that further training was given to the IC about the importance of clearly stating the degree of weight given to evidence.

2.50 In March 2015 the NMC introduced case examiners (two senior NMC staff) who will take most of the decisions that previously could only be taken by the IC. The NMC has told us that it accepts that the IC has been considering the wider public interest inconsistently and that this topic, as well as the topic of weighing evidence, has been addressed in the training provided for the case examiners.

Decisions to impose and review interim orders

2.51 We audited 21 cases in which panels considered whether or not an interim order should be imposed (or, at review hearings, whether they should be continued). We identified concerns about seven of those decisions (in addition to the concerns referred to in paragraph 2.35 above about the information presented by the NMC at interim order hearings). In three cases we considered that the decisions did not adequately manage risks to public protection and in two cases we were concerned that the NMC's case handling might fail to maintain public confidence – our concerns about these five cases are set out in paragraphs 2.109 and 2.113 (3rd and 6th bullets). In the sixth and seventh cases our concerns were:

- In the sixth case we considered that the conditions should have included a requirement for drug testing of the registrant, for the benefit of the reviewing panel's assessment of ongoing risk to patients. We were also concerned about the reviewing panel's amendment of the conditions to require the registrant to keep the NMC informed of their employment details and to work under indirect supervision – in circumstances where it was alleged that the registrant was stealing drugs for their personal use, and had attended work under the influence of drugs, and where the registrant had been dismissed from their employment and had shown no insight
- In the seventh case none of the interim conditions addressed the potential risk that the registrant might pose to children. The registrant's employer then informed the NMC that the local safeguarding group had described the registrant as a risk to children and that the employer had therefore decided not to permit the registrant to work on their premises. We were concerned about the NMC's decision not to seek an early review of the interim order – that decision was made on the basis that the panel that imposed the interim conditions would have taken account of the registrant's suspension from work when formulating the conditions and so it was concluded that there was no new information to put before a panel. We were also concerned about the decision taken by the panel (once a review hearing was held) to continue the interim conditions of practice order, rather than to replace it with an interim suspension order as requested by the NMC. We noted that it was not clear what weight had been given to the following factors: information from the registrant's GP that the registrant was unfit for work; the registrant's suspension by their current employer; and the information before the panel about the risks the registrant posed to children. In response to our feedback about this decision, the NMC has

said that it is satisfied that the public were adequately protected by the interim conditions imposed although the NMC has also acknowledged that the panel's reasoning could have been more detailed.

Decisions to cancel final FTP panel hearings

2.52 Two linked cases we audited had been closed under Rule 33 of the NMC (FTP) Rules 2004 (see paragraphs 1.34-1.36).

2.53 We were concerned about the use of the Rule 33 procedure for cancelling final FTP panel hearings in these cases, as well as about the actual decisions made. We were also concerned about the approach suggested by the NMC's internal legal team in one of these cases. Our concerns are:

- The NMC recommended that the final FTP panel hearing in two linked cases should be cancelled. The documentation we saw on file indicated that that recommendation was partly motivated by concerns about the likelihood of further criticism by the High Court should it be necessary for the NMC to apply for a further Court extension to the interim order that was in place in one of the cases (see paragraph 2.114 first bullet for our comments about the criticisms made by the High Court). In response to our audit feedback the NMC told us that its only basis for seeking cancellation of the final FTP panel hearing was that the two key witnesses could not be available, which meant that it could not prove the charges and it was therefore not in the public interest for a hearing to go ahead in either case
- We concluded that it would have been more appropriate for the CCC to have considered whether or not there was a case to answer, having examined the evidence. We noted that the employee who had conducted the local investigation and made the complaint to the NMC was available to attend the final FTP panel hearing, and the NMC was also in possession of three witness statements (we have set out our findings in relation to the inadequacies with the evidence gathering process in these cases at paragraph 2.38). In addition, a review that had been conducted by the NMC's internal legal team five months beforehand had concluded that there was sufficient evidence to establish the facts and impairment (we acknowledge that it would have been assumed at that stage that all the key witnesses would be available to attend the hearing) and that the cases should be considered by the final FTP panel because of their seriousness and the implications for patient safety. We do not agree with the view that the NMC set out in its response to our audit feedback – that it was preferable to cancel the final FTP panel hearing entirely at this stage, so that at some future date, should circumstances change, the NMC could revisit the cases
- We note that Rule 33(4) requires that the NMC provide the 'maker of the allegations' with a reasonable opportunity to comment. We considered that the NMC had not given the actual 'maker of the allegations' in this case (the nursing home where the registrant(s) worked at the time) a reasonable opportunity to comment – the NMC had taken over two years to investigate the complaint and, by the date of the Rule 33 application, the nursing home was owned by a different

company and under the management of individuals who had not worked with either registrant and who had no knowledge of the complaint. In our view the NMC ought to have treated the former home manager (who had made the original complaint) as the 'maker of the allegations' (the NMC was in contact with that individual, as they were also a key witness) in order to comply with Rule 33(4). In response to our audit feedback the NMC has accepted that it ought to have better processes in place for consulting complainants in circumstances where the setting in which the incident took place is later managed by a different individual/company.

Interaction between the FTP and registration departments

2.54 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 (expiring) and their removal from the register. 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 investigation, the NMC places an 'under investigation' flag on the individual's WISER record as soon as an FTP investigation is opened.

2.55 Our audit identified one case where the individual in question had already 'lapsed' from the register (i.e. the NMC had not initially identified that it had no jurisdiction to open the case – because the individual concerned was no longer a registrant). In response to our audit findings the NMC said that this case was opened to keep a record of the concern to ensure that the registration team was aware of the concerns should the individual apply for restoration to the register in the future. We remain concerned that the NMC did not check the registration status of the individual concerned before opening the case.

2.56 We identified a concern related to the interaction between the FTP and registration departments in one other case. In that case the NMC was in receipt of information from the registrant's employer that indicated that the registrant might not be meeting the 'Prep' requirements (the NMC's CPD requirements that were in place at the time) and the FTP staff did not alert the registration department about this, despite its relevance to the registrant's compliance with the requirements for renewal of their registration.

Customer care

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

2.58 The NMC introduced customer service standards within its FTP team in August 2011 ("the 2011 standards") which were the standards in place at the time of our audit. The NMC revised those standards in October 2014 (i.e. after the cases considered in our audit had been closed). In our audit we considered four aspects of the 2011 standards which we considered to be most relevant to the initial stages of the FTP process.

Providing updates to parties

2.59 The 2011 standards stated that the NMC aimed to provide updates to parties (i.e. the complainant and the registrant) every six weeks. We concluded that it was appropriate to consider whether or not the NMC had provided updates within that timescale as part of our audit, even though the NMC had decided to stop working to that standard – because the 2011 standards had been made public and the relevant stakeholders would not have been aware of the decision by the NMC to stop working to the six weekly target. We found that the NMC had not provided updates to either the complainant or the registrant (or both) every six weeks in 59 of the 100 cases we audited including:

- Thirteen of the 35 cases we audited that had been closed by the screening team
- Thirty of the 46 cases we audited that were closed by the IC. This included one case where the NMC told the parties that the IC would consider the case in the next 4–5 months the day before it placed the investigation 'on hold' pending the outcome of a third party investigation and it then did not update the parties about this until four months later (and that update was only provided at the request of the registrant's representative). Following those events it was a further year before the next update was sent, even though the registrant's representative had requested an update on five occasions in that period
- Both cases that we audited were closed by administrative removal. In one of these cases the registrant was only updated after six months because their representative chased the NMC for an update
- All 17 cases we audited were closed following the grant of voluntary removal from the register. In one of these cases the NMC failed for several months to advise both parties that the case had been effectively placed on hold, pending the outcome of a third party investigation. The NMC also failed to respond to several pieces of correspondence from the registrant's representative asking for an update about the progress of the investigation.

2.60 We note that the NMC's revised customer service standards (in place since October 2014) do not specify any timeframe for providing updates to parties. Instead they commit the NMC to advising the parties at the outset of a case how long it is expected that the process will take, and to providing an update only if the timing changes. We will review the application of this aspect of the new standards in future, with a particular focus on whether the (reasonable) expectations of stakeholders are being met.

Acknowledging correspondence

2.61 The NMC's 2011 standards did not require every piece of correspondence to be acknowledged. We identified 17 cases in our audit where we considered that it would have been better customer service for an acknowledgement to have been provided. In some instances, there was a failure to acknowledge letters that should have been treated as corporate complaints because they raised issues about the provision of inaccurate information and about the NMC's case handling. In other instances important communications (such as the registrant's representations for consideration by the IC) were not acknowledged, even where

the registrant had specifically asked for an acknowledgment.

2.62 In five of these cases there was a delay in acknowledging the registrants' applications for voluntary removal – those delays lasted between 10 days and nine weeks. In two of these cases the application form was never acknowledged.

Failure to respond to correspondence

2.63 The 2011 standards state that correspondence will be acknowledged within five working days, that the acknowledgment will state 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. We identified three cases where these timescales had not been achieved:

- In one case the registrant wrote to the NMC advising that they wished to appeal their interim order, saying that they were in financial hardship, and that they were confused about whether or not the interim order prevented them from working. The lack of any written response to that letter was only identified five months later, when the interim order was reviewed – the panel reviewing the interim order instructed the NMC to respond to the letter to advise the registrant that they could apply for an early review of the interim order and that they could work in any capacity other than that of a registered nurse. Despite the panel's instructions, no letter was sent to the registrant
- In another case the registrant wrote three times to the NMC about the impact of their retirement on the interim order that was in place. When the NMC finally replied to this correspondence, it sent a standard letter setting out the voluntary removal process. That letter was not tailored to take account of the three letters the registrant had sent. When the registrant wrote for a fourth time, querying the outcome of their request for voluntary removal from the register, they received no response for four weeks (until the registrant's wife contacted the NMC – at which point the registrant was made aware that an application form would need to be completed). The NMC did not acknowledge receipt of the registrant's voluntary removal application form and it took a further 12 weeks for the NMC to inform the registrant that voluntary removal could not proceed because the registrant had not made the required admissions. In response to our audit feedback about this case the NMC has acknowledged that it should have provided more timely responses to the registrant
- In a third case the NMC did not respond to an email from the registrant raising various concerns about the FTP process. We considered that, in particular, the NMC should have responded to explain why, regardless of the registrant's concerns, they were going to proceed with an application to extend the interim order.

2.64 We consider that the failures of the NMC to reply to queries from its stakeholders in these cases may well have damaged their confidence in the regulatory process. We note that the new customer service standards also require a substantive response to written correspondence to be sent within 20 days. We will check for improvement in this area of the NMC's customer care in future.

General customer care

2.65 We identified other customer care failings in 29 of the 100 cases we audited, broadly relating to the same three key areas: supporting complainants and witnesses during the FTP process, communicating effectively with registrants and their representatives during the FTP process, and accuracy of written correspondence. We set out examples of failings in each of these three areas below.

Supporting complainants and witnesses during the process

2.66 Ensuring that complainants and witnesses are properly supported throughout the investigation of an FTP complaint (and ultimately any final 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 2012–2014. They included:

- One case where the NMC belatedly identified during a case review that it had failed to obtain a relevant witness statement and then did not explain to the witness the reason for the delay in approaching them and required them to review the drafted statement within a very short timeframe
- Three cases in which there were lengthy and unnecessary delays in notifying witnesses of hearing dates (or changes to hearing dates) and/or the tone of the NMC's correspondence may have impacted on the witnesses' willingness to participate in the FTP process in our view. In the first case, we had concerns about the tone of the NMC's response to one witness who decided that they were no longer willing to give evidence at the final FTP panel hearing (because so much time had passed they did not feel they could provide an accurate account of events). That witness complained that the NMC's response to them was 'threatening'. In another case there was a delay of 15 weeks in notifying the witnesses that they would be required to attend a hearing, followed by a nine-month period without updating them – at which point they were notified that the hearing would not be proceeding (due to the grant of the registrant's request for voluntary removal from the register)
- Failures to send correspondence to the correct addressee/address including (in two cases) repeated failures despite awareness of the errors.

Communicating effectively with registrants and their representatives during the process

2.67 We identified areas for improvement in the NMC's communication with registrants and their representatives in 11 cases, including failures to: identify matters which should have been treated as corporate complaints; correct registrants' misunderstandings of the FTP process/the outcomes of their cases or update them about their cases' current status; respond to correspondence (or to do so promptly); identify that requested information had already been provided (and therefore making repeated requests for it). We also noted two cases where there was a significant delay with notifying the registrant that a case had been

opened about them – there was an eight-week delay in one case and 10 months in another.

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

Inaccuracies in correspondence

2.69 We identified 19 cases where there were inaccuracies in the correspondence sent to the parties, including eight of the 19 cases where there were inaccuracies in decision letters. We were particularly concerned about the inaccuracies in the decisions letters sent in three cases:

- In the first case the complainant was not provided with full reasons for the IC's decision although the police (who were not the complainant) were given full reasons
- In the second case it transpired that the individual had not been working as a nurse but as a care assistant. The closure letter to the complainant said that the complaint would be considered if the individual ever applied for NMC registration which was an error as the registration team does not hold any records for this individual, as they have never been an NMC registrant
- In the third case the decision letter sent to the complainant referred to the fact that the registrant was suffering from a health condition that potentially impaired their fitness to practise as well as side effects from their medication. This was inappropriate because it was personal sensitive information of which the complainant would have been unaware, as their complaint was about record keeping concerns. In addition, the complainant was not told why their record keeping concerns were not being taken forward.

2.70 Examples of the other types of inaccuracies we identified are as follows:

- In four of the 19 cases there were inaccuracies in the update letters sent to either the registrant or the complainant
- In two of the 19 cases the Disclosure and Barring Service (DBS) was provided with inaccurate information. For example, in one case the DBS was advised that the case would be considered by the IC after nine months, however, the case was closed by the screening team. In another case the DBS was provided with details of one case about the registrant but not about another linked case
- There was a failure to tailor standard letters appropriately in 10 of the 19 cases, which led to confusing information being provided.

2.71 These cases demonstrate that the NMC has not yet achieved consistent accuracy in its correspondence and that the measures that the NMC has taken to improve the accuracy of its correspondence (including quality checks that were introduced in 2011) have not been entirely effective in resolving the issue.

Guidance

2.72 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.

2.73 We have highlighted in earlier sections of this report our concerns about the consistency of the NMC's compliance with its existing processes and guidance in the following areas:

- Failures to recognise and act upon complaints about the FTP process and/or the NMC's handling of a case (see paragraph 2.67)
- Failures to accurately complete/update WISER entries (see paragraphs 2.54-2.56 and paragraph 2.77)
- Failures to adhere to customer service standards (see paragraphs 2.58-2.64)
- Failures to adhere to processes to prevent confidentiality and data breaches from occurring, and failures to identify and investigate breaches once they occur (see paragraphs 2.84 and 2.86).

2.74 We also identified as a result of our audit that it might be beneficial for the NMC to develop guidance or to strengthen its existing guidance to improve the consistency and clarity of its approach in three areas:

- How to handle new concerns arising during an investigation. In one case we audited, during the course of an investigation the NMC had received information from the registrant's employer expressing concern about their clinical competence and their behaviour around patients (the allegation under investigation was about a conviction for drink driving). The NMC treated the new allegations as a separate investigation, in order to prevent the case involving drink driving from missing its KPI for being investigated within 12 months. We considered that it would have been better for the IC to have considered both cases together, because there appeared to be a possible common issue related to the registrant's alcohol use
- Confirming details of criminal cautions/convictions. We identified concerns about the NMC's approach of requesting only a Police National Computer[15] (PNC) check in cases involving a criminal caution or conviction, rather than routinely requesting the certificate of caution/memorandum of conviction. We identified two cases in which the NMC had relied upon inaccurate information provided by PNC checks (see paragraph 2.25, second bullet)
- Confirming registration details before investigating. In one case the NMC initially did not progress an investigation because the name of the registrant did not precisely match any name on the registration database. However, two months later a decision was taken that the investigation should proceed (nothing had changed during that period).

2.75 While we saw evidence of good general compliance with procedures and guidance documents, we have concluded that this is not consistent in the areas we have identified above.

[15] Police National Computer: database containing information about people who have been convicted, cautioned or recently arrested

2.76 In addition, we noted that although the NMC revised its voluntary removal guidance as of 20 June 2014, the original guidance remained on the NMC's website for several weeks after that date which could have been confusing for registrants and anyone else with an interest in a case where a voluntary removal application was pending. We noted a related concern about the application of the voluntary removal guidance – in one case the NMC had applied the revised guidance although it had not been published at that time, and the registrant's representatives did not know about it. We consider this to be poor practice and the type of issue that can lead to claims of unfairness in decision making.

Record keeping

2.77 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 also essential for proper management of cases.

2.78 We checked the registration status of every registrant in the 100 cases we audited in order to identify whether there was an accurate record of the registrant's details on the registration database. We found that the registrants' status had been accurately updated throughout the cases' lifetime in the majority of cases. We found inaccuracies in three cases, including: failures to tick the 'under investigation' flag promptly or at all.

