



Annual review of performance 2016/17

**Health and Care Professions Council**



## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care<sup>1</sup> 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.<sup>2</sup> 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](http://www.professionalstandards.org.uk).

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

<sup>2</sup> *Right-touch regulation (revised)*. Available at [www.professionalstandards.org.uk/policy-and-research/right-touch-regulation](http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation)

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## About the Health and Care Professions Council

The Health and Care Professions Council (the HCPC) regulates the practice of arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, speech and language therapists in the UK and social workers in England.

The work of the HCPC includes:

- Setting standards for the education and training of practitioners and assuring the quality of education and training provided
- Setting and maintaining standards of conduct, performance, and ethics for practitioners and standards of proficiency for each professional group
- Maintaining a register of practitioners ('registrants') who meet those standards
- Setting standards of continuing professional development to ensure registrants maintain their ability to practise safely and effectively
- Taking action to restrict or remove from practice individual registrants who are considered not fit to practise.

As at 31 March 2017, the HCPC was responsible for a register of 350,330 practitioners. The annual registration fee is £90.



# At a glance

Annual review of performance

Regulator reviewed: **Health and Care Professions Council**

## Standards of good regulation

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### Core functions

**Met**

Guidance and Standards

**4/4**

Education and Training

**4/4**

Registration

**6/6**

Fitness to Practise

**4/10**

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# 1. The Annual Performance Review

- 1.1 We oversee the nine health and care professional regulatory organisations in the UK, including the Health and Care Professions Council.<sup>3</sup> More information about the range of activities we undertake as part of this oversight, as well as more information about these regulators, can be found on our website.
- 1.2 An important part of our oversight of the regulators is our annual performance review, in which we report on the delivery of their key statutory functions. These reviews are part of our legal responsibility. We review each regulator on a rolling 12-month basis and vary the scope of our review depending on how well we see the regulator is performing. We report the outcome of reviews annually to the UK Parliament and the governments in Scotland, Wales and Northern Ireland.
- 1.3 These performance reviews are our check on how well the regulators have met our *Standards of Good Regulation* (the Standards) so that they protect the public and promote confidence in health and care professionals and themselves. Our performance review is important because:
  - It tells everyone how well the regulators are doing
  - It helps the regulators improve, as we identify strengths and weaknesses and recommend possible changes.

## The Standards of Good Regulation

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

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<sup>3</sup> These are the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Pharmaceutical Council, the Health and Care Professions Council, the Nursing and Midwifery Council, and the Pharmaceutical Society of Northern Ireland.

- 1.7 When considering information relating to the regulator's timeliness, we consider carefully the data we see, and what it tells us about the regulator's performance over time. In addition to taking a judgement on the data itself, we look at:
  - any trends that we can identify suggesting whether performance is improving or deteriorating
  - how the performance compares with other regulators, bearing in mind the different environments and caseloads affecting the work of those regulators
  - the regulator's own key performance indicators or service standards which they set for themselves.
- 1.8 We will recommend that additional review of their performance is unnecessary if:
  - We identify no significant changes to the regulator's practices, processes or policies during the performance review period; and
  - None of the information available to us indicates any concerns about the regulator's performance that we wish to explore in more detail.
- 1.9 We will recommend that we ask the regulator for more information if:
  - There have been one or more significant changes to a regulator's practices, processes or policies during the performance review period (but none of the information we have indicates any concerns or raises any queries about the regulator's performance that we wish to explore in more detail) or;
  - We consider that the information we have indicates a concern about the regulator's performance in relation to one or more Standards.
- 1.10 This targeted review will allow us to assess the reasons for the change(s) or concern(s) and the expected or actual impact of the change(s) or concern(s) before we finalise our performance review report.
- 1.11 We have written a guide to our performance review process, which can be found on our website [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## 2. What we found – our judgement