2.79 We identified no concerns about record keeping in any of the 35 cases we reviewed that had been closed by the screening team.

2.80 We identified record keeping deficiencies in 32 of the remaining 65 cases that we audited – those deficiencies occurred in 2011, 2012, 2013 and 2014. This figure includes data, confidentiality and information breaches in relation to the handling of 10 cases in 2013 and 2014.

2.81 We have separated our findings in this section by year in order to assist the NMC in evaluating whether the standard of record keeping has improved during 2013/2014 compared to previous years in line with the changes it has implemented to bring about improvement to its record keeping practice. Our findings are set out in paragraphs 2.82-2.87.

2.82 We identified five cases where record keeping errors had occurred in 2012, including missing records and misfiling.

- In one of these cases there was an avoidable delay caused when the case file was misfiled in the library and was not located for several weeks
- In one case one of the interim order review decisions stated that the panel had reviewed the transcripts of the previous two interim order review hearings although we noted that they were not in the bundles saved on the case management system
- In two linked cases there was a failure to redact (anonymise) records appropriately, which led to a data breach in one of those cases (and that breach which was not identified by the NMC)
- We are particularly concerned about one case in which the NMC received a PNC disclosure relating to an individual who had the same name and date of birth as the registrant, but who lived at a different

address. The information was not cross-checked by the NMC, which resulted in incorrect information being disclosed to the panel reviewing the interim order. That panel then relied upon that incorrect information in its reasoning, and that incorrect information was published on the NMC's website. The error was identified by the complainant. Even though the NMC had received the PNC disclosure a week before the interim order review hearing, it had not disclosed that information to the registrant or their representative, and they therefore had no opportunity to alert the NMC to the fact that the PNC disclosure related to a different individual. When the NMC became aware of the error it removed the incorrect information about the registrant from its website, wrote to the registrant to apologise and instigated a serious event review. The NMC has told us that it has now amended its process so that staff are required to check that PNC disclosures relate to the relevant individuals. The NMC has not told us whether it notified the Information Commissioner about this incident.

2.83 We identified record keeping errors that had occurred in 2013 in 21 cases. The errors included misfiling, and missing records (including missing records about the NMC's attempts to contact and trace key witnesses in two linked cases that were closed by administrative removal). In one of these cases a form on which the registrant had allegedly been dishonest was only made available to the final FTP hearing panel as a result of the registrant providing a copy at the hearing (no copy had been saved on the NMC system).

2.84 In addition, we were concerned to identify six cases where a confidentiality or data breach occurred during 2013:

- In one case two versions of the bundle of documents to be considered by the IC were saved onto the case management system – one of which contained documents related to an unrelated registrant. In response to our audit feedback the NMC has told us that it cannot establish which of these two IC bundles was sent to the registrant, and that it has therefore identified this as a potential data breach. The NMC also told us that the registrant has not alerted them to the receipt of any documents unrelated to their case. We note that the NMC has not written to the registrant to confirm that any papers that might have been wrongly received have been securely disposed of
- The details of one case were wrongly sent to the Royal College of Nursing instead of the Royal College of Midwives. The matter was dealt with in line with the NMC processes, in that it was escalated internally, an adverse incident form was submitted, and learning identified, and the papers were returned to the NMC. We noted that while the NMC telephoned the registrant to notify them about the error, the NMC did not write to the registrant to confirm that the papers had been safely returned and/or destroyed
- In one case the registrant sent the NMC copies of a patient's records although the registrant did not have the authority to be in possession of them or share them. This was a matter that the NMC did not identify as problematic or investigate further – instead it retained the records and

included them within the bundle of documents for consideration by the IC

- The NMC discussed two cases with individuals it believed were representing registrants, without first getting consent or evidence of authorisation from the relevant registrants. In a third case, information was given to the registrant's representative over email and by telephone two weeks before consent from the registrant was obtained
- In one case the NMC sent the complainant details of the decision in a different case. This was identified as an adverse incident. The NMC had told us that it is unable to provide us with details of the action taken in response to this incident, because its recording system does not enable it to search incidents by the FTP case reference number.

2.85 We identified record keeping errors that occurred during 2014 in seven cases, including misfiling and missing records in four of these cases. In an eighth case we noted that there had been a failure to save the final version of a letter requesting the complainant's comments on the registrant's application for voluntary removal, with the result that it is not clear when or if the letter was sent. This is particularly concerning as comments must be sought from the complainant before a voluntary removal application is decided.

2.86 In addition, we were concerned to identify three cases where there had been a confidentiality or data breach during 2014:

- In two linked cases the NMC received information that the complainant no longer worked at the nursing home in which the incident had taken place. The NMC continued to send updates to the 'registered home manager' throughout, although the home had been taken over by another company, no one there was aware of the complaint, and the manager had not worked with either of the registrants. This occurred because the NMC treated the nursing home (or the manager in post) as the complainant, rather than identifying the individual who had made the complaint (or the company on whose behalf they made the complaint) as the complainant. We considered that this amounted to a data breach. The NMC did not itself identify this as a data breach, although when we provided feedback about this case the NMC accepted that it was inappropriate to correspond with an unconnected organisation
- In the third case the NMC contacted the registrant's daughter without written consent to suggest that the daughter was authorised to act on behalf of the registrant, in order to discuss the possibility of the registrant signing undertakings and the registrant's consent to medical testing.

2.87 Poor record keeping has been a feature of our previous audits, and despite the NMC's improvement activities and expansion of its quality assurance mechanisms, we have been unable to conclude that the NMC has achieved consistent improvement in record keeping across its caseload. We recommend that the NMC reviews its quality assurance of records management, in order to ensure that it is effective in helping the NMC to reduce the number of data, confidentiality and information breaches occurring.

Timeliness and monitoring of progress

2.88 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.

2.89 We identified delays with the progression of four of the 35 cases we audited that had been closed by the screening team. In three cases there were delays of between four and nine weeks in chasing up information requests. In a fourth case there were delays of three and six weeks in chasing up information required in order to make a decision about whether to apply for an interim order.[16]

2.90 The NMC has a key performance indicator (KPI) for 90% of investigations to be completed within 12 months of receipt of the complaint. We noted that 13 out of the 65 cases that we audited that progressed past the screening stage of the NMC's FTP process had not met the KPI. Only one of the 13 cases had been opened prior to 1 August 2011 (i.e. only that case had been opened before the KPI was introduced). While we recognise that the NMC was not working to that KPI at the time, we note that in that case the NMC did not contact the registrant about the investigation until 10 months after the police first contacted the NMC. It took 40 months to close the case, which we considered was unreasonable. (See paragraph 2.91 second bullet for further details about this case). We identified avoidable delays in another two of the 13 cases.

2.91 Details of the delays that we considered were avoidable are as follows:

- In the first case there were delays in progressing witness statements – which the NMC staff member attributed to their heavy workload. There is no indication that anything was done to address the relevant individual's workload to prevent the case from missing the 12-month investigation KPI
- In the second case (referred to in paragraph 2.90 above) there were several areas of delay which meant ultimately that it took over three years to investigate the case before it was closed. The NMC took five months to request further information from the complainant, and failed to chase the magistrates' court for key evidence for four months. Further delay was caused due to confusion about whether or not proper notice had been given to the registrant about when the IC was to consider their case. It took the NMC nearly six months to instruct an external company to conduct a medical assessment of the registrant. The NMC then did not identify for another six months that the testing had not in fact taken place, and then took a further two months to progress the rescheduling of the testing
- Progression of the third case was delayed by several months, pending the outcome of a police investigation into the conduct of a doctor whom the registrant had been working with. There was then a further four-month delay before the NMC investigation began. It was only at that point that the external lawyers ascertained that the CQC had not been investigating the allegation that the registrant had been storing medical records at their home and it became clear that the NMC could have started its investigation several months earlier.

[16] We note it was concluded that an interim order application was not needed in this case.

2.92 The NMC met its KPI for concluding investigations within 12 months in 43 of the cases that we audited. However we identified areas of unnecessary delay in 12 of those 43 cases, which indicates that the cases could have been concluded more quickly. In one case we considered that the NMC could have concluded the case more quickly had it not taken over seven months to request a report from the registrant's GP– we noted that the internal legal team's review of the case identified that the case was at risk of missing the KPI 'with no good reason'.

2.93 We identified unnecessary delays in the NMC's handling of five cases during the period between the IC referral and the final FTP panel hearing taking place. For example:

- In two linked cases there were delays (including a delay in the decision to join the cases) which ultimately contributed to difficulties in securing witnesses' attendance at the hearing
- We audited three cases which would not have met the relevant KPI (that 90 per cent of cases should be progressed to the first day of a final FTP panel hearing (or meeting) within six months of referral by the IC) had voluntary removal applications not been granted. It took the NMC 20 weeks to progress one case after it had been referred for a final FTP panel hearing, and no further action was taken for four months. We considered that swifter progression of the case might ultimately have meant the case could have been resolved (by voluntary removal from the register) before there was any need to make a second application to the High Court to extend the interim order.

Cases closed by granting voluntary removal

2.94 One of the reasons for allowing registrants under FTP investigation to voluntarily remove themselves from the register is that doing so reduces the overall timeframe for conclusion of the case. We were therefore concerned to find delays by the NMC in processing applications for voluntary removal of between four weeks and seven months in length in almost half (eight out of 19) of the cases we audited that were ultimately closed following voluntary removal being granted. In one of these cases the NMC only responded to communications from a registrant about the possibility of voluntary removal after the registrant's wife followed up on three letters the registrant had sent to the NMC over a three-month period. In another case the registrant's daughter contacted the NMC to complain that the registrant's health was being affected by the delays. At that point the NMC had been in receipt of the registrant's voluntary removal application form for one month and had taken no action to progress it. Following the complaint, it was a further two weeks before any action was taken to progress the voluntary removal application.

Delays in responding to requests for information from other organisations

2.95 We identified three cases involving significant delays by the NMC in responding to requests for information about FTP investigations made by employers or statutory organisations with responsibilities for safeguarding the public, including Disclosure Scotland and the Independent Safeguarding Authority (ISA). Delays in responding to such requests could result in risks to the public. In response to our feedback the NMC advised us that it has set up a new safeguarding team to deal with information requests within 20 working days.

Periods of inactivity

2.96 In 10 of the 35 cases we audited that were ultimately closed by the screening team there was no activity for periods of between six weeks and 16 weeks although our review of the relevant documents demonstrated that there were actions that could have been undertaken during that period.

2.97 In 10 of the 46 cases that we audited that were ultimately closed by the IC there was no activity for periods of between three weeks and six and a half months although our review of the relevant documents demonstrated that there were actions that could have been undertaken during that period. In one case, one period of inactivity for six and half months was followed by another period of inactivity of 11 weeks.

Notifying relevant parties of decisions

2.98 The NMC has an internal target that letters notifying the parties of decisions should be sent within five working days. If a decision letter is not sent within 10 days without there being an appropriate reason for the delay, the NMC considers this to be an 'adverse incident'.

2.99 We identified six cases where the internal target for decision letters was not met. The delays ranged between nine days and five weeks in length and there were no appropriate reasons for them. It was not apparent in any of these cases what action was taken as a result of these 'adverse incidents'.

2.100 We were also concerned about two further cases:

- In the first case it took two weeks (taking account of the Christmas period) to notify the registrant that an interim suspension order had been imposed on them. This was of particular concern because the registrant was due to work over the Christmas period with vulnerable adults, and the registrant's representative had therefore asked to be notified of the outcome on the day of the interim order application. There was a clear patient safety risk of which the NMC was aware and no action was taken to ensure that this notification took place promptly
- In the second case the registrant's employer contacted the NMC to ask about the outcome of the review of the registrant's interim order. The NMC advised the employer that an interim conditions of practice order was in place and suggested that they check the NMC's website for details. We considered that it would have been more appropriate for the NMC to have written directly to the employer to notify them of the conditions, as one of the conditions restricted the registrant to working in a non-clinical role with that employer.

2.101 We do not consider that this audit has demonstrated consistent improvement in timeliness.

Conducting reviews of interim orders

2.102 The NMC Order 2001 requires interim orders to be reviewed within six months initially, and then every three months.[17] In our 2013 audit report we criticised the

[17] 31 (6) NMC Order 2001

NMC's approach[18] when interim order reviews cannot be completed on the scheduled date (due to timing issues or administrative errors).

2.103 In this audit we reviewed 19 cases where an interim order had been imposed. In 14 of those cases the interim orders had not been reviewed within the required timescales. In three cases the reviews were conducted not far outside the required timescales (between three and 13 days). However, in other cases the delays ranged from one to three months (and much longer in two cases) and there was often no indication from the case file that the NMC was attempting to schedule the review within the statutory deadline. For example:

- In one case the interim order review did not take place for 11 months – two scheduled reviews did not take place due to lack of time, and it was only when the case officer identified that a review was necessary because the registrant had been committed for trial at the Crown Court that a review took place
- In another case, an interim order review was not completed for 16 months. The first review did not take place on the date it was first scheduled and the NMC did not reschedule it for a further three months. The review did not take place on that rescheduled date either (because on that occasion proper notice had not been served on the registrant in accordance with the NMC FTP Rules 2004).[19] The NMC rescheduled the review for a third time two months later, but that review also did not take place. We considered the delay in reviewing the interim order in this case raised a public protection risk (see paragraph 2.109 third bullet).

Extension of interim orders by the courts

2.104 The NMC Order 2001 only permits interim orders to be imposed/continued for a maximum of 18 months. If the NMC cannot conclude the FTP investigation/hearing of the case before that period has expired, it has to apply to the relevant court for an extension of the interim order (if still appropriate).

2.105 Avoidable delays in progressing eight of the cases that we audited meant that the NMC had to seek court extensions of interim orders. Our concerns are as follows:

- Internal delays/administrative failures meant that two investigations into fraudulent registration allegations did not conclude before expiry of the interim orders originally imposed, and the NMC had to seek court extensions. In the first case a court extension was required as the result of internal delays in finalising evidence (it took 16 weeks to finalise a statement from the registration department) and in scheduling the IC meetings required under the statutory framework. The second case was one that should not have been treated as a fitness to practise complaint and therefore no interim order application should have been necessary. The registrant in question had in fact stated on their registration forms that they had not completed the required number of

[18] If an interim order has to be adjourned due to timing issues, the NMC does not reschedule it, but waits until the next review is due, unless either the registrant requests an early review or information comes to light which indicates that an early review is required.
[19] 8(4) NMC (Fitness to Practise) Rules 2004 as amended

hours in practice, but the NMC's registration department failed to take account of that statement

- In the third case the court extension was only necessary as the result of delays in the investigation by external lawyers and the preparations for the final FTP panel hearing. The NMC's statement in support of its application for an extension acknowledged that there was no justification for the delays
- In the fourth case the NMC told the High Court that the delay resulted from problems in scheduling the final FTP panel hearing and acknowledged that it was not apparent why the case had not been scheduled for an earlier hearing date. We also noted that there had been a nine-week delay in processing the registrant's voluntary removal application form, and concluded that it was that factor that had made it necessary to apply to the High Court to extend the interim order
- In the fifth case a second court extension to the interim order was required due to the failure to progress the case appropriately following the first court extension being granted– as noted in internal correspondence on the file. Even once the 'very slow progress' was highlighted internally, no steps were taken to escalate the issue (such as to conduct a serious event review) or expedite the case. In response to our audit feedback the NMC told us that a serious event review was not required because there was progress on the case every six weeks, even though that was 'of limited effectiveness', and that by the time that the slow case progression was identified a voluntary removal application had been received. We note that the NMC took four months to progress the registrant's voluntary removal application for consideration by the Registrar – had that application been dealt with promptly there would have been no need for a second extension of the interim order
- In the sixth case, avoidable delays meant that two High Court extensions of the interim order were required:

– The first extension followed: a 13-week period of inactivity, a delay of four weeks in requesting a reference from the registrant's employer, failing to chase up consent relating to a medical assessment promptly over a period of 40 weeks, a further five weeks delay in requesting information from the registrant's GP, a six-month delay in scheduling and rescheduling the IC's consideration of the case (the rescheduling was only necessary because the NMC failed to give the registrant the required amount of notice initially) and a delay of six months in deciding whether the case should be considered at a meeting or a hearing of the final FTP panel

– The NMC requested a second court extension of the interim order (for an eight-month period) so that it could seek a further witness statement. When we audited the case we considered that the need for a further witness statement should have been identified nine months before the NMC sought the extension. In any event, at the date when the High Court extended the interim order (whilst making critical

remarks about the NMC's timeliness in handling the case) the witness statement had not been requested, even though the NMC had identified the need for it the previous month. Once the High Court granted the extension, no efforts were made to progress the obtaining of this statement until the following month – by that time the relevant witness had left their previous employment and the NMC was unable to make contact with them. We also noted that the registrant had indicated their wish to be voluntarily removed from the register on various occasions from a year before the date when the High Court extension was sought. Had a voluntary removal application been made and granted, there would have been no need for the second High Court extension.

- In the seventh case avoidable delays relating to the scheduling of the final FTP panel hearing led to the need for the first High Court extension of the interim order. A second extension was then required, as a result of delays by the NMC in dealing with the case once the CCC referred it to the HC. The individual's voluntary removal application was ultimately granted, and had the NMC progressed the case more speedily once it had been referred to the HC, a second High Court extension of the interim order would have been unnecessary
- In the eighth case we were disappointed to identify avoidable delays prior to three High Court extensions of the interim order.
  - Prior to the first extension, there were delays in the preparation of the case for consideration by the IC. This included taking three months to request medical tests due to an 'oversight', taking 18 weeks to request information from the police and the registrant's employer, and taking 14 weeks to follow up on information requested from the registrant's physiotherapist.
  - Prior to the second extension there were delays in preparing the case for the HC, including a delay of 18 weeks in obtaining internal legal advice about whether further medical evidence was needed
  - The third High Court extension was requested partly on the basis that there had been a delay whilst waiting for all the relevant information relating to the voluntary removal application, such as confirmation about the theft that formed part of the complaint. We noted that the NMC had delayed requesting evidence of the registrant's new role (which was relevant to the Registrar's consideration of the registrant's intentions about future practice).We noted that if the information had been requested sooner, the application for the third High Court extension would have been unnecessary.

2.106 We audited an additional four cases where there were avoidable delays by the NMC in case progression which might have resulted in court applications for extensions of interim orders being required had applications for voluntary removal not been granted:

- In the first case various periods of inactivity by the NMC (ranging from four to seven weeks), alongside non-engagement by the registrant

meant that the interim order would have expired prior to the final FTP panel hearing

- In the second case the registrant's voluntary removal application was not considered by the Registrar for seven months. During that period the interim order was reviewed twice, and an application for a High Court extension was prepared. The registrant concerned was in poor health and it can therefore be assumed that the delay may have had a negative impact on them
- In the third case, as a result of internal delays it took almost three months for the decision to grant voluntary removal to be made. In response to our audit feedback the NMC acknowledged these delays.

2.107 We are concerned about the unnecessary delays in case progression that have led to the NMC having a continuing need to seek court extensions of interim orders.

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. Protection of the public includes not only directly protecting them from harm, but also declaring and upholding professional standards and maintaining public confidence in the profession and the regulatory system.

2.109 In this audit we identified two cases in which decisions about imposing interim orders raised concerns about public protection. We also identified two cases in which the failure to review interim orders in accordance with the statutory framework raised similar concerns (see paragraphs 1.44-1.45):

- In the first case the panel decided not to impose an interim order on the basis that the incident was a 'one off police caution'. This was factually inaccurate – the NMC had conducted a PNC check two weeks before which showed that the registrant had several criminal cautions and convictions. In addition, the NMC had received a letter from the police a week before, which provided background information about the registrant's various interactions with the police. We are concerned that the NMC did not provide the panel with the relevant information when it was considering the application for an interim order. In response to our feedback on this case the NMC has acknowledged that this was 'plainly an error' on its part. The NMC also said that in practice there was no lapse in public protection caused by that error
- In the second case the registrant was initially subject to an interim conditions of practice order. At the review of that order, the registrant's employer revealed that the first condition (which required the registrant only to work under direct supervision) was unworkable in practice. This called into question whether the registrant had ever complied with the original interim conditions of practice order. The panel decided to replace the interim conditions order with an interim suspension order. Our concern was that the NMC only informed the registrant's employer that the original order had been replaced by a suspension order six months after the event (in response to the registrant's employer contacting the NMC to confirm that the registrant had been complying

with the interim conditions of practice which they believed were still in place). We are concerned to note that the issue of whether the registrant had continued to work as a nurse whilst suspended was not investigated by the NMC, and that the NMC did not seek written confirmation from the employer that they had only permitted the registrant to work as a care assistant. The NMC said that there was no lapse in public protection because the registrant was under a duty to inform his employer of any matter affecting their fitness to practise. We consider that the failures by the NMC to investigate these issues could have had patient safety (as well as public confidence) implications

- In the third case the panel imposed an interim conditions of practice order. There were then several avoidable delays, which meant that the review of the order did not take place within six months, as required – instead the review only took place after 16 months (see paragraph 2.103 second bullet). This was particularly serious because during that period the NMC itself identified the need for an early review of the order. Nine months before the review eventually took place, the NMC received a medical report stating that the registrant was not fit to practise, as well as information that the registrant's health had deteriorated and that the delay in reviewing the interim order was having a negative impact on their health. We consider that had the review hearing take place promptly and/or had an early review actually been scheduled at the time when the NMC identified the change in circumstances, the appropriate action would have been addressed sooner (at the review the panel replaced the conditions of practice order with a suspension order). In response to our audit feedback the NMC has said that there was no risk to public protection because the registrant was working in a non-clinical role for the same employer throughout

2.110 We also had concerns about the impact on public protection of the decision by the IC to close one case in circumstances where we considered it had been provided with inadequate information. We were concerned that: the NMC had not investigated the concerns raised by the registrant's manager about the registrant's ability to identify and assess risk; the witness statements obtained (which were not provided to the IC) suggested that the registrant's record keeping concerns were more serious than was indicated in the report considered by the IC, but the NMC had not sought further evidence (such as the findings from the registrant's employer's audit of the registrant's record keeping); and there was no reference to the vulnerability of the patients. In response to our audit feedback the NMC has said that it would have been disproportionate to conduct further investigation, as the matters that were not fully investigated were not capable of amounting to misconduct in the context of systemic failings within the registrant's place of employment. In the NMC's view there was therefore no lapse in public protection. We considered that the failure to investigate the concerns in this case properly and to place relevant information and evidence before the IC created a risk that the IC's decision not to refer the case for a final FTP panel hearing was wrong, because it was based on an incomplete picture of the registrant's failings.

2.111 We accept that there were no public protection risks arising from these cases. In

our view, however, that was due to the circumstances of the cases and not as a result of any regulatory action the NMC took. We are concerned that the NMC did not properly manage the risks to public protection in its handling of the aspect of the four cases we set out above.

Maintaining public confidence in the regulatory process

2.112 We identified a number of cases where, in our view, the approach taken by the NMC might damage registrants' and other stakeholders' confidence in the operation of the regulatory process.

Operating a fair process

2.113 We identified concerns in six cases related to the NMC's operation of its FTP process which we considered had led to unfairness to one or more individuals:

- In the first case the NMC failed to include the registrant's representations in the bundle of documents to be considered by the IC, and the IC reached its decision without being aware of those representations. The NMC dealt with this situation by deciding to 'set aside' the IC's decision and to arrange for a different IC panel to consider the case. The registrant was not informed that the original IC's decision had been set aside, but was only informed about the reconvened IC's decision. In response to our audit feedback about this case the NMC said that it had decided not to send the decision letter detailing the original IC's decision to the registrant, in order to prevent confusion and concern. It is not clear to us whether the NMC acted within its statutory framework in taking this approach and we are concerned that its lack of transparency deprived the registrant of the opportunity to consider their position
- We were particularly concerned about a second case – in which the NMC did not specifically draw the registrant's attention to the addition of an allegation of dishonesty or explain the reasons for it
- In a third case the panel imposed an interim order based on information about criminal cautions and convictions about a different person. The erroneous basis for the interim order was only identified when the complainant contacted the NMC (two weeks after the order was imposed) once they saw the information published on the NMC's website. The NMC did not immediately set aside the previous decision and instead scheduled an early review, which took place two weeks later. We considered that it was unfair to the registrant to leave an interim order in place in these circumstances and that it amounted to an unlawful interference with the registrant's right to practise their profession. An additional concern is that the NMC did not inform the registrant of this error for two weeks, even though the incorrect information about the registrant had been published on the NMC's website. We consider the NMC's handling of this case to be a matter that could damage public confidence in the regulatory process
- In a fourth case the registrant's representations were received only after the IC had concluded its consideration of their case. Receipt was

not acknowledged, and the registrant was not told that their representations had not been considered by the IC

- In the fifth case the NMC case officer wrote to the registrant's representative asking for information about psychological assessments that they had been undergoing (as recommended by their treating psychiatrist) and in doing so, misrepresented the reason for asking for that information. We were also concerned that the case officer subsequently described the registrant's representative's response as 'uncooperative' although we did not see any evidence of any lack of co-operation on the file
- At the interim order review in the sixth case the NMC told the panel that the registrant had breached one of the interim order conditions – a condition which required them to submit a letter from their employer 14 days beforehand. In fact, the NMC must have known when scheduling the review that the timing of the review meant that the registrant would not be able to comply with that condition. We considered that then alleging a breach of the conditions was unfair to the registrant and could have damaged their confidence in the regulatory process.

Inadequacies in case handling

2.114 We identified concerns in six cases which had not been identified by the NMC's own quality assurance mechanisms and which we considered did not serve to maintain public confidence in the NMC's regulatory processes.

- In the first case the case officer told the NMC's internal legal team that the IC referral related to impairment of fitness to practise as a result of lack of competence (rather than misconduct). Following an internal case review, the in-house legal team decided to change the allegation. We do not consider that it was appropriate for the internal legal team to unilaterally alter the basis of the allegation against the registrant in this way, even if they had valid concerns about the appropriateness of the IC's referral decision
- In the second case the registrant's representative wrote to the case officer 'without prejudice' suggesting that the registrant might submit a voluntary removal application and stating, 'if the NMC is minded to agree that this case is suitable for VR[20] we will complete the necessary forms'. The reply from the NMC said that the NMC would consider disposing of the case by means of voluntary removal. The NMC has told us that it considers that the reply it sent was entirely appropriate. In our view, it would have been more appropriate to state that while any voluntary removal application would be considered, the decision about whether to grant voluntary removal lies with the Registrar once they have reviewed the application. In our view, in the context of the question asked, the NMC's response implied advance (and premature) agreement that the particular case was suitable for voluntary removal

[20] Voluntary removal (VR) from the register – see paragraph 1.36 – 1.37

- In the third case the NMC requested a GP reference from the registrant – when the registrant did not respond, instead of chasing up that request the NMC approached the registrant's GP directly one year later
- We identified three cases in which we considered that the NMC should have communicated more effectively with other regulators/statutory bodies. In the first case no consideration was given to whether the CQC should be made aware of the complaint, despite the nature of one allegation (that the registrant had acted aggressively towards a care home resident) as well as the content of the registrant's representations (which raised concerns about safeguarding incidents in the home). In the second case the NMC failed to respond to a request for further information from the ISA. In the third case the NMC became aware that a doctor had inappropriately prescribed medication to an NMC registrant but did not refer the matter to the GMC.

2.115 We consider that, if the approaches taken in these cases were adopted more widely, there would be the potential for damage to stakeholders' confidence in the NMC's operation of the regulatory process.

Action taken following internal case reviews prior to final FTP panel hearings

2.116 Since 2013 the NMC's internal legal team has been undertaking internal reviews of some cases awaiting a final FTP panel hearing, in order to identify 'potential courses of action for exploration'. From our audit of three cases where such reviews had been conducted we identified a general concern about some of the recommendations made following reviews, given that the cases had already been referred for final FTP panel hearings. Our specific concerns about two of these cases are as follows:

- The legal review in the first case suggested "encouraging" voluntary removal because it would not be appropriate to "offer no evidence/allow to lapse". The reasons given for this recommendation were that the registrant was 60 years of age and it was therefore reasonable to accept that they would not return to nursing, and the charges were too serious to utilise the 'allow to lapse procedure'. The review recommended that, irrespective of whether the registrant was willing to make fuller admissions (once they had been asked again to do so), if medical evidence could be obtained to corroborate the registrant's illness, the case was suitable for voluntary removal. We are concerned by this recommendation as the NMC's voluntary removal guidance states that voluntary removal is unlikely to be appropriate in cases where the misconduct is serious. We are also concerned by the inference from the format of the legal review documentation that in some cases it is considered appropriate to allow registrants to lapse from the register after a referral to a final FTP panel hearing has been made
- In a second case a similar recommendation was made and it was suggested that the case officer should 'follow up with registrant about the facts alleged to see if VR can be pursued.' While we can understand why it might be considered acceptable for a regulator to 'encourage' voluntary removal in cases where the alleged impairment

of fitness to practise is as a result of ill health, it is more difficult to understand why a regulator considers it appropriate for a regulator to 'encourage' voluntary removal in cases involving misconduct. An additional concern in this case is that while the NMC's guidance about voluntary removal states that in cases of misconduct, voluntary removal is only appropriate when the registrant has admitted both the facts and impairment of their fitness to practise, the registrant had clearly stated that they did not admit that their fitness to practise was impaired. Following the legal review, a letter was sent to the registrant which noted that the registrant had ticked 'do not know' when asked if they admitted the charges. The letter said that the Registrar would only consider applications for voluntary removal if the 'yes' box was ticked and it also enclosed a further application form. We also saw an internal email which suggested that the voluntary removal application form should be chased in the New Year. In response to our audit feedback the NMC told us that it finds proactive engagement with registrants the most effective way of ensuring case progression. While we agree with this in principle, we consider that the NMC went beyond the role that it is proper for the regulator (and the decision maker in relation to the voluntary removal application) to adopt. The registrant's answer about whether or not they admitted the charges against them should have simply been accepted, and the application processed in accordance with that answer, without the NMC prompting the registrant as to what the 'right' answer was at the same time as effectively inviting them to make a second application.

Comments made to and by the High Court when applying for extensions to interim orders

2.117 We consider that aspects of the NMC's handling of the eight cases where High Court applications for extensions to interim orders were made have the potential to damage damaging to public confidence in the regulator. Our specific concerns in six of those eight cases relate to comments made to the High Court when applying for those extensions and the details of these are as follows:

- We identified three concerns about the first case. First, the witness statement that the NMC put before the High Court when seeking the initial extension of the interim order stated that the registrant was legally represented and that they had engaged with the FTP proceedings, but had not provided any response. In fact the NMC was in possession of correspondence that confirmed that the registrant was unrepresented. Second, the skeleton argument that the NMC provided to the High Court implied that delays in the investigation carried out by the NMC's external lawyers were a significant factor in the overall timeframe of the case and the need to extend the interim order. The skeleton argument did not make it clear to the High Court that delays in the external lawyers' investigation only accounted for seven weeks' of the total delay, and in fact the most significant factor in the length of time it had taken to progress the case was the NMC's delay in scheduling the final FTP panel hearing. Fourth, in our view the witness statement prepared prior to the second application for a High Court extension wrongly implied that the delay in concluding the case was

the fault of the registrant (as it said that the NMC was waiting for the registrant to provide a medical report). When we audited the case we noted that the NMC had taken several months to draft the ill health charge which also contributed to the delay in requesting a medical report. In response to our audit feedback the NMC said that the witness statement merely set out factually the obstacle to bringing the case to a conclusion, and that the skeleton argument is only a summary rather than evidence and that the High Court judge will scrutinise the totality of the papers lodged and challenge any inconsistencies

- In the second case the NMC applied to the High Court for extensions on two occasions. On the second occasion the High Court was critical of the NMC and only granted a three-month extension, rather than the six months requested by the NMC. The judge directed the NMC to use those three months to: set a date for the final FTP panel hearing; serve witness summonses (if necessary); and close the case. The judge said that they were not satisfied that the NMC had proceeded with all due diligence and indicated that any further application would be considered in light of these criticisms. The NMC closed the case within three months by making an application to cancel the final FTP panel hearing on the basis of insufficient evidence (See paragraph 2.38 for our further comments about this case)
- In the third case the chronology provided to the High Court by the NMC said that the NMC had received a letter from an employer which confirmed that the registrant was currently employed by them. However, the registrant had stated in writing that they were not working. In response to our audit feedback, the NMC acknowledged that its papers for the High Court contained a factual inaccuracy
- In the fourth case the judge who granted the second extension was ‘very critical’ of the NMC due to the delay and the limited progress that had been made in the 12 months since the first extension. The judge was not satisfied that the NMC had dealt with the case as a priority or that it was progressing the case as quickly as possible and noted that the final FTP panel hearing had not been scheduled
- In the fifth case extensions to the interim order were granted by the High Court on three occasions. A witness statement submitted by the NMC to support the second application for an extension indicated that the delay in the case resulted from the internal legal team having identified that further medical evidence was needed. As we noted above (see paragraph 2.105, seventh bullet page 49) in fact it had taken the NMC nearly five months to complete its internal legal review, which we considered was the most significant factor leading to the need for a further six-month extension to the interim order
- In the sixth case the NMC’s application for a High Court extension acknowledged delays in case progression, including delays attributed to obtaining signed witness statements and documents from a third party. The application described those delays as being to a ‘large extent’ due to factors outside of the NMC’s control. When we audited

the case we noted that these factors had only resulted in four weeks of the total delay. The NMC also told the High Court that delay resulted from problems in scheduling the final FTP panel hearing, due to the number of witnesses who would be required to attend. When we audited the file we found little evidence that there had been any communications about scheduling a specific hearing date. We therefore concluded that the NMC had not presented a full account to the High Court of the reasons behind the application to extend the interim order.