- 2.1 We reviewed the HCPC's performance from 1 January 2016 to 31 December 2016. Our review included an analysis of the following:
- Council papers, including fitness to practise reports
  - Internal audit reports not intended for publication, and other reports or documents supplied by the regulator which are referred to in the relevant parts of the report
  - Policy and guidance documents
  - Statistical performance dataset (see sections 2.7 to 2.10 below)<sup>4</sup>
  - Third party feedback
  - A check of the HCPC register
  - Information available to us through our review of final fitness to practise decisions under the Section 29 process.<sup>5</sup>
- 2.2 As a result of this analysis, we carried out a targeted review of Standards 2 and 5 of the *Standards of Good Regulation* for Registration and Standards 1, 4, 5, 6 and 8 of the *Standards of Good Regulation* for Fitness to Practise.
- 2.3 We obtained further information from the HCPC relating to these Standards through targeted written questions. We also audited 100 fitness to practise cases closed by the HCPC between 1 May 2015 and 31 January 2017. The cases audited were divided into the following five sample categories:
- Cases from receipt of complaint to Investigating Committee Panel<sup>6</sup> (ICP) decision
  - Cases closed for not meeting the Standard of Acceptance<sup>7</sup>
  - Cases closed after they have met the Standard of Acceptance but before an Investigating Committee meeting
  - Cases closed by the Investigating Committee

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<sup>4</sup> We use the statistical data we consider to assess the regulator's performance against itself over time. Where appropriate, we will also make comparisons with the performance of other regulators.

<sup>5</sup> Each regulator we oversee has a 'fitness to practise' process for handling complaints about health and care professionals. The most serious cases are referred to formal hearings in front of fitness to practise panels. We review every final decision made by the regulators' fitness to practise panels. If we consider that a decision is insufficient to protect the public properly we can refer them to Court to be considered by a judge. Our power to do this comes from Section 29 of the [NHS Reform and Health Care Professions Act 2002 \(as amended\)](#).

<sup>6</sup> When a Fitness to Practise case has been investigated and allegations raised all the case information is referred to an Investigating Committee Panel. The committee reviews the information and decides whether there is a case to answer or not. If there is a case to answer the committee refers the case to the Health Committee or Conduct and Competence Committee. If there is no case to answer the case is closed.

<sup>7</sup> The Standard of Acceptance details the criteria a case has to meet to be investigated. If a case does not meet the Standard of Acceptance, it will be closed. If it does it will be referred to a Case Manager to investigate.

- Cases involving allegations of substance/alcohol abuse.

2.4 Further detail on these sample categories can be found in the relevant sections below.

### Summary of the HCPC's performance

2.5 For 2016/17 we have concluded that the HCPC:

- Met all the *Standards of Good Regulation* for Guidance and Standards
- Met all the *Standards of Good Regulation* for Education and Training
- Met all the *Standards of Good Regulation* for Registration
- Met four of the ten *Standards of Good Regulation* for Fitness to Practise. The HCPC did not meet Standards 1, 3, 4, 5, 6 and 8.

2.6 In the last two performance reviews of the HCPC we identified areas of concern in respect of its Fitness to Practise (FTP) procedures. Following our review this year, we continue to have these concerns. Moreover, our audit of cases has identified further areas where the HCPC may not be ensuring that its fitness to practise function ensures public protection. The HCPC has indicated that it has undertaken significant work to improve performance. The results of this were not evident in the cases that we considered. We will review the impact of these changes in future performance reviews, but we recommend that the HCPC examine closely the concerns raised in this report as it undertakes this improvement activity.

### Key comparators

2.7 We have identified with all of the regulators the numerical data that they should collate, calculate and provide to us, and what data we think provides helpful context about each regulator's performance. Below are the items of data identified as being key comparators across the Standards.

2.8 We expect to report on these comparators both in each regulator's performance review report and in our overarching reports on performance across the sector. We will compare the regulators' performance against these comparators where we consider it appropriate to do so.

2.9 Set out below is the comparator data provided by the HCPC for the period under review, 1 January 2016 to 31 December 2016. Annual data for the period is 1 April 2016 to 31 March 2017.