2.118 We noted our concern about the unnecessary delays in case progression that had led to the NMC having a continuing need to seek court extensions of interim orders in both our 2013 and 2014 audit reports. We are also concerned that, as set out above, we found documents that had been presented to the High Court in support of interim order extension applications that contained summaries of the factual background that were not always complete. While we have no reason to suggest that any errors or omissions were anything other than inadvertent, we nevertheless consider that our audit findings about this aspect of the NMC's case handling have the potential to damage public confidence in the NMC. A regulator, as a body exercising public functions, would be expected to be scrupulous to ensure the complete accuracy of any information presented to the courts.

3. Detailed findings – voluntary removal

3.1 On 14 January 2013 the NMC introduced a process to enable registrants who are subject to FTP proceedings to apply to have their names permanently removed from the NMC's register without a full public hearing (voluntary removal). The decision about whether or not to grant a request for voluntary removal is made by the NMC's Registrar[21], on the basis of a recommendation made by FTP staff in accordance with the process set out in the NMC's guidance document ("the original guidance").

3.2 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.

3.3 We consider that any decision to grant an application for voluntary removal from the register during an ongoing FTP investigation requires 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 therefore expect to see proper application of the relevant guidance and thoroughly reasoned voluntary removal decisions which specifically take the public interest into account.

3.4 In our 2013 audit report we expressed serious concerns about all 21 of the cases we audited that had been closed following decisions to grant voluntary removal from the register. Following the publication of our 2013 audit report, the NMC made some amendments to the original guidance – the revised version of it ("the revised guidance) came into effect on 20 June 2014.

3.5 In this audit we reviewed six cases that had been closed following decisions to grant voluntary removal where the original guidance applied (see Appendix 1) as well as all 11 cases where the revised guidance applied (including any voluntary removal cases closed between 20 June 2014 and 31 July 2014) (see Appendix 2).

Application of the NMC's voluntary removal guidance

3.6 In our 2013 audit report we identified concerns not only about the contents of the original guidance but also about five specific aspects of the NMC's application of that guidance. We are pleased to report that we did not identify any concerns about the revocation of interim orders (in order to facilitate voluntary removal) in this year's audit. However we did identify concerns about the NMC's application of the guidance in relation to four of the areas that we had highlighted in our 2013 report, specifically:

- The Registrar's assessment in granting voluntary removal
- Cases involving misconduct allegations

[21] 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.

- Cases involving both ill health and misconduct allegations
- Cases where voluntary removal was granted after the final FTP panel hearing had commenced.

3.7 In this audit we compared the relevant sections of the NMC's original and revised guidance for voluntary removal that relate to each of these areas before assessing whether the NMC's handling of cases closed by voluntary removal and application of its guidance had improved in 2014 in relation to each of these specific areas and whether, overall, the NMC's handling of voluntary removal applications is adequate for the purposes of public protection and the maintenance of public confidence in the nursing professions and in the regulatory process.

The Registrar's assessment in granting voluntary removal

3.8 Both the original and the revised guidance states that the Registrar must not grant a voluntary removal application unless they are 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" (in this section of the report, we refer to the "maker of the allegation" as the complainant, as they are often the same person).

3.9 We set out our findings about the application of this aspect of the guidance below, by reference to each of the three factors that the Registrar is required to consider.

i) The public interest

3.10 The original and the revised guidance set 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.

3.11 We concluded that the NMC had given insufficient weight to the public interest in two of the six cases that we audited where the original guidance applied, as well as in three of the 11 cases that we audited where the revised guidance applied, as set out below:

Cases where the original voluntary removal guidance applied

- In one case we identified two different concerns about the application of the guidance. First, we noted that only two factors relevant to the public interest were taken into account (the registrant's completion of their community service and continued volunteering, and confirmation they were not on the POVA[22] list) when it was not clear what their relevance was, and when there were other public interest factors which were not considered. In response to our audit feedback, the NMC said that the registrant's completion of community service and volunteering

[22] The Protection of Vulnerable Adults (POVA) list is a list of people who are banned from working with vulnerable adults in a registered care setting. It is a criminal offence for someone on this list to apply for work in this area.

were evidence of their move away from nursing and were therefore more relevant to assessing the interests and future plans of the registrant. Second, the fact that the registrant's criminal conduct had already been the subject of a finding in the public domain (i.e. the courts) was relied upon to demonstrate that there was no public interest in a final FTP panel hearing taking place. This reasoning was of particular concern to us, as it did not appear to take due account of the regulator's role in maintaining public confidence in the profession and its regulation or to recognise the difference between a court finding and regulatory action

- In a second case the only reference to the public interest was the stated conclusion that there was no public interest in holding a public hearing. In our view it was necessary to explain the reasoning behind that conclusion, and to set out how the public interest in declaring and upholding professional standards and maintaining public confidence would be addressed if voluntary removal was granted without a hearing taking place, given that patient harm had been caused, there had been no remediation, and it appeared that the registrant might have attitudinal problems.

Cases where the revised guidance applied

- In one case the voluntary removal recommendation form (upon which the Registrar based their decision) stated that there was no evidence of direct patient harm. In fact although a witness had raised a concern that the registrant's failure to administer medication had caused one patient to deteriorate, that concern had not been investigated by the NMC. In our view it was potentially misleading for the NMC to say that there was no evidence of patient harm in these circumstances

- In a second case the voluntary removal recommendation form referred to a statement contained in the report that had been considered by the IC to the effect that there was no direct evidence of harm to patients. In the circumstances of this case, we consider that it would have been more appropriate for the Registrar to consider the primary evidence. We did not think that the Registrar had properly considered (as required by the revised guidance) the extent of harm caused to patients and the potential impact on public confidence if removal were granted (see paragraph 15, appendix 2) – in this case the registrant had failed to document clinical information for a significant number of patients, creating a risk that other clinicians might provide them with inappropriate treatment based on the inadequate records. In response to our audit feedback the NMC expressed the view that the likely outcome of any final FTP panel hearing would have been a conditions of practice order. In that circumstance, voluntary removal offered greater public protection as the registrant would no longer be able to practise as a nurse. In our view, without an assessment of the potentially aggravating features of the case, it was not safe to conclude that a suspension or striking off would not be imposed if the case proceeded to a hearing

- In a third case the voluntary removal recommendation form did not explain the reasons for the conclusion that was reached that the public interest in holding a hearing did not outweigh the public interest in the registrant's immediate removal from the register. Nor did it specifically address several issues that had been highlighted in the report that was considered by the IC when it referred the case for a hearing, including the importance of declaring and upholding professional standards. We also noted that, while the recommendation form referred to the fact that no actual harm had been caused to patients, it did not highlight that the only reason for the absence of harm was that a senior colleague had intervened.

3.12 We recognise that we did not identify concerns related to the Registrar's analysis of the public interest in the eight other cases that were closed under the NMC's revised process. However we suggest that the NMC reviews our comments in the above cases and considers making further improvements, particularly around its assessment of harm. The NMC has stated that it will review its guidance to ensure that its position on public interest and the seriousness of the misconduct is clearly set out and that it will ensure that the reasons provided for decisions to grant voluntary removal are clearer.

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

3.13 Both the original and revised 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.

3.14 We identified concerns about the NMC's evaluation of the evidence of the registrant's interests and future plans in two of the six cases we audited where the original guidance applied, and in four of the 11 cases we audited where the revised guidance applied.

Cases where the original voluntary removal guidance applied

- In one case we identified a number of concerns about either the weight placed upon the evidence of the registrant's interests and future plans or about the accuracy of the NMC's presentation of that evidence in the recommendation made to the Registrar. Our first concern was that some weight was given to the registrant's account of their previous ill health, even though there was no independent evidence about it (the registrant said that they had suffered a rare form of cancer which almost resulted in their death) and even though it was not clear how the registrant's previous ill health could be relevant to their interests and future plans. Our second concern was about weight being placed on the fact that the registrant last practised in 2012, as evidence that there was little likelihood of them seeking readmission to the register. In fact, the registrant had been unable to work in the intervening period as they had been suspended from work and also restricted by an interim suspension order. We disagree with the view the NMC provided in response to our feedback – that the lack of any attempts at

remediation during this period was relevant, as it indicated the registrant's desire not to return to nursing. Our third concern was that there was no evidence of any 'genuine' desire for permanent removal from the register, over and above the application for voluntary removal itself. We do not understand the point made to us by the NMC in response to our feedback – which was that the fact that the registrant's desire for permanent removal from the register was expressed once a referral for a final FTP panel hearing was made is relevant to the genuineness of that desire. Our final concern was that the NMC inaccurately summarised in the recommendation form that was considered by the Registrar the information that had been provided by the registrant's GP – the GP had not in fact indicated awareness of any intention on the registrant's part to permanently retire from nursing, but had simply provided information about the registrant's depression, and commented that it was work-related and had been affected by the disciplinary process. In response to our audit feedback the NMC said that it is reasonable to infer that if practising as a nurse causes someone to feel depressed, they are less likely to seek readmission to the register in the future. We consider that the information supplied by the registrant's GP should have been set out in full and that the recommendation form should have made it clear where inferences were being drawn by NMC staff

- In a second case we identified two concerns about the evidence supporting the NMC's recommendation to the Registrar. Our first concern was there was no medical evidence about the actual impact of the registrant's ill health conditions on their fitness to practise. Our second concern was the voluntary removal recommendation form referred to the registrant's genuine desire to be removed from the register – which was based simply on the registrant having made no attempt to have their interim order lifted. In fact, the registrant had said that they wanted the NMC investigation to 'go away' – we therefore considered that NMC was wrong to assume that the registrant had a genuine desire to leave nursing, as opposed to having a desire for the FTP process to come to an end.

Cases where the revised guidance applied

- In one case an internal legal review highlighted concerns about whether the registrant was likely to seek to return to the register. The NMC therefore wrote to the registrant to state that, in general, if the Registrar considered that the registrant was likely to seek readmission to the register, it would not be appropriate to grant voluntary removal, and sought further information about the registrant's future plans (specifically whether there was any evidence that they were working or retraining in a different profession). We did not consider that this was an appropriate approach to take, as it amounts to the regulator advising a registrant what to say in order to ensure that their application is granted. We considered that a more appropriate approach would have been for the Registrar to have considered the first application form and to have provided the registrant with reasons as to why they had rejected their application. The NMC disagrees with

our comments in this case and considers its approach to have been an example of good customer care

- In three cases NMC staff drew inferences about the registrants' plans for retirement based on their age/the length of time they had been registered, without any evidence from the registrants concerned that they intended to retire.

3.15 Based on our findings we have concluded that improvements are needed in relation to the quality of the recommendations made to the Registrar by NMC staff about registrants' plans and future interests.

iii) Comments received from the maker of the allegations (the complainant)

3.16 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' (who in this section of the report we refer to as "the complainant") about whether the application should be granted, before it is considered by the Registrar. The "maker of the allegations" is defined as 'the person who will be most affected by the decision to remove the registrant from the register without a public hearing'.

3.17 We identified two cases where we considered that the NMC's handling of this aspect of the process required improvement:

- In one case the recommendation form stated that the complainant had no comments to make, although in fact there was no record of any communication with the complainant on this topic, which suggests that their comments were never sought.
- In a second case the NMC attempted to contact the individual who had submitted the complaint to the NMC on behalf of the registrant's employer. That individual was no longer employed by the registrant's employer and no further attempt was made to seek comments from the employer (who in this case we considered was the real "maker of the allegations", rather than the particular individual who had submitted the complaint).

3.18 Both the original and the revised guidance require the Registrar to have regard to any comments received from the complainant. Additionally, the revised guidance sets out that there is no presumption that voluntary removal will be allowed if the complainant consents, but any comments from the maker of the allegations must be taken into account by the Registrar. We identified two cases where it was not possible/appropriate for the NMC to contact the complainant to request their comments – in one case the complainant was a police force, and in the other case the registrant had self-referred. We consider that in such cases it would be helpful if the NMC considered contacting the registrant's employer/former employer, as they may have relevant comments to make. In one of those cases the registrant's former employer had not only advised the registrant to contact the NMC, but had also provided a considerable amount of evidence to the NMC – we thought it was possible that their views would have been helpful to the Registrar. We shall be interested in how the NMC reconsiders its approach in light of our comments about these cases.

Cases involving misconduct charges

3.19 Both the original and the revised guidance states that the Registrar must consider the extent of any harm caused to patients and the potential impact on public confidence if voluntary removal is granted. The guidance 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 is clear that cases concerning actions that led to the death of a patient and any other significant harm (such as sexual misconduct) will usually fall within the category of cases where voluntary removal may not be appropriate.

3.20 Both the original and the revised guidance indicates that in cases primarily involving either serious' misconduct or a conviction (i.e. cases where suspension or striking off *may* be the appropriate sanction at a final 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'[23].

3.21 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 a final FTP panel hearing.

3.22 The section of the original and revised guidance that addresses cases involving lack of competence or less serious misconduct and convictions 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 and any admission is to be recorded in writing.

3.23 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

3.24 In our 2013 audit report we highlighted concerns about the NMC's failure to categorise some cases as involving 'serious' misconduct when applying the original guidance. We also highlighted concerns about a number of cases where voluntary removal was permitted, even though the misconduct *was* categorised as 'serious' – on the basis that there were 'exceptional circumstances'.

3.25 We were therefore keen to check for improvements in this year's audit and whether, overall, the NMC's assessment of the seriousness of the misconduct was appropriate.

3.26 In this audit we reviewed six misconduct cases where the original guidance applied. Four of those cases were ones which had been referred to final FTP panel hearings. Our findings about those four cases are as follows:

[23] See paragraphs 39 and 44 of the original guidance and paragraphs 41 and 46 of the revised guidance.

- In one case the recommendation form used the term ‘minor’ convictions, which was not consistent with the categorisation of the case throughout its lifetime (in legal advice, by the Committees that imposed and reviewed the interim order and by the IC) as one involving serious allegations that might result in striking off. Similarly, the internal review that was conducted while the case was awaiting a scheduled hearing date concluded that voluntary removal would not be appropriate because the misconduct had involved theft. In response to our audit feedback about this case the NMC acknowledged that different views about its seriousness had been taken during its lifetime, and the Registrar is not bound by assessments made earlier in the process. The NMC also implied that additional information that had been received by the date of the voluntary removal application (a reflective piece and information about the registrant’s health) meant that it was legitimate at that time to treat the misconduct as less ‘serious’. We cannot agree with that analysis – the offence was one of dishonesty in the workplace and theft of opiates, which is intrinsically serious. We also note that there was no real evidence of any causative link between the registrant’s ill health and their theft. We concluded that voluntary removal should not have been granted in this case. We consider that decisions to grant voluntary removal in such circumstances would be more credible if they addressed any inconsistencies with assessments of seriousness made earlier in the cases’ lifetime
- In a second case the only reference to the seriousness of the misconduct in the recommendation form was the conclusion that suspension or striking off was unlikely. We considered that there was no justification for that conclusion and we noted in particular that, as some of the incidents occurred while the registrant was subject to a performance improvement plan and physical harm occurred, conditions might have been considered an insufficient sanction had the case progressed to a final FTP panel hearing. We were also concerned about a statement in the recommendation form that there was no apparent harm to the vulnerable patients involved. That statement appeared to be inconsistent both with the basis on which the IC referred the case for a final FTP panel hearing, and with the evidence – the registrant had bruised one patient’s arm and had administered an overdose of morphine and an under-dose of an anti-emetic to another patient. In response to our audit feedback about this case, the NMC told us that it had assessed the harm suffered as not being serious, which meant that voluntary removal was available. We note that while an assessment of the harm as being not significant enough to render voluntary removal inappropriate might have been reasonable, the recommendation form does not include such an assessment but refers to there being no harm at all. The harm might have been considered by the final FTP panel as an aggravating factor which rendered conditions inappropriate in our view
- The voluntary removal recommendation form (as endorsed by the Assistant Registrar) referred to a third case as being one involving ‘minor misconduct’. We considered that analysis to be inconsistent with

other assessments of the seriousness of the case that had been made during its lifetime (for example the NMC had applied to the High Court to extend an interim order on the basis of the 'gravity' of the allegations). We also disagreed with the Assistant Registrar's assessment that the likely outcome, if the case were to proceed to a final FTP panel hearing, would be a conditions of practice order, given that the registrant had continued their misconduct even after being asked to stop. In response to our audit feedback, the NMC told us that under the original guidance cases were sometimes categorised as 'minor misconduct', meaning they were unlikely to result in suspension/striking off and that such categorisation is no longer used when the revised guidance applies. While helpful, this does not explain why cases have been treated as appropriate for voluntary removal when earlier in their lifetime they have been categorised as involving 'serious' misconduct

- In a fourth case we identified three concerns about the NMC's assessment of the seriousness of the case. Our first concern was that a degree of weight was placed on the fact that an interim conditions of practice order had been imposed, rather than an interim suspension order, and it is not apparent to us why this was considered relevant. We disagreed with the NMC's analysis set out on the recommendation form that suspension or striking off was unlikely, due both to the lack of significant harm and to the fact that the allegations related solely to the registrant's record keeping and medication administration. In fact the NMC had not fully investigated the risk of harm to patients (for example, it had not made any inquiries in response to information about a safeguarding incident). We considered that suspension, might have been the outcome if the case had proceeded to a final FTP panel hearing because: the registrant had not displayed full insight into their failings; they had made multiple errors over a period of time; they had not practised for two years; they had made no recent attempts to remediate their failings; their earlier attempts at remediation had not prevented the errors from occurring. Our final concern was that no express conclusion was drawn about the seriousness of the misconduct, nor was it apparent if the decision maker considered whether any 'exceptional circumstances' existed. When we audited the case we noted that there were a number of indications that the NMC had previously treated the case as one involving serious misconduct. For example, an email from the NMC's internal legal team (about an application to the High Court for an interim order extension), sent at around the time that the voluntary removal application was being considered, stated that the case concerned 'serious clinical issues' and that an interim order remained necessary on the basis of public protection and the wider public interest. We were also concerned that no weight had apparently been placed on the vulnerability of the patients whom the registrant was treating. In response to our audit feedback about this issue the NMC acknowledged that the voluntary removal decision did not include an adequate assessment of the seriousness of the misconduct.