	Comparator	Q4 <sup>8</sup>	Q1 <sup>9</sup>	Q2 <sup>10</sup>	Q3 <sup>11</sup>	2016/17 <sup>12</sup>
1	The number of registration appeals concluded, where no new	1	0	2	3	6

<sup>8</sup> Q4 2015/16 is from 1 January 2016 to 31 March 2016.

<sup>9</sup> Q1 2016/17 is from 1 April 2016 to 30 June 2016.

<sup>10</sup> Q2 2016/17 is from 1 July 2016 to 30 September 2016.

<sup>11</sup> Q3 2016/17 is from 1 October 2016 to 31 December 2016.

<sup>12</sup> The HCPC's annual data covers the period 1 April 2016 to 31 March 2017.



	information was presented, that were upheld					
2	Median time (in working days) taken to process initial registration applications for					
	UK graduates	7	3	7	9	5
	EU (non-UK) graduates	53	43	33	49	38
	International (non-EU) graduates	45	46	30	48	41
3	Time (in weeks) from receipt of initial complaint to the final Investigating Committee/Case Examiner decision					
	Median	39	35	34	31	34
	Longest case	174	155	229	168	285
	Shortest case	8	8	2	10	7
4	Time (in weeks) from receipt of initial complaint to final fitness to practise hearing					
	Median				97	
	Longest case				296	
	Shortest case				12	
5	Median time (in weeks) to an interim order decision from receipt of complaint					
		12.5	19.5	12.6	20	18.9
6	Outcomes of the Authority's appeals against final fitness to practise decisions					
	Dismissed				0	
	Upheld and outcome substituted				0	
	Upheld and case remitted to regulator for re-hearing				0	
	Settled by consent				1	
	Withdrawn				1	
7	Number of data breaches reported to the Information Commissioner					
					0	
8	Number of successful judicial review applications					
					0	

<sup>13</sup> Annual data available only.

- 2.10 Where we had concerns about the data provided we considered these as part of our targeted review. These are discussed in the relevant sections below.

### 3. Guidance and Standards

- 3.1 The HCPC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.

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

- 3.2 In January 2016, the HCPC published revised *Standards of Conduct, Performance and Ethics* (SCPE) which is the core guidance for registrants. Following this, in June 2016 the HCPC published revised *Guidance on conduct and ethics for students* to reflect the updates made to the SCPE for registrants.

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

- 3.3 In November 2016, the HCPC published the *Standards for the use by orthoptists of exemptions to sell and supply medicines*. The standards were released further to the changes to the Human Medicines Regulations 2012. There was an omission in the regulations in that they failed to require an annotation to be added to the names of those orthoptists on the HCPC register who are authorised to sell and supply certain medicines. Consequently, the standards aim to explain the requirement for an annotation<sup>14</sup> on the HCPC register for those orthoptists who have completed approved training to sell and supply specific medicines. We examine this issue further at Standard 5 for Registration.
- 3.4 As well as the overarching SCPE which apply to all registrant groups the HCPC regulates, the HCPC sets profession-specific Standards of Proficiency. Following a public consultation, the revised *Standards of proficiency for social workers* were published on the HCPC website on 9 January 2017. The standards were effective from that date. They concentrate on the identification and application of strategies, information governance and leadership.
- 3.5 In January 2017, the HCPC issued revised *Guidance on health and character*. It is designed for existing and potential registrants and education providers. The revisions to the guidance focus on the processes used by the HCPC when they assess registrants' health and character.