3.27 We were disappointed with the quality of the NMC's assessment of the

seriousness of the misconduct in these cases, given that these voluntary removal applications were granted after the NMC had seen the findings from our 2013 audit report.

3.28 In response to our audit findings in these four cases, the NMC has told us that, following its own quality assurance exercise, it has identified that it did not previously provide decision makers with sufficient evidence or references. The NMC has assured us that amendments have been made to the application and recommendation forms to address this deficiency. The NMC has also said that it will review its guidance in light of our findings, to ensure that it is sufficiently clear. We do not think that this will fully address our findings which do not solely relate to the information that is presented to the decision maker or the clarity of the guidance and particularly relate to the judgements that have been made.

3.29 As well as reviewing the overall assessments made in each of the cases to check that they adequately protected the public and maintained public confidence in the regulatory process, in this audit we looked for evidence of improvement since our 2013 audit in the NMC's categorisation of 'serious' misconduct. In particular we looked for evidence that the revised guidance had had a positive impact (see paragraphs 3.23-3.28). However, nine of the 11 cases we audited did not involve serious misconduct, and we were therefore unable to assess the effectiveness of the changes introduced in 2014 as we only saw two cases that involved serious misconduct.

3.30 In both of the cases that we audited which involved serious misconduct and where the revised guidance applied we identified serious concerns:

- In one case the recommendation form (which was endorsed by the Registrar) stated that in the absence of dishonesty or a serious criminal conviction, striking off was not a likely outcome at a final FTP panel hearing (this case concerned record keeping issues). We considered that the Registrar should have considered not just whether striking off was a likely outcome at a final FTP panel hearing, but also whether suspension was likely. This was particularly relevant in this case given the seriousness of the misconduct (which involved the registrant's failure to rectify their failings after two periods of supervised practice). We were also concerned that the IC's evaluation of the seriousness of the case (when it referred it to a final FTP panel hearing) was itself based upon inadequate investigation by the NMC (see paragraph 2.27 second bullet, paragraph 2.28 second bullet). Our second concern was that the treatment of the seriousness of the case at the voluntary removal stage was not consistent with the view that had been taken earlier on – both by the final FTP panel when deciding that the case should be dealt with at a hearing (rather than a meeting); and by the NMC itself, when considering the possibility of agreeing a sanction with the registrant (using the consensual panel determination process) – at that time the only sanction the NMC considered agreeing with the registrant was striking off
- In a second case the decision to grant voluntary removal was based on a conclusion that the misconduct allegations would be unlikely to result in suspension or striking off at a final FTP panel hearing, which was inconsistent with the view expressed by the IC in referring the case to a

final FTP panel hearing. In response to our audit feedback, the NMC said that the IC's comment about striking off being a possible outcome had only made in the context of explaining why the final FTP panel hearing should take place in front of the CCC rather than the HC. It is not clear to us why, if the NMC's analysis is correct, it has any impact on our concern about the later assessment of the case as one where neither suspension nor striking off were likely outcomes. In addition, we note a concern about the NMC's conclusion that there was no evidence of patient harm – in fact the NMC had not established whether any patient harm had been caused, although there was information to indicate that the registrant's record keeping failings had affected 26 patients over a five-month period (see paragraph 3.11 fourth bullet).

3.31 In response to our audit findings the NMC said that, in its view, decisions to grant voluntary removal were taken after the seriousness of the allegations was appropriately weighed. The NMC advised us that it will review its guidance to ensure that its position on the seriousness of the misconduct is appropriately weighed and that clear reasons are provided.

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

3.32 In our 2013 audit report we concluded that the application form should require 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 findings, the NMC amended the application form so that applicants are required to sign it at the end and to make a declaration that they admit the facts of the allegation and admit that their fitness to practise is impaired. The NMC has also revised its process to invite registrants to submit a reflective statement about their misconduct.

3.33 In this audit we identified five cases (where the original guidance applied) where voluntary removal was granted despite the fact that the allegations had not been proved and full admissions had not been made by the registrant:

- In one case the registrant's originally answered, 'don't know' in response to the question about whether they admitted the facts of the allegations and impairment in their first application form. We also note that the registrant had consistently denied impairment of their fitness to practise throughout the process. We were concerned that the NMC's internal legal team then contacted the registrant and supplied them with another application form, stating, '…in order for voluntary removal to be approved you must admit the allegations and impairment by ticking 'yes' in the admission boxes'. We consider both that it was inappropriate for the regulator to act in this way, and that the internal legal team's communication with the registrant about their first voluntary removal application form should have been taken into account by the Registrar in evaluating the credibility of the admissions made at their second attempt. We were also concerned to note that while the recommendation form suggested that the registrant should be given credit for making early admissions, in fact those admissions had only occurred when the employer confronted them

- In a second case a link was made within the recommendation form (which was endorsed by the Registrar) between the registrant's lack of insight and their underlying ill health condition, despite the fact that the medical evidence did not support the registrant's claim that there was such a link
- In a third case the registrant had displayed no insight, in that they had denied the allegations and disputed the evidence. In their application for voluntary removal, the registrant said that they would admit to one of the misconduct allegations, but that voluntary removal was being sought on the grounds of ill health. While they signed the part of the form indicating that they admitted impairment of fitness to practise (but not the facts and allegations) they also added a handwritten comment which cast doubt on the extent of their admission – they said that they were unable to revisit each individual allegations, but were 'signing documents praying it will all soon be over.' It appeared to us that the registrant was applying for voluntary removal simply in order to avoid the final FTP panel hearing. In response to our audit feedback about this case, the NMC said that this was an 'unusual' case, and that the absence of full admissions was properly dealt with in the voluntary removal recommendation form. We disagree with the NMC's response to our audit feedback - what the recommendation form said was that it could be considered unfair for the registrant to have to admit the allegations, because they were insufficiently particularised (i.e. detailed). In our view, even if the allegations had been poorly drafted by the NMC, that was not a sufficient justification for the NMC to permit voluntary removal in the circumstances of this case
- In a fourth case once it was referred for a final FTP panel hearing, the case was reviewed by the internal legal team. A recommendation was made that the case was suitable for voluntary removal, even though the registrant had consistently denied the facts and allegations and disputed three of the witnesses' evidence. In response to our audit feedback about this case the NMC told us that because the registrant had enquired about voluntary removal, an assumption was made that the registrant would admit the allegations and impairment. We also note that the recommendation form contained a factual inaccuracy, in that it stated that the registrant had admitted the facts and allegations in their first application. We consider this to be relevant because it may have impacted on the Registrar's assessment of the sincerity of the registrant's insight (the registrant had only made admissions on the second application form, following prompting by the NMC)
- In a fifth case, we were concerned that one of the documents the Registrar took into account was a "draft" (according to the covering email) unsigned reflective piece. The NMC told us that because the reflective piece was written in the first person, it was treated as originating from the registrant (the NMC does not require documents to be signed). We consider that the NMC should revisit its approach to unsigned draft documents.

3.34 We identified concerns in two of the 11 cases we audited in which the revised process applied:

- In the first case the registrant admitted impairment of their fitness to practise on the basis of ill health, but they did not admit it was impaired due to misconduct, as alleged. The voluntary removal recommendation form did not highlight that the registrant had not admitted impairment of fitness to practise as alleged, nor was this issue addressed in the Registrar's decision to grant voluntary removal. An additional concern was that the voluntary removal recommendation form credited the registrant with having some insight despite the fact that two weeks previously the registrant had denied all the misconduct allegations (including some they had previously admitted). In response to our feedback about this case, the NMC acknowledged only that there had been an omission on the voluntary removal recommendation form in failing to address the basis of the admission of impairment. We consider that voluntary removal should not have been granted, as this case fell outside the provisions of the NMC's voluntary removal guidance
- In a second case we noted that while the registrant had admitted the factual allegations and impairment of their fitness to practise when applying for voluntary removal, no consideration was given to the sincerity of those admissions (earlier in the case's lifetime the registrant had disputed the alleged facts, as set out in one witness's evidence).

3.35 The NMC advised us that the primary purpose of requiring admissions is to avoid any difficulties in the event that the registrant subsequently applies for readmission to the register. The NMC advised that admissions which are received at a late stage of the case will not preclude a case from being considered by the NMC as suitable for voluntary removal. Our findings in relation to these two cases indicate that the NMC should reconsider its approach – to ensure that the Registrar places sufficient weight on the sincerity of the registrant's insight and/or the credibility of their admissions – both of which are factors that would affect the type of sanction that would be imposed if the case were to proceed to a final FTP panel hearing.

Cases involving both health and misconduct/conviction allegations

3.36 The original guidance stated that, where allegations were 'multi-factorial[24]', the Registrar would consider whether voluntary removal was appropriate in all the circumstances. The guidance around the treatment of 'serious' misconduct or conviction cases also applied in multi-factorial cases (i.e. if a suspension or striking off order might be the appropriate sanction, voluntary removal 'will not generally be appropriate and the case should normally proceed to a full panel adjudication, save in 'exceptional circumstances').[25]

3.37 In our 2013 audit we identified a number of cases involving 'multi-factorial' allegations which had been referred for consideration at a final FTP panel hearing (at the Health Committee) and where the Registrar when granting voluntary removal took no account of the misconduct allegations.

3.38 The revised guidance no longer refers to 'multi-factorial' cases and instead refers

[24] The guidance does not define the term, 'multi-factorial' however we understand it to mean that the allegations relate to impairment on the grounds of misconduct and ill health.
[25] See paragraphs 39 and 44 of the original guidance and paragraphs 41 and 46 of the revised guidance.

to ‘allegations of impairment on more than one ground’ which we regard as an improvement in terms of clarity. The revised guidance states that if the case involves an allegation of impairment on grounds other than ill health that would not in itself result in a suspension or striking off order then voluntary removal may be appropriate notwithstanding that the nurse or midwife admits only the allegation of impairment by reason of health. The revised guidance provides that, ‘voluntary removal *may* [our emphasis] be appropriate notwithstanding that the nurse or midwife admits only the allegation of impairment by reason of health’, and makes it clear that where the allegations referred for consideration at a final FTP hearing include allegations of impairment on grounds other than ill health, all the outstanding allegations will be taken into account in considering an application for voluntary removal. In this audit, we checked the NMC’s application of this aspect of its original and revised guidance.

Cases where the original guidance applied

3.39 We identified concerns in two of the three cases we audited that involved allegations of impairment based on both ill health and misconduct. In one case we were concerned that the report prepared by NMC staff for consideration by the IC did not address whether, due to the seriousness of the allegations any referral for a final FTP panel hearing should be made to the CCC rather than the HC (see paragraph 2.33 fourth bullet). The misconduct allegations were not considered by the Registrar in taking the decision to grant voluntary removal. In a second case we had concerns about the assessment of the seriousness of the misconduct that was endorsed by the Registrar.

Cases where the revised guidance applied

3.40 We audited six cases involving both ill health and other allegations where the revised guidance applied. We identified concerns about the failure to provide adequate reasons (for cases that fall outside the provisions of the NMC’s guidance) in three of those six cases:

- As a result of our review of one case, we concluded that the NMC should consider amending its guidance to allow for the granting of voluntary removal in some cases where the registrant has become seriously ill, despite the fact they do not admit serious misconduct allegations. In the case we audited the decision-maker had not recorded in adequate detail their reasons for departing from the current guidance and granting voluntary removal. We concluded that the NMC’s approach failed to maintain confidence in regulation (see paragraph 3.48 second bullet)
- In a second case we were concerned about the assessment of the seriousness of the misconduct in the recommendation form, as endorsed by the Registrar (see paragraph 3.11 fourth bullet, page 58 and paragraph 3.30 second bullet). In our view, the NMC’s guidance should be amended to clarify that the Registrar’s assessment should encompass consideration of any potentially aggravating features of the case (such as evidence of patient harm). In addition, we consider that the NMC should ensure that adequate information about harm is provided to the Registrar

- In a third case the registrant had consistently denied the misconduct allegations and only admitted impairment on the grounds of ill health. The registrant had made numerous enquiries about voluntary removal, but since they consistently denied the misconduct allegations, the NMC did not initially engage with them about the voluntary removal process. However, two days before the final FTP panel hearing was scheduled to begin, the registrant contacted the NMC to say that they would admit that their fitness to practise was impaired on ill health grounds. At the final FTP panel hearing the registrant requested their case be transferred to the Health Committee. The NMC case presenter's comment about the possibility of the case being transferred to the Health Committee was that 'by transferring it to the Health Committee we can draft a new health charge and then discuss the possibility of VR with the registrant'. We were concerned about the inference that the case should be transferred to the Health Committee in order to facilitate voluntary removal and we consider that this was not an appropriate comment to make. In response to our audit feedback the NMC said that the submission made was merely outlining the possibility of the voluntary removal process should the case be transferred to the Health Committee. We are satisfied that the CCC's decision to transfer the case to the HC was correct. In our view, the approach taken in this case may damage confidence in the NMC as a regulator if it were to be repeated.

3.41 We recommend that the NMC introduces the appropriate processes to ensure the recording by decision-makers of adequate reasons for their assessment of the seriousness of the misconduct involved in cases reclassified as multifactorial. It is particularly important to provide adequate reasons where cases fall outside the circumstances envisaged in the NMC's published guidance.

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

3.42 One of the public policy reasons why voluntary removal is considered to be a valuable mechanism is that it results in a cost-saving for the regulator and may speed up the timeframe for conclusion of the case, which is to everyone's benefit. Those advantages are not achieved to the same extent where voluntary removal is granted partway through a final FTP panel hearing, because at that point there is no significant time or resource-saving to be achieved.

3.43 Our audit included two cases where voluntary removal was granted after the final FTP panel hearing had commenced. We had concerns about one of the cases. The allegations were that the registrant had: failed to administer medication; signed the clinical records to say that the medication had been given; retrospectively dishonestly amended the records; and given an inconsistent account of the events to their employer during their investigation. We noted that there was an internal email acknowledging that the alleged misconduct was too serious for voluntary removal to be acceptable but despite that, a few days later the NMC invited the final FTP panel hearing to make a 'no case to answer decision' on the dishonesty allegation. Voluntary removal was then granted. In response to our audit feedback the NMC said that the final FTP hearing panel could have chosen not accept the NMC's proposal to offer no evidence and instead required the evidence to be called.

The failure to provide reasons or adequate reasons

3.44 In our 2013 audit report we expressed concern that the Registrar had not provided 'standalone' reasons for the decisions to grant voluntary removal in any of the cases we audited.

3.45 In this year's audit we identified the same concern in all six of the cases we audited where the original guidance applied. This was not unexpected, as the NMC did not make any changes to its approach until the revised guidance came into effect on 20 June 2014.

3.46 We are pleased to report that in the 11 cases we audited where the revised guidance applied, standalone reasons for the decisions had been set out in the voluntary removal recommendation forms which were then endorsed by the Registrar.

3.47 We identified one of the 11 cases where we considered that it would have been beneficial for additional reasoning to have been included in the recommendation form endorsed by the Registrar. In that case we were concerned that the Registrar only considered the probability of striking off at any final FTP panel hearing (rather than also considering the probability of a suspension *or* striking off, as required under the guidance). We also concluded that the decision to grant voluntary removal would have been strengthened if it had specifically addressed the relevance of the allegations that the registrant had not admitted (see paragraph 3.33 second bullet, paragraph 3.30 first bullet where we set out our further comments about this case in more detail).

3.48 We also identified concerns about the adequacy of reasons in the following three cases:

- In the first case we had two concerns. First, the NMC initially told the registrant that it would not support their application for voluntary removal because the allegations were too serious. There was no record of who had made that decision, there was no record of the reasons that the Registrar rejected the registrant's application for voluntary removal, and no reasons were provided to the registrant. Second, the Assistant Registrar stated that one of their reasons for granting voluntary removal was that the ill health considerations made it unlikely that the final FTP panel hearing would take place in public. In fact the hearing had in fact already commenced in public, but had not been completed (due to the application for voluntary removal) – it therefore appeared that the Assistant Registrar had based their decision on a factual error
- In a second case the registrant did not admit the allegations and impairment of fitness to practise in their voluntary removal application. The NMC then contacted the registrant to seek fuller admissions. We considered that it would have been better practice for the Registrar to have rejected the application and to have provided the registrant with reasons to explain why the application could not be granted. The NMC disagree with our view on this issue
- In a third case the Registrar did not refer to the registrant's previous voluntary removal application when assessing the sincerity of the

registrant's statements in their second application about their future plans.

Maintaining confidence in regulation

3.49 We concluded that the approach adopted by the NMC in three cases would not maintain public confidence in regulation if it were adopted generally:

- In the first case the NMC's internal legal team contacted the registrant's representative to enquire whether the registrant wished to apply for voluntary removal, even though the registrant had previously stated that they had wished to remain registered with the NMC and had not made any enquiries about voluntary removal. In response to our audit feedback the NMC said that it could see no objection to the approach it had taken
- In the second case the registrant had consistently denied all the allegations (including dishonesty). They subsequently became very ill. We saw an email from the NMC internal legal team which we considered raised concerns about the NMC's motivation for facilitating voluntary removal in this case. The email said 'I know people are eager to schedule but if we can VR this we will save a great deal of time and money as [the registrant's representatives] are pushing for a full five day hearing…' What then happened was that the NMC contacted the registrant's representative prior to the final FTP panel hearing, indicating that the NMC could not prove the dishonesty aspect of the case and at the same time saying that the registrant's genuine desire to leave nursing, their length of service and medical evidence as to the registrant's future prognosis would make them 'a strong candidate' for voluntary removal 'in the event that there were admissions to the record keeping errors'. The email went on to say that the registrant could refuse 'the proposal' outright, in which case the most likely outcome at the hearing would be at least a conditions of practice order. The NMC then emailed the registrant confirming that they had dropped the dishonesty allegation from the case. There was no contemporaneous record on the file to show why the NMC had decided to make such a 'proposal' to the registrant and not to pursue the most serious aspect of the case (i.e. the dishonesty allegation) (a subsequent note stated that the dishonesty allegation had been dropped because there was no evidence to indicate that the registrant had any intention to mislead). In our view, since the case had been referred to a final FTP panel hearing on the basis that there was a realistic prospect of dishonesty being proved, it was not appropriate for the NMC to drop the dishonesty charge in order to facilitate voluntary removal in circumstances where nothing had changed in the intervening period (other than the registrant's health). We recognise that the NMC's motivation may have been to bring the FTP proceedings to a swift conclusion, given the registrant's ill health. However, in our view, the NMC should amend its guidance to allow for the granting of voluntary removal in some cases where the registrant has become seriously ill, despite the fact they do not admit serious misconduct allegations – see paragraph 3.39 first bullet

- In a third case the NMC advised the registrant that it would not support their first voluntary removal application because the allegations were too serious. However, the NMC then wrote to the registrant five months later enclosing a further voluntary removal application form. There was no record on the case file to explain what had prompted this action – the only event that had taken place in the intervening period was that the registrant had notified the NMC that they would not be able to attend the final FTP panel hearing due to their health problems.

3.50 We note that the revised guidance makes it clear that caution should be applied in assessing the genuineness of the registrant's desire for voluntary removal where the application appears to have been triggered solely by the FTP proceedings. However, as set out above, in one of the cases we audited we saw no evidence that either the NMC staff completing recommendation forms or the Registrar in deciding whether to grant voluntary removal had considered the relevance of the fact that the NMC had invited the registrant to apply for voluntary removal. In some cases the NMC had gone much further, advising registrants on where their responses to the questions on the form meant that their application could not be granted, at the same time as enclosing a second form for completion. We have some anxiety about the regulator actively encouraging registrants who have shown no interest in voluntary removal to make voluntary removal applications. We also consider that the Registrar should take account of the history of the correspondence between the NMC and the registrant/their representative when evaluating the sincerity of the registrant's statement about their wish to be voluntarily removed from the register in such circumstances.

4. Conclusions and recommendations

Conclusions and recommendations related to detailed findings in section 2

4.1 In this audit we checked to see that the NMC had maintained its good performance in the areas that we had identified in our 2013 audit report. We are pleased to report that we observed:

- Documented risk assessments in all 95 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 the process
- No concerns about record keeping in all 35 cases that were closed by the screening team
- Examples of good case handling and good customer care by caseworkers in several cases that were closed by the screening team, such as by tailoring standard letters and taking a proactive approach to making enquiries prior to closing cases.

4.2 We identified some inconsistent performance in the following areas:

- Acknowledging and assessing complaints on receipt – we noted delays in five cases. This can lead to unnecessary and avoidable delays in commencing an investigation as well as potentially impacting on complainants' confidence in the process (see paragraphs 2.4-2.7)
- Inadequacies related to the need to re-risk assess cases during their lifetime on receipt of new or adverse information and/or the need to ensure that all relevant information is taken into account in 11 cases. We are concerned that the findings in these cases suggest that NMC staff do not always identify emerging risks and take appropriate action promptly (see paragraphs 2.11-2.15)
- Delays in applying for and imposing interim orders in five cases which had the potential to expose the public to unnecessary risks. In general, based on our audit we were satisfied that the NMC was imposing interim orders without unnecessary delay, however, we considered that the NMC should review our comments in the five cases we identified to satisfy itself that these issues cannot recur in future cases (see paragraphs 2.16-2.17)
- In our 2013 audit we identified no concerns about the closure decisions made by the screening team in 27 cases. In this audit we identified concerns about the closure decisions in two out of 35 cases that were closed by the screening team (see paragraph 2.41)
- Inconsistent compliance with internal process and guidance documents (see paragraphs 2.73)
- Inconsistent improvement related to timeliness (see paragraphs 2.88-2.101).

4.3 We were disappointed that we were unable to identify much improvement in the NMC's performance compared to the 2013 audit in the following areas:

- Compliance with the NMC's 2011 customer service standards (which were in place at the time of our audit). Compliance was inconsistent which may have reduced the relevant individuals' level of confidence in the NMC (see paragraphs 2.57-2.71
- Record keeping has been a feature of our previous audits, and despite the NMC's improvement activities and expansion of its quality assurance mechanisms, we have been unable to conclude that the NMC has achieved consistent improvement in record keeping across its caseload. Poor practices for information governance and poor record keeping led to confidentiality or data breaches in 11 cases (see paragraphs 2.84-2.87)
- Unnecessary delays in case progression that have led to the NMC continuing to seek court extensions of interim orders. We also found documents that had been presented to the High Court in support of interim order extension applications containing summaries of the factual background that were not always complete. While we have no reason to suggest that any errors or admissions were anything other than inadvertent, we nevertheless consider that our audit findings about this aspect of the NMC's case handling has the potential to damage public confidence in the NMC. A regulator, as a body exercising public functions, would be expected to be scrupulous to ensure the complete accuracy of any information presented to the courts (see paragraphs 2.104-2.107 and 2.116-2.118)
- Inadequacies in the handling of the process for the reviewing of interim orders (which repeats a finding from our 2013 audit report) (see paragraphs 2.102-2.103).

4.4 We also identified areas where the NMC's performance had declined compared to our 2013 audit. Our concerns related to the following areas:

- Inadequacies in gathering information and evidence in four screening cases (see paragraphs 2.20-2.21)
- Inadequacies in gathering information and evidence in 36 cases, including: failures to gather relevant information/evidence; failures to investigate relevant issues; inadequacies in the charges drafted; as well as inadequacies in the information/evidence presented to the IC and CCC. While we recognise that the inadequacies we identified in these cases did not create any public protection risks, nevertheless it is unacceptable for decision makers who are responsible for making significant decisions about whether or not registrants should be restricted from practising not to be provided with relevant evidence, as that could affect their decisions. In addition, we consider that a pattern of such failings could lead to a loss of confidence in the regulator's processes (see paragraphs 2.22-2.37)
- Inadequacies in the NMC's case handling in six cases, and concerns related to the NMC's operation of its FTP process which we considered led to unfairness to one or more individuals in another six cases. We considered that if the approach taken in these cases was adopted more widely there would be the potential to adversely affect public

confidence in the NMC's system of regulation (see paragraphs 2.112-2.115)

4.5 Inadequacies in the decision making at the early stages of the NMC's FTP process has been a consistent feature of our audits reports in the last five years. We concluded after each of those previous audits that we had not yet seen sufficient levels of improvement, despite the steps the NMC has taken, such as making procedural changes, providing training for IC members and staff, and amending its guidance. We are concerned that this audit has also highlighted deficiencies in the NMC's evaluation and decision making processes and in some decisions and/or the reasons for them. In particular we identified:

- Two cases closed by the IC where we identified concerns about whether the correct decision was taken and 14 other cases where we considered that the IC had provided inadequate reasons for the decisions taken (see paragraph 2.44-2.50). In one further case we had concerns about the impact on public protection of the decision by the IC to close the case (see paragraph 2.110)
- Deficiencies in the decisions made by panels imposing and reviewing interim orders in two cases which meant that risks to public protection were not adequately managed. In addition, deficiencies in the NMC's handling of the process for reviewing interim orders in two further cases which we considered damaged confidence in the NMC's system of regulation (see paragraph 2.109)
- Two cases closed by administrative removal which we concluded had been closed by the chair of the CCC on the basis of information which the NMC presented inaccurately and that is a matter of some concern. We had concerns about the use of the Rule 33 procedure for cancelling final FTP panel hearings, as well as the decisions themselves. We note that the NMC disagrees with our analysis of these cases (see paragraph 2.38 and paragraph 2.52-2.53).

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

- Reviews its approach to gathering information and evidence with reference to the four screening cases to ensure that cases are not prematurely closed by the screening team before all necessary information and evidence has been obtained (see paragraphs 2.20-2.21)
- Ensures that all relevant information and evidence is placed before decision makers– particularly the IC and panels imposing and reviewing interim orders (see paragraphs 2.22-2.37)
- Reviews its quality assurance of records management, to ensure that it is effective in helping the NMC to reduce the number of data, confidentiality and information breaches occurring (see paragraphs 2.77-2.87)
- Ensures that staff comply with internal processes and guidance. This should include ensuring compliance with the customer service standards, with a particular focus on checking that the (reasonable)

expectations of stakeholders are met, correspondence is responded to, and complaints about the FTP process are identified and handled appropriately (see paragraph 2.73)

- Considers the three areas where we suggested the development of additional guidance or the strengthening of existing guidance (see paragraphs 2.74-2.76)
- Reviews its handling of the cases that we identified as posing risks to the maintenance of public confidence (see paragraphs 2.112-2.118).

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

4.7 We set out in section 3 our conclusions and recommendations arising from the 17 cases that we audited that were closed following the grant of applications for voluntary removal from the register.

4.8 We identified some improvements in the NMC's approach to voluntary removal cases, following the revisions that it made to its voluntary removal guidance which came into effect on 20 June 2014. We noted improvements in the recording of reasons for the Registrar's decision to grant the registrant's application for voluntary removal, which meant that it was easier to understand the reasons for those decisions. We were also pleased that we did not identify any concerns about decisions to revoke interim orders in order to facilitate voluntary removal, following the further training the NMC provided to its panel members and the revisions to its guidance. We therefore concluded that the revisions that the NMC had made to its guidance in relation to revoking interim orders and recording reasons had led to improvement.

4.9 Our overall conclusion is that while there is evidence of some improvements in the NMC's approach to its handling of voluntary removal cases, the NMC has not successfully addressed all of the concerns we identified in our 2013 audit report. We recommend that the NMC reviews our concerns in relation to its handling of cases closed by voluntary removal, and considers whether further amendments to its guidance or processes are needed.

4.10 Our conclusions about the areas where improvement is needed are as follows:

- The Registrar's analysis of the public interest, particularly around the assessment of harm. We recognise that our concerns about this related to only three of 11 cases we audited to which the revised guidance applied (see paragraphs 3.10-3.12)
- The quality of the recommendations made to the Registrar by NMC staff about registrants' future plans and interests (see paragraphs 3.13-3.15)
- The quality of the NMC's assessment of the seriousness of misconduct. We audited cases where the NMC granted voluntary removal despite the case having been categorised as involving serious misconduct earlier in its lifetime (see paragraphs 3.24-3.31 and 3.36-3.41)
- The Registrar's assessment of the registrant's insight and the credibility of their admissions – both of which are factors that would affect the

type of sanction that would be imposed if the case were to proceed to a final FTP panel hearing (see paragraphs 3.32-3.35)

- The recording of reasons for the decisions to both reject and grant voluntary removal, particularly where cases fall outside the circumstances envisaged in the NMC's published guidance (see paragraphs 3.41 and 3.44-3.48).

4.11 We were particularly concerned about two aspects of the NMC's handling of voluntary removal cases.

- The potential impact on public confidence in the NMC as a regulator of its involvement in 'encouraging' or facilitating registrants to apply for voluntary removal. We have some anxiety about the regulator actively encouraging registrants who have shown no interest in voluntary removal to make voluntary removal applications if they are the subject of FTP proceedings. We also consider that the Registrar should take account of the history of the correspondence between the NMC and the registrant/their representative when evaluating the sincerity of the registrant's statement about their wish to be voluntarily removed from the register in such circumstances (see paragraphs 3.49-3.50)
- The NMC's approach to granting voluntary removal even when a final FTP panel hearing is under way. In cases where voluntary removal is granted after the final FTP panel hearing has begun none of the efficiency benefits arising from an early resolution by voluntary removal are achieved, and the decision to grant voluntary removal in those circumstances therefore requires more careful consideration. We have concluded that the approach demonstrated in one case may fail to maintain public confidence in the regulatory process (see paragraph 3.42-3.43).

4.12 We also identified that the NMC does not currently seek comments about a voluntary removal application from anyone other than the 'maker of the allegations' (i.e. the original complainant) and, if they are not available, no comments are sought from anyone other than the registrant. We suggest that the NMC consider whether there are other individuals (such as current employers) who might have relevant comments that the NMC could obtain in some/all cases before deciding whether or not to grant voluntary removal (see paragraphs 3.17-3.18).

5. Annex 1: Fitness to practise casework framework

5.1 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 ongoing basis.

Stage-specific principles

Stage	Essential elements
Receipt of information	• 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	*Documents/tools* • 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. *Actions* • 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	*Documents/tools* • Guidance for caseworkers/decision makers • Tools for investigation planning. *Actions* • Plan investigation/prioritise time frames • Gather sufficient, proportionate information to judge public interest • Give staff and decision makers access to appropriate expert advice where necessary • Liaise with parties (registrant/complainant/key witnesses/employers/other stakeholders) to gather/share/validate information as appropriate.
Evaluation/decision	*Documents/tools* • Guidance for decision makers, appropriately applied. *Actions* • Apply appropriate test to information, including when evaluating third party decisions and reports • Consider need for further information/advice. • Record and give sufficient reasons • Address all allegations and identified issues • Use clear plain English • Communicate decision to parties and other stakeholders as appropriate • Take any appropriate follow-up action (eg warnings/advice/link to registration record).

Overarching principles

Stage	Essential elements
Protecting the public	• Every stage should be focused on protecting the public and maintaining confidence in the profession and system of regulation.
Customer care	• 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	• Systems, timeframes and guidance exist to ensure ongoing risk assessment during life of case • Take appropriate action in response to risk.
Guidance	• 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	• 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	• 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.

6. Appendix 1 – the NMC's previous voluntary removal guidance

Guidance on voluntary removal decision making

Nursing & Midwifery Council

Guidance for making decisions on applications for voluntary removal during the fitness to practise process and applications for readmission

Introduction

1 This guidance sets out the relevant criteria and factors to consider in making decisions on applications for voluntary removal from nurses or midwives who are the subject of a fitness to practise allegation. It should also be used by any person or committee providing advice in relation to any such decision.

Background

2 This guidance only applies to an application for voluntary removal made by a nurse or midwife who is subject to a current fitness to practise investigation or who discloses information on an application for voluntary removal which leads to a fitness to practise case being opened. Any other applications for removal or lapsing from the register or notifications of ceasing to practise will continue to be dealt with by the Registrations directorate without regard to this guidance.

3 A nurse or midwife may submit an application for voluntary removal from the register at any point in the fitness to practise process. The procedures for dealing with such applications are set out in The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 as amended.

4 At present, voluntary removal cannot be permitted when the nurse or midwife is the subject of a final suspension or conditions of practice order. Any such applications fall outside the scope of this guidance. Voluntary removal is also not permitted whilst the nurse or midwife is the subject of an interim suspension or conditions of practice order so any such order will need to be revoked before an application for voluntary removal can be granted.

Main principles

5 The primary purpose of this process for voluntary removal is to allow those nurses and midwives who admit that their fitness to practise is impaired and 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.

6 In providing advice in relation to such any application for voluntary removal, and in reaching a decision on such an application, it is necessary to have regard to the fact that there is a public interest in the ventilation at a public hearing before a panel of serious allegations which are likely to result in a finding of impaired fitness to practise.

7 It will not generally be appropriate for an application for voluntary removal to be allowed until a full investigation into the allegation has been completed and the full extent of the alleged impairment has been ascertained. If a potential voluntary removal application is made at an early stage in the investigation the nurse or midwife may be invited to resubmit an application at a later stage when the investigation has been completed and the case has been considered by the Investigating Committee.