**Standard 3: In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external**

<sup>14</sup> The annotation for the exemptions for orthoptists is 'Prescription only medicines – sale / supply (POM-S)'

## events, developments in the four UK countries, European and international regulation and learning from other areas of the regulator's work

- 3.6 The HCPC has engaged with stakeholders over this period of review and has conducted a number of public consultations:
- In October 2016 the HCPC carried out a consultation on its *Revised guidance on confidentiality*. The guidance was designed to provide advice to registrants on how they handle and share information about service users. The changes were designed to reflect changes made to the SCPE in January 2016. Further to the consultation, the HCPC further decided that a summary of the guidance should be published to convey the key messages to readers. It is anticipated that the guidance will be published later in 2017.
  - In October 2016, the HCPC launched a consultation on draft *Guidance on social media*. The development of this guidance was initiated in response to feedback from health professionals that they would welcome further guidance on meeting the HCPC's requirements when using social media. The consultation closed on 13 January 2017 and the guidance was subsequently published on the HCPC website.
  - From April to June 2016 the HCPC carried out a consultation on the revised *Standards of proficiency for social workers*, as referred to at paragraph 3.4 in Standard 2.

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

- 3.7 The HCPC continues to publish its guidance and standards on its website. Information on how to make a complaint if the standards and guidance are not followed is also clearly available. The standards and guidance are available in large print and easy to read formats. The HCPC continues to promote awareness of its standards and guidance work by means including blogs, events, newsletters, webinars and social media activity.

## 4. Education and Training

- 4.1 The HCPC has met all of the *Standards of Good Regulation* for Education and Training during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.

**Standard 1: Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user centred care. The process for reviewing or developing standards for education and training should incorporate the views and experiences of key stakeholders, external events and the learning from the quality assurance process**

- 4.2 In June 2017, the HCPC released its revised *Standards of education and training* (SETs) and guidance. Guidance was also produced to accompany the revised standards and this is accessible on the HCPC website. The revised standards have new requirements relating to learner involvement and support and inter-professional education. They are designed to strengthen the link between the SETs and the SCPE.
- 4.3 Further to the HCPC's review of returning to practice arrangements at the end of 2014, it carried out a consultation on updated guidance from July to October 2016. The HCPC published revised *Guidance on returning to practice* in June 2017. The guidance concentrates on clarification of the returning to practice process.

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

- 4.4 The HCPC requires all education providers who have not been visited since September 2014 to demonstrate how they are involving service users and carers in their approved programmes for the 2016/17 academic year.
- 4.5 The HCPC requires a declaration that approved education and training programmes for certain professions have incorporated the revised standards of proficiency into their teaching and learning. Revised standards of proficiency have been published by the HCPC every year since 2012, with a focus on different professions each year. The declaration is made through the annual monitoring process for 2016/17. A list of the professions affected is in the education section of the HCPC website.

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

- 4.6 The HCPC's education annual report 2015, published during this period of review, states that the HCPC received five concerns about educational establishments in 2014/15, two of which met its threshold for further investigation. At the end of October 2016, the HCPC reported five open concerns: three at the initial enquiry stage and two under investigation. All five of these were recorded as closed in November and December 2016.
- 4.7 The HCPC recorded a higher number of concerns requiring further investigation in 2016/17 than previous years.
- 4.8 The HCPC reports regularly on activity in this area and we did not identify any significant concerns with the way the HCPC is managing its work in this area.

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

- 4.9 The HCPC continues to publish information on approved programmes on its website. It also provides details of its approval and quality assurance process, including programme approval reports. The information on the programmes is available through a searchable register of approved programmes.

## **5. Registration**

- 5.1 The HCPC has met all of the *Standards of Good Regulation* for Registration during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.

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

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

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

- 5.3 The HCPC did not meet this Standard last year due to concerns we identified about the registration appeals process. This year, we carried out a further review in order to understand changes to the HCPC's performance against this Standard.

#### **Registration appeals process**

- 5.4 Last year, we identified some concerns about the HCPC's approach to registration appeals in relation to the process being operated by the HCPC, and the transparency of that process both internally and for those making an appeal.
- 5.5 The HCPC was operating a process where some final registration appeals decisions were being made at case conferences by the Education and Training Committee (ETC) rather than by the Appeal Panel. Where legal advice given to the ETC indicated that the appeal would likely be successful, the applicant would be registered and the appeal closed. The HCPC's legislation sets out that decisions on appeals are made by an Appeal Panel, and we were concerned that the ETC was making decisions which should have been made by the Appeal Panel.
- 5.6 In its response to us last year, the HCPC informed us that it was changing the registration appeals process. It told us that for the future, if the ETC was given legal advice not to defend an appeal, the consent of the Appeal Panel must be given to allow registration and for the appeal to be closed. If consent is not given, then the appeal will proceed to a hearing in front of the Appeal Panel. We agreed that this was a pragmatic approach which addressed our concerns, and that we would follow the HCPC's progress with this new approach.