8 In any event, at whatever stage an application is received, it should not be granted unless the Registrar is satisfied that it is appropriate to do so in all the circumstances.

9 In reaching that decision, the Registrar must have regard to:

9.1 The public interest

9.2 The interests of the nurse or midwife

9.3 Any comments received from the maker of the allegation (if any).

The public interest

10 The public interest incorporates a number of elements:

10.1 The protection of patients and the public generally from nurses and midwives whose fitness to practise is impaired.

10.2 The maintenance and promotion of public confidence in the nursing and midwifery professions, including the declaring and upholding of professional standards.

10.3 The maintenance and promotion of public confidence in the NMC's performance of its statutory functions.

Public protection

11 The NMC's primary (although not sole) task is to protect the public from future harm at the hands of a nurse or midwife whose fitness to practise may be impaired. Voluntary removal may appear to give the public the most immediate and the most effective form of protection at the NMC's disposal as the nurse or midwife will not be entitled to practise at all.

12 However, it must be borne in mind that voluntary removal is not necessarily permanent. The (potential) threat posed by a nurse or midwife might be revived by his or her future readmission to the register. The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 as amended by provide safeguards in that any application for readmission following voluntary removal would not be granted automatically. Such an application would be referred to the Registrar to consider and any unresolved fitness to practise allegations would be taken into consideration.

13 Nevertheless, the revival of an unresolved allegation may not be straightforward. During the interval between the granting of voluntary removal and the application for readmission, evidence of any alleged misconduct might have disappeared or deteriorated, for example, because a witness's memory has faded or the witness has become uncontactable or even died. In order to address these concerns, it is only likely to be appropriate to grant an application for voluntary removal when the nurse or midwife is willing to formally admit the allegations of impairment that have been made and that admission can

be recorded in writing or a finding of impairment has been made by a panel.

14 In these circumstances, in the event of voluntary removal being granted, details of the allegations admitted would be made available on request to relevant enquirers (including potential employers and overseas medical authorities). The allegations admitted would also be considered if the nurse or midwife subsequently applied for readmission to the register.

Public confidence

15 In addition, it is important to remember that there are two other elements to the public interest. Given that there is a statutory scheme for dealing with allegations of impaired fitness to practise made against nurses and midwives there is a corresponding public interest in such allegations being properly scrutinised in public. When this happens, and is seen to happen, professional standards are seen to be upheld and public confidence in the nursing and midwifery professions and in the NMC is better maintained and promoted. Voluntary removal may prevent this from happening and this factor should always be taken into account in reaching a decision.

16 There are also circumstances in which the nature of the allegations against the nurse or midwife may raise public confidence issues even where patients and the public are protected by removing the name of the nurse or midwife from the register. The Registrar must consider the extent of harm caused to patients and the potential impact on public confidence if the application for voluntary removal is allowed. Where there is reason to believe that the actions of the nurse or midwife may have caused the death of a patient or other significant harm such as cases involving sexual misconduct, there is a strong indicator that voluntary removal may not be appropriate. In such cases there is likely to be a significant impact on public confidence as we are unable to place detailed information about those concerns in the public domain.

The interests and future plans of the nurse or midwife

17 The relevant factors to be considered under this heading and the weight to be given to them will depend on the basis for voluntary removal application and the nature of the outstanding fitness to practise allegations, but they may include:

17.1 The state of health of the nurse or midwife (see paragraphs 32-34 below)

17.2 The likelihood of the nurse or midwife seeking readmission to the register

17.3 The length of time since the nurse or midwife last practised.

17.4 The genuineness of the nurse or midwife's desire to permanently remove themselves from the register

17.5 Any evidence that the nurse or midwife has no intention to practise in the UK or elsewhere in the future.

The likelihood of the nurse or midwife seeking readmission to the register

18 In general, if the Registrar considers that a nurse or midwife is likely to seek readmission to the register in the future, it will not be appropriate to grant voluntary removal. This is because where there are outstanding fitness to practise concerns voluntary

removal is allowed on the basis that removal of the nurse or midwife's name will ensure that patients are permanently protected in the future.

19 In assessing the genuineness of the nurse or midwife's desire to permanently remove themselves from the register, one of the most significant factors will be whether they are at an early or late stage in their career.

20 Where a nurse or midwife applies for voluntary removal during the later stages of their career and can provide evidence to support their intention to permanently retire from the profession this is generally a strong indicator that they are unlikely to seek readmission in the future. However, caution should be applied where the nurse or midwife is at an early or mid career point, where the prospect of return to practice is significantly higher.

21 In exceptional cases, nurses or midwives at a very early stage in their working life may demonstrate genuine insight and express their intention to pursue an alternative career path and may be able to provide robust evidence of that intention. The Registrar should consider carefully the availability of any supporting evidence, for example steps taken to retrain in another profession, in determining the application.

22 Where a nurse or midwife applies for voluntary removal because they intend to cease practising to undertake personal caring responsibilities, the primary indicator of the likelihood of their seeking to be readmitted to the register in the future is their career stage as discussed above. Again, caution should be applied to nurses or midwives at an early or midpoint in their career where the prospect of a return to practice is significantly higher. However, each case should be viewed on its individual merits, taking all relevant information into account.

The length of time since the nurse or midwife last practised

23 In general, the longer the time since a nurse or midwife last practised, the less likely they are to seek readmission to the register. Equally, the longer the time since a nurse or midwife last practised the less likely it is that any future application for readmission will be successful due to the increased risk of deterioration of clinical knowledge and practice as time elapses.

24 When considering a nurse or midwife's work history, equal weight should be given to any evidence that the nurse or midwife has practised overseas or within the UK.

The genuineness of a nurse or midwife's desire to permanently remove themselves from the register

25 The genuineness or sincerity of a nurse or midwife's desire to remove themselves from the register is a significant factor for consideration in deciding whether or not it may be appropriate to allow an application for voluntary removal.

26 Where there is evidence to support the fact that a nurse or midwife has already instigated steps to retire from their professional practice, or reduce the scope of their practice before any concerns were raised with them by the NMC, this may be a strong indicator that the nurse or midwife's desire to remove themselves from the register is sincere. Caution should be applied where an application for voluntary removal is triggered solely by fitness to practise proceedings.

27 In assessing the genuineness of a nurse or midwife's desire to permanently remove themselves from the register the Registrar should consider any insight they have shown in relation to any concerns raised about their fitness to practise. In assessing their credibility and sincerity, the Registrar may also wish to consider whether the nurse or midwife has previously been truthful in any communication with the NMC and other bodies.

Nurse or midwife's intention to practise in the UK or elsewhere in the future.

28 In general, if the Registrar believes that a nurse or midwife intends to practise in the UK or elsewhere in the future it will not be appropriate to allow voluntary removal. In cases where the nurse or midwife is mentally unwell, the Registrar should consider the nurse or midwife's state of mind when expressing their plans for the future. See also paragraphs 32 to 34 below.

29 Where a nurse or midwife expresses an intention to practise either overseas, on a part-time basis, or in private practice in the future this is as equally relevant as where the nurse or midwife expresses an intention to practise on a full-time basis in the UK. Whilst the remit of the NMC is confined to regulating nurses and midwives in the UK we have a wider public interest in ensuring the protection of patients everywhere.

30 It is also in the public interest to consider any plans the nurse or midwife may have to pursue work in another health profession (regulated or otherwise) or in health management or policy. In such circumstances, the Registrar should consider the impact on public confidence where there is reason to believe that the nurse or midwife may remove themselves from the register then seek work in another health profession in the future.

Applying the criteria to particular cases

31 In providing advice in relation to any application for voluntary removal and in reaching a decision on such an application, all aspects of the case, and all of the factors outlined above that are relevant, should be considered when there are outstanding fitness to practise issues in relation to the nurse or midwife.

Health cases

32 In situations where the allegations and evidence relate exclusively to a nurse or midwife's long-term mental or physical health and there are no outstanding conduct issues to consider, it will generally be appropriate for an application for voluntary removal to be granted as long as the decision is in the public interest and the available evidence suggests that there is little likelihood that the nurse or midwife will make an application for readmission to the register in the future.

33 A striking-off order cannot be imposed by a panel in a health case unless the nurse or midwife has already been suspended or subject to a conditions of practice order for at least two years. If the nurse or midwife shows insight into their health condition and accepts that their fitness to practise is impaired as result, either before or after findings of fact have been made at a hearing, the public interest might better be served by allowing the nurse or midwife to remove themselves from the register as soon as possible. The genuineness of their insight and of their desire to permanently remove themselves from the register will have

to be considered carefully taking into account all the factors outlined above.

34 In such circumstances, their voluntary removal on health grounds (although not the details of any medical condition) would be recorded (and may be disclosed to relevant enquirers including potential employers and overseas medical authorities) and readmission would not be allowed unless the nurse or midwife was able to satisfy the Registrar, by means of up-to-date independent medical evidence, that they were now of good health and capable of safe and effective practice.

Lack of competence cases

35 Voluntary removal may also be appropriate where the allegation relates to lack of competence and the nurse or midwife accepts that their fitness to practise is impaired, has already ceased practising and has no intention of returning to any practice. An example here would be someone who is nearing the end of their career at the time of the allegation and has already retired or is planning to retire by the time the referral is made. The genuineness of their insight and of their desire to permanently remove themselves from the register will have to be considered carefully taking into account all the factors outlined above.

36 As with health cases, a striking-off order cannot be imposed by a panel in a lack of competence case unless the nurse or midwife has already been suspended or subject to a conditions of practice order for at least two years. If the nurse or midwife shows insight into their deficiencies and accepts that their fitness to practise is impaired as result, either before or after findings of fact have been made at a hearing, the public interest might better be served by allowing the nurse or midwife to remove themselves from the register as soon as possible.

37 In such circumstances, their voluntary removal would be flagged on the register (and disclosed to relevant enquirers including potential employers and overseas medical authorities) and readmission would not be allowed unless the nurse or midwife was able to satisfy the Registrar that they were now capable of safe and effective practice.

Misconduct

38 If the allegations are primarily about misconduct, or relate to a conviction or determination concerning the nurse or midwife's conduct, there are more likely to be arguments in favour of refusing the application for voluntary removal and allowing the case to proceed to a full panel adjudication, if the case to answer test is met. This is particularly likely to be the case where the allegations are of serious nature and where a suspension or striking off order may be an appropriate sanction.

39 In such cases, voluntary removal is only likely to be appropriate in exceptional circumstances. These 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.

40 In relation to less serious misconduct and conviction cases, as stated above, it is only ever likely to be appropriate to grant an application for voluntary removal when:

40.1 The allegations, if proved, would not be of sufficient seriousness to warrant a suspension or striking-off order, and

40.2 The allegations of impairment have been admitted or proved.

41 This may arise when the nurse or midwife is willing to formally admit the allegations that have been made and that admission can be recorded in writing or when findings of fact and impairment have been made at a hearing.

42 Voluntary removal should not be considered as an appropriate alternative to suspension or striking off but may be appropriate where a lesser sanction would have been imposed but the nurse or midwife wishes to permanently cease practicing.

43 All the factors set out above will have to be considered by the Registrar in reaching a decision including consideration of issues of public protection and public confidence and the genuineness of the nurse or midwife's future intentions.

Multi-factorial cases

44 If the allegations are multi-factorial, the Registrar will need to look at all the allegations and consider whether, in all the circumstances, voluntary removal may be appropriate. Again, if the referral includes misconduct allegations of a serious nature where 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.

Comments from the maker of the allegation

45 Where an application for voluntary removal is received, the rules require the maker of the allegation (if any) to be provided with a reasonable opportunity to comment on the application. This invitation to comment may be made in writing by a member of staff or orally at a hearing where the maker of the allegation is present.

46 Some of those who have made allegations may be satisfied that the nurse or midwife will no longer be able to practise and that the public will be protected and some may be relieved that they will not be required to give evidence at a public hearing. On the other hand, some of those who have made allegations may be extremely unhappy with any suggestion that nurses or midwives are to be allowed to remove their names from the register without having to face a public hearing.

47 There is no presumption in the rules that voluntary removal should only be allowed if the referrer or the maker of the allegation has given their consent. Such a requirement is neither appropriate nor practicable. For example, in health cases, it will not be possible to disclose the details of the nurse or midwife's health condition as such details are always regarded as confidential and are not made public by the NMC. It will therefore not always be possible for the maker of an allegation to be fully informed of the reasons that voluntary removal may be appropriate.

48 Instead, in reaching a decision on any application for voluntary removal, the Registrar and those providing advice in relation to any such application, must have regard to any comments received from the maker of the allegation and consider what weight should be attached to them taking into account the interests of the nurse or midwife and the public interest.

Readmission to the register

49 A nurse or midwife can apply for readmission to the register following

voluntary removal at any time. When applying for readmission the burden lies with the nurse or midwife to demonstrate that they are capable of safe and effective practice and are of good health and good character.

50 All applications for readmission to the register are considered by the Registrar in accordance with the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, as amended.

51 Where the Registrar receives an application for readmission following voluntary removal and is or becomes aware of information (whether received before or after the voluntary removal was allowed or before or after the readmission application was made) which raises concerns that the applicant's fitness to practise may be impaired, the Registrar shall have regard to that information for the purposes of determining whether the applicant has satisfied the Registrar:

51.1 That the applicant is capable of safe and effective practice as a nurse or midwife in accordance with article 9(2)(b) of the Order;

51.2 Of the applicant's good health in accordance with rule 6(5); and

51.3 Of the applicant's good character in accordance with rule 6(6).

52 In reaching a decision the Registrar will have regard to the information about the applicant's future intentions provided by the nurse or midwife at the time of their application for voluntary removal and any admissions made by the nurse or midwife in relation to their fitness to practise. The Registrar will need to be satisfied that it is appropriate in all the circumstances for the nurse or midwife to be readmitted to the register. The Registrar will exercise caution in allowing a nurse or midwife to be readmitted following their voluntary removal from the register in circumstances where they have previously expressed an intention to permanently cease to practise.

Health cases

53 Depending on the nature of the concerns, the nurse or midwife may be required to provide up to date independent medical evidence from a specialist in the relevant field approved by the NMC in order to satisfy the Registrar that she is now of good health and is capable of safe and effective practice.

7. Appendix 2 – The NMC's current voluntary removal guidance

Guidance on voluntary removal decision making

Guidance for making decisions on applications for voluntary removal from the register during the fitness to practise process and applications for readmission.

Introduction

1. This guidance sets out the relevant criteria and factors to consider in making decisions on applications for voluntary removal from nurses or midwives who are the subject of a fitness to practise allegation. It should also be used by any person or committee providing advice in relation to any such decision.

Background

2. This guidance only applies to an application for voluntary removal made by a nurse or midwife who is subject to a current fitness to practise investigation or who discloses information on an application for voluntary removal which leads to a fitness to practise case being opened. Any other applications for removal or lapsing from the register or notifications of ceasing to practise will continue to be dealt with by the Registrations directorate without regard to this guidance.

3. A nurse or midwife may submit an application for voluntary removal from the register at any point in the fitness to practise process. The procedures for dealing with such applications are set out in The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 as amended.

4. At present, voluntary removal cannot be permitted when the nurse or midwife is the subject of a final suspension or conditions of practice order. Any such applications fall outside the scope of this guidance. Voluntary removal is also not permitted whilst the nurse or midwife is the subject of an interim suspension or conditions of practice order so any such order will need to be revoked before an application for voluntary removal can be granted. For more detail about this, please see paragraphs 51 and 52 below.

Main principles

5. The primary purpose of this process for voluntary removal is to allow those nurses and midwives who admit that their fitness to practise is impaired and do not intend to continue practising to be permanently removed from the register without the need for a full public hearing when the public interest does not warrant such a hearing and the public will be best protected by their immediate removal from the register.

6. In providing advice in relation to such any application for voluntary removal, and in reaching a decision on such an application, it is necessary to have regard to the fact that

there is a public interest in the ventilation at a public hearing before a panel of serious allegations which are likely to result in a finding of impaired fitness to practise.

7. It will not be appropriate for an application for voluntary removal to be allowed until an investigation into the allegation has been completed and the full extent of the alleged impairment has been ascertained. If a potential voluntary removal application is made at an early stage in the investigation the nurse or midwife may be invited to resubmit an application at a later stage when the investigation has been completed and the case has been considered by the Investigating Committee.

8. In any event, at whatever stage an application is received, it should not be granted unless the Registrar is satisfied that it is appropriate to do so in all the circumstances.

9. In reaching that decision, the Registrar must have regard to:

   9.1. The public interest.

   9.2. The interests of the nurse or midwife.

   9.3. Any comments received from the maker of the allegation.

The public interest

10. The public interest incorporates a number of elements:

    10.1. The protection of patients and the public from nurses and midwives whose fitness to practise is impaired.

    10.2. The maintenance and promotion of public confidence in the nursing and midwifery professions, including the declaring and upholding of professional standards.

    10.3. The maintenance and promotion of public confidence in the NMC's performance of its statutory functions.

Public protection

11. The NMC's primary (although not sole) task is to protect the public from future harm at the hands of a nurse or midwife whose fitness to practise may be impaired. Voluntary removal may appear to give the public the most immediate and the most effective form of protection at the NMC's disposal as the nurse or midwife will not be entitled to practise at all.