- 5.7 During this review period, we followed up with the HCPC on its revised approach to registration appeals. We looked at an internal HCPC audit report completed in November 2016, data on the outcomes of registration appeals for 2016/17 and internal procedural and guidance documents. We asked the HCPC about the revised process, appeal outcomes and its communications with appellants. We also enquired about any processes the HCPC had put in place to ensure there was an exchange of learning between departments following the appeals process and the resulting decisions.
- 5.8 The HCPC's response provided reassurance that all 49 appeal decisions up until the beginning of March 2017 resulting in dismissed, upheld, remitted or substituted outcomes were made by the Registration Appeals Panel, and so were not determined solely by the ETC.
- 5.9 The HCPC internal audit report, completed in November 2016, recorded that every decision as part of the appeals process had been agreed by an Appeals Panel. This information provided further reassurance that the process being followed was as described to us by the HCPC.
- 5.10 Our review of the correspondence sent to appellants showed that the revised process the HCPC now operates is being communicated more clearly and that there is a clearer distinction being made between the role of the Council (as the Registration Appeals Committee) and the ETC (as the respondent in any appeal). The HCPC may wish to further review the correspondence with appellants to ensure that the role of the ETC in deciding not to contest an appeal is clear.
- 5.11 Based on the evidence we saw, the HCPC's revised process appears to be operating as the HCPC told us it would last year.

### Registration processing times

- 5.12 We expressed concerns in the 2015/16 performance review about fluctuations in the time it took the HCPC to process international applications and that the way the HCPC were resourcing their registration processes may unfairly impact on international applicants. The difference between the HCPC's service standards for UK applications and for overseas applications contributed to our concerns about the disparity of the processing times for UK and overseas applicants.
- 5.13 As part of our targeted review this year, we enquired about the times taken for processing registration applications, how the progression of applications is monitored and how applicants are kept updated about the progress of their application.
- 5.14 The HCPC explained that, for overseas applicants, it measures the number of working days between receipt of an application and the first assessment decision. It clarified that the first assessment decision involves verification of the documents provided by the applicant in support of their application, and the determination of any further action required in respect of tests or adaptation periods. From the information on the HCPC website, there are three stages to the point of first assessment. No time is given for the initial stage which is receipt of the application. However, the times for completion of stages two and three are given on the website as four weeks and '*within 60 working days*', respectively, for both European Mutual Recognition and international applicants.

5.15 We reviewed the 2016/17 data relating to registration processing times, and there is a reduction in the fluctuations in processing times since our last report.

Registration	Q4 2015/16	Q1 2016/17	Q2 2016/17	Q3 2016/17	2016/17 annual
<b>Median time (in working days) taken to process initial registration applications for:</b>					
<b>UK graduates</b>	7	3	7	9	5
<b>EU (non-UK) graduates</b>	53	43	33	49	38
<b>International (non-EU) graduates</b>	45	46	30	48	41

5.16 Based on the information we have reviewed, the fluctuations we saw in the last performance review period seem not to have been repeated this year. Furthermore, the time taken for processing of all applications is within the HCPC service standards and the HCPC has informed us that applicants are kept updated about the progress of their applications.

**Conclusion against this Standard**

5.17 The HCPC’s responses to our questions appear to demonstrate that the registration appeals process has been revised so that the registration appeals process does operate as the HCPC told us it would last year. In the main, the documents provided demonstrate increased transparency with appellants. There is also evidence that the HCPC has undertaken activities to improve exchange of learning and to identify methods to improve consistency of decision-making. We consider that there could be scope for greater transparency with registrants about the appeal process but this is a minor concern.