12. However, it must be borne in mind that voluntary removal is not necessarily permanent. The (potential) risk posed by a nurse or midwife might be revived by his or her future readmission to the register. The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, as amended, provide safeguards in that any application for readmission following voluntary removal would not be granted automatically. Such an application would be referred to the Registrar to consider and any unresolved fitness to practise allegation would be taken into consideration.

13. Nevertheless, the revival of an unresolved allegation may not be straightforward. During the interval between the granting of voluntary removal and the application for readmission, evidence of any alleged misconduct might have disappeared or deteriorated, for example, because a witness's memory has faded or the witness has

become uncontactable or even died. In order to address these concerns, it is only likely to be appropriate to grant an application for voluntary removal when the nurse or midwife is willing to formally admit the allegation of impairment that have been made and that admission can be recorded in writing or a finding of impairment has been made by a panel (for details of how this applies in cases involving allegations of impairment on health and other grounds, see paragraph 46 below).

14. In these circumstances, in the event of voluntary removal being granted, details of the allegations admitted or found proved would be made available on request to relevant enquirers (including potential employers and overseas medical authorities). The allegations admitted or found proved would also be considered if the nurse or midwife subsequently applied for readmission to the register.

Public confidence

15. In addition, it is important to remember that there are two other elements to the public interest. Given that there is a statutory scheme for dealing with allegations of impaired fitness to practise made against nurses and midwives there is a corresponding public interest in such allegations being properly scrutinised in public. When this happens, and is seen to happen, professional standards are seen to be upheld and public confidence in the nursing and midwifery professions and in the NMC is better maintained and promoted. Voluntary removal may prevent this from happening and this factor should always be taken into account in reaching a decision.

16. There are also circumstances in which the nature of the allegations against the nurse or midwife may raise public confidence issues even where patients and the public are protected by removing the name of the nurse or midwife from the register. The Registrar must consider the extent of harm caused to patients and the potential impact on public confidence if the application for voluntary removal is allowed. Where there is reason to believe that the actions of the nurse or midwife may have caused the death of a patient or other significant harm such as cases involving sexual misconduct, there is a strong indicator that voluntary removal may not be appropriate. In such cases there is likely to be a significant impact on public confidence as we are unable to place detailed information about those concerns in the public domain.

The interests and future plans of the nurse or midwife

17. The relevant factors to be considered under this heading and the weight to be given to them will depend on the basis for voluntary removal application and the nature of the outstanding fitness to practise allegations, but they may include:

    17.1. The state of health of the nurse or midwife (please see paragraphs 32-35 below).

    17.2. The likelihood of the nurse or midwife seeking readmission to the register.

    17.3. The length of time since the nurse or midwife last practised.

    17.4. The genuineness of the nurse or midwife's desire to permanently remove themselves from the register.

17.5. Any evidence that the nurse or midwife has no intention to practise in the UK or elsewhere in the future, for instance, evidence of retirement or the pursuit of another career.

The likelihood of the nurse or midwife seeking readmission to the register

18. In general, if the Registrar considers that a nurse or midwife is likely to seek readmission to the register in the future, it will not be appropriate to grant voluntary removal. This is because where there are outstanding fitness to practise concerns voluntary removal is allowed on the basis that removal of the nurse or midwife's name will ensure that patients are permanently protected in the future. However, for the particular considerations on this issue that arise in health cases, please see paragraph 35 below.

19. In assessing the genuineness of the nurse or midwife's desire to permanently remove themselves from the register, one of the most significant factors will be whether they are at an early or late stage in their career.

20. Where a nurse or midwife applies for voluntary removal during the later stages of their career and can provide evidence to support their intention to permanently retire from the profession this is generally a strong indicator that they are unlikely to seek readmission in the future. However, caution should be applied where the nurse or midwife is at an early or mid-career point, where the prospect of return to practice is significantly higher.

21. In exceptional cases, nurses or midwives at a very early stage in their working life may demonstrate genuine insight and express their intention to pursue an alternative career path and may be able to provide robust evidence of that intention. The Registrar should consider carefully the availability of any supporting evidence, for example steps taken to retrain in another profession, in determining the application.

22. Where a nurse or midwife applies for voluntary removal because they intend to cease practising to undertake personal caring responsibilities, the primary indicator of the likelihood of their seeking to be readmitted to the register in the future is their career stage as discussed above. Again, caution should be applied to nurses or midwives at an early or midpoint in their career where the prospect of a return to practice is significantly higher. However, each case should be viewed on its individual merits, taking all relevant information into account.

The length of time since the nurse or midwife last practised

23. In general, the longer the time since a nurse or midwife last practised, the less likely they are to seek readmission to the register. Equally, the longer the time since a nurse or midwife last practised the less likely it is that any future application for readmission will be successful due to the increased risk of deterioration of clinical knowledge and practice as time elapses.

24. When considering a nurse or midwife's work history, equal weight should be given to any evidence that the nurse or midwife has practised overseas or within the UK.

The genuineness of a nurse or midwife's desire to permanently remove themselves from the register

25. The genuineness or sincerity of a nurse or midwife's desire to remove themselves from the register is a significant factor for consideration in deciding whether or not it may be appropriate to allow an application for voluntary removal.

26. Where there is evidence to support the fact that a nurse or midwife has already instigated steps to retire from their professional practice, or reduce the scope of their practice before any concerns were raised with them by the NMC, this may be a strong indicator that the nurse or midwife's desire to remove themselves from the register is sincere. Caution should be applied where an application for voluntary removal is triggered solely by fitness to practise proceedings.

27. In assessing the genuineness of a nurse or midwife's desire to permanently remove themselves from the register the Registrar should consider any insight they have shown in relation to any concerns raised about their fitness to practise. In assessing their credibility and sincerity, the Registrar may also wish to consider whether the nurse or midwife has previously been truthful in any communication with the NMC and other bodies.

Nurse or midwife's intention to practise in the UK or elsewhere in the future

28. In general, if the Registrar believes that a nurse or midwife intends to practise in the UK or elsewhere in the future it will not be appropriate to allow voluntary removal. In cases where the nurse or midwife is mentally unwell, the Registrar should consider the nurse or midwife's state of mind when expressing their plans for the future. See also paragraphs 32 to 34 below.

29. Where a nurse or midwife expresses an intention to practise either overseas, on a part-time basis, or in private practice in the future this is as equally relevant as where the nurse or midwife expresses an intention to practise on a full-time basis in the UK. Whilst the remit of the NMC is confined to regulating nurses and midwives in the UK we have a wider public interest in ensuring the protection of patients everywhere.

30. It is also in the public interest to consider any plans the nurse or midwife may have to pursue work in another health profession (regulated or otherwise) or in health education, management or policy. In such circumstances, the Registrar should consider the impact on public confidence and protection where there is reason to believe that the nurse or midwife may remove themselves from the register then seek work in another health profession in the future.

Applying the criteria to particular cases

31. In providing advice in relation to any application for voluntary removal and in reaching a decision on such an application, all aspects of the case, and all of the factors outlined above that are relevant, should be considered when there are outstanding fitness to practise issues in relation to the nurse or midwife.

Health cases

32. In situations where the allegations and evidence relate exclusively to a nurse or midwife's long-term mental or physical health and there are no outstanding conduct issues to consider, it will generally be appropriate for an application for voluntary removal to be granted as long as the decision is in the public interest (on this, see paragraph 16 above) and the available evidence suggests that there is little likelihood that the nurse or midwife will make an application for readmission to the register in the future.

33. For details of the approach to be taken in health cases where there may also be outstanding conduct issues, please see paragraph 46 below.

34. A striking-off order cannot be imposed by a panel in a health case unless new fitness to practise findings are made or the nurse or midwife is already on a conditions of practice order in respect of a previous finding of impairment. If the nurse or midwife shows insight into their health condition and accepts that their fitness to practise is impaired as result, either before or after findings of fact have been made at a hearing, the public interest might better be served by allowing the nurse or midwife to remove themselves from the register. The genuineness of their insight and of their desire to permanently remove themselves from the register will have to be considered carefully taking into account all the factors outlined above.

35. In such circumstances, their voluntary removal on health grounds (although not the details of any medical condition) would be recorded (and may be disclosed to relevant enquirers including potential employers and overseas medical authorities) and readmission would not be allowed unless the nurse or midwife was able to satisfy the Registrar, by means of up to date independent medical evidence, that they were now of good health and capable of safe and effective practice. It may be appropriate for a nurse or a midwife to be voluntarily removed even if they express a desire to seek re-admission in the future should their health improve to an appropriate level if they show insight into their condition and accept that their fitness to practise is currently impaired.

Lack of competence cases

36. Voluntary removal may also be appropriate where the allegation relates to lack of competence and the nurse or midwife accepts that their fitness to practise is impaired, has already ceased practising and has no intention of returning to any practice. One example here would be someone who is nearing the end of their career at the time of the allegation and has already retired or is planning to retire by the time the referral is made. Another may be someone who has completed training but found on entering autonomous practice that they are not able to cope and so wish to pursue an alternative career. The genuineness of their insight and of their desire to permanently remove themselves from the register will have to be considered carefully taking into account all the factors outlined above.

37. As with health cases, a striking-off order cannot be imposed by a panel in a lack of competence case unless new fitness to practise findings are made or the nurse or midwife is already on a conditions of practice order in respect of a previous finding of impairment. If the nurse or midwife shows insight into their deficiencies and accepts that their fitness to practise is impaired as result, either before or after findings of fact have been made at a hearing, the public interest might better be served by allowing the nurse

or midwife to remove themselves from the register. However, the need to maintain public confidence must still be considered (see paragraph 16 above).

38. In such circumstances, their voluntary removal would be flagged on the register (and disclosed to relevant enquirers including potential employers and overseas medical authorities) and readmission would not be allowed unless the nurse or midwife was able to satisfy the Registrar that they were now capable of safe and effective practice.

39. The consequences of the Registrant's actions and the harm caused by those actions should be taken into account when considering the public confidence issues discussed in paragraphs 15 and 16 above in lack of competence cases. However, VR may still be suitable in cases where there is evidence of harm if the registrant has shown insight into their actions, and an awareness of the consequences of their actions. The comments of the maker of the allegation will also need to be carefully considered in these cases.

Misconduct cases

40. If the allegations are primarily about misconduct, or relate to a conviction or determination concerning the nurse or midwife's conduct, there are more likely to be arguments in favour of refusing the application for voluntary removal and allowing the case to proceed to a full panel adjudication, if the case to answer test is met. This is particularly likely to be the case where the allegations are of serious nature and where a suspension or striking off order may be an appropriate sanction.

41. In this context, it should be noted that the presence an interim order is not necessarily an indication that the public interest demands a public hearing. Interim orders are imposed following risk assessment, and are primarily aimed at protecting the public while an allegation is investigated and determined. In cases where the allegations of misconduct or conviction in all the circumstances of the case are such that a striking off order or suspension order may be an appropriate outcome, voluntary removal is only likely to be appropriate in exceptional circumstances. These 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.

42. In relation to less serious misconduct and conviction cases, as stated above, it is only ever likely to be appropriate to grant an application for voluntary removal when:

    42.1. The allegations, if proved, would not be of sufficient seriousness to warrant a suspension or striking-off order, and

    42.2. The allegations of impairment have been admitted or proved. This may arise when the nurse or midwife is willing to formally admit the allegations that have been made and that admission can be recorded in writing or when findings of fact and impairment have been made at a hearing.

43. In misconduct or conviction cases, voluntary removal should not be considered as an appropriate alternative to suspension or striking off but may be appropriate where a lesser sanction would have been imposed but the nurse or midwife wishes to permanently cease practicing.

44. All the factors set out above will have to be considered by the Registrar in reaching a decision including consideration of issues of public protection and public confidence and the genuineness of the nurse or midwife's future intentions.

Allegations of impairment on more than one ground

45. Where it is alleged that the nurse or midwife's fitness to practise is impaired on more than one ground, the Registrar will need to look at all the allegations and consider whether, in all the circumstances, voluntary removal may be appropriate.

46. The NMC's legislation is such that allegations of impairment by reason of health can only be considered by the Health Committee, and cannot be expressly considered by the Conduct and Competence Committee alongside allegations of impairment on other grounds. In cases where the Investigating Committee has found a case to answer on allegations of impairment on other grounds, but the case has been referred to the Health Committee on an allegation of impairment by reason of health, all outstanding allegations will be taken into account in considering an application for voluntary removal. If the case includes misconduct allegations of a serious nature where 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. If the case involves an allegation of impairment on grounds other than health that would not in itself result in a suspension or striking off order, voluntary removal may be appropriate notwithstanding that the nurse or midwife admits only the allegation of impairment by reason of health.

Comments from the maker of the allegation

47. Where an application for voluntary removal is received, the rules require the maker of the allegation (if any) to be provided with a reasonable opportunity to comment on the application. This invitation to comment may be made in writing by a member of staff or orally at a hearing where the maker of the allegation is present.

48. Some of those who have made allegations may be satisfied that the nurse or midwife will no longer be able to practise and that the public will be protected and some may be relieved that they will not be required to give evidence at a public hearing. On the other hand, some of those who have made allegations may be extremely unhappy with any suggestion that nurses or midwives are to be allowed to remove their names from the register without having to face a public hearing.

49. There is no presumption in the rules that voluntary removal should only be allowed if the referrer or the maker of the allegation has given their consent. Such a requirement is neither appropriate nor practicable. For example, in health cases, it will not be possible to disclose the details of the nurse or midwife's health condition as such details are always regarded as confidential and are not made public by the NMC. It will therefore not always be possible for the maker of an allegation to be fully informed of the reasons that voluntary removal may be appropriate. Equally, there is no presumption that voluntary removal will be allowed if the maker of the allegation consents to it. This is one factor to take into account, but is not determinative.

50. Instead, in reaching a decision on any application for voluntary removal, the Registrar and those providing advice in relation to any such application, must have regard to any

comments received from the maker of the allegation and consider what weight should be attached to them taking into account the interests of the nurse or midwife and the public interest.

Revoking interim orders to give effect to voluntary removal decisions

51. As noted above, voluntary removal is not permitted whilst the nurse or midwife is the subject of an interim suspension or conditions of practice order so any such order will need to be revoked before an application for voluntary removal can be granted.

52. To ensure that the process is as smooth as possible, where an applicant is subject to an interim order, the Registrar will make a decision about whether the application should be granted or not. The Registrar will be fully aware of the existence of the interim order, and will take it into account in deciding whether or not the case is suitable for voluntary removal. Should the Registrar decide that it is, a panel of the relevant practice committee will then be invited to revoke the interim order. This is an administrative process.

Readmission to the register

53. A nurse or midwife can apply for readmission to the register following voluntary removal at any time. When applying for readmission the burden lies with the nurse or midwife to demonstrate that they are capable of safe and effective practice and are of good health and good character.

54. All applications for readmission to the register are considered by the Registrar in accordance with the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, as amended.

55. Where the Registrar receives an application for readmission following voluntary removal and is or becomes aware of information (whether received before or after the voluntary removal was allowed or before or after the readmission application was made) which raises concerns that the applicant's fitness to practise may be impaired, the Registrar shall have regard to that information for the purposes of determining whether the applicant has satisfied the Registrar:

    55.1. That the applicant is capable of safe and effective practice as a nurse or midwife in accordance with article 9(2)(b) of the order.

    55.2. Of the applicant's good health in accordance with rule 6(5).

    55.3. Of the applicant's good character in accordance with rule 6(6).

56. In reaching a decision the Registrar will have regard to the information about the applicant's future intentions provided by the nurse or midwife at the time of their application for voluntary removal and any admissions made by the nurse or midwife in relation to their fitness to practice. The Registrar will need to be satisfied that it is appropriate in all the circumstances for the nurse or midwife to be admitted to the register. The Registrar will exercise caution in allowing a nurse or midwife to be admitted following their voluntary removal from the register in circumstances where they have previously expressed an intention to permanently cease to practise.

Health cases

57. Depending on the nature of the concerns, the nurse or midwife may be required to provide up to date medical evidence from a specialist in the relevant field approved by the NMC in order to satisfy the Registrar that she is now of good health and capable of safe and effective practice.

Lack of competence and poor clinical performance cases

58. Upon considering any application for readmission in circumstances where the allegations that were extant at the time that an application for voluntary removal was allowed concerned lack of competence or poor clinical performance, the applicant will need to satisfy the Registrar that she is now capable of safe and effective practice. The nurse or midwife may be required to complete an appropriate return to practice course before seeking readmission and the burden will be on the nurse or midwife that she is now fit to practise without restriction.

Allegation of impairment on more than one ground

59. Where it is alleged that the nurse or midwife's fitness to practise is impaired on more than one ground, the Registrar will need to look at all the allegations and consider whether, in all the circumstances, voluntary removal may be appropriate.

60. The nurse or midwife will need to satisfy the Registrar that she is capable of safe and effective practice, and of good health and good character, in light of all of the outstanding allegations. Where any outstanding allegations were not admitted or proved, the Registrar will consider the evidence available to prove those allegations at the time of the application for readmission.

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