5.18 In respect of the processing times for international and EU applications, the data provided to us for 2016/17 demonstrates less variation in processing times for EU and international applications over this period.

5.19 In conclusion, the information provided by the HCPC as part of the targeted review has assured us that it has taken steps to improve its performance against this Standard. We therefore consider that this Standard is met.

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

5.20 This year, we identified one error relating to the information displayed on the online register. A registrant was subject to a caution which was not recorded on the online register. We notified the HCPC of our finding and the error was rectified.

- 5.21 We carried out a check of a sample of the entries on the HCPC's online register. This check did not identify any concerns about information displayed on the register. This suggests that the error identified was isolated and not sufficient to call into question the HCPC's performance against this Standard.

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

- 5.22 The HCPC register remains prominently displayed on its website and is easily accessible. A multiple registrant search function is provided to assist employers who may need to check the registration status of numerous registrants.
- 5.23 The HCPC uses social media to promote awareness of the register among employers and the public. Registration deadlines, reminders and articles are provided on a variety of social media with links to the HCPC's website. Videos about registration are provided on YouTube.

**Standard 5: Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner**

- 5.24 In October 2016, the HCPC published its prosecution policy regarding protection of title. There are no significant changes to the approach taken, and the policy now includes some further information about the process of enforcement.
- 5.25 We carried out a targeted review of this Standard to obtain further information about the HCPC's response to a legislative error relating to orthoptists.

**Orthoptist annotations**

- 5.26 New legislation in the Human Medicines Regulations 2012 (the Regulations) has enabled orthoptists to sell and supply certain medicines. However, the legislation failed to stipulate that only orthoptists annotated on the HCPC's register were eligible to do so. This error was identified by the HCPC after it had drafted the relevant standards for orthoptists who wished to sell and supply medicines.
- 5.27 We asked the HCPC what steps it had taken to ensure that the risk of orthoptists selling and supplying the relevant medicines without having met the HCPC's standards was managed.
- 5.28 The HCPC told us that it has taken the following steps to manage any risks arising from the legislative error:
- It identified the error in the Regulations and notified the Medicines and Healthcare Products Regulatory Authority (MHRA) and NHS England about it
  - To address the legislative error, the HCPC decided that an annotation should, notwithstanding the absence of this requirement in the Regulations, be included on the register for those registrants who are qualified to sell and supply the relevant medicines. This requirement was



reflected in the dedicated *Standards for the use by orthoptists of exemptions to sell and supply medicines*, effective from November 2016

- A requirement was put in place that HCPC-approved post-registration training should be completed by an orthoptist before the addition of any annotation on the register. This was also stipulated in the dedicated standards mentioned above
  - Any communications from the HCPC or the British and Irish Orthoptist Society<sup>15</sup> (BIOS) have been clear that the post-qualification training, and requirement to be annotated on the register, are necessary before any orthoptist can sell or supply medicines.
- 5.29 The HCPC told us that it considered that there was limited risk associated with this issue. We understand that no applications have to date been received for the approval of training courses. The HCPC has informed us that the revised timescale for amendment of the Regulations is October 2017.
- 5.30 Based on the information provided by the HCPC, we are satisfied that it is managing the risk posed by the legislative error, and has taken a pragmatic and proportionate approach to ensure public protection and minimise any risk to public confidence through the error it has identified. We conclude that this Standard is met.

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

- 5.31 We reported in our last report that the HCPC proposed to carry out a consultation to establish any changes that might be necessary to the HCPC's continuing professional development (CPD) scheme. The consultation on revised guidance on CPD was carried out between October 2016 and January 2017.
- 5.32 The consultation received 80 responses, including 53 responses from HCPC registrants and 22 from health organisations.
- 5.33 The outcome of the consultation was reviewed by the HCPC in March 2017. The results of research carried out by the Department of Health into the costs and impact of the HCPC's CPD system were reviewed at the same time. The resulting changes to the CPD guidance aimed to clarify existing CPD requirements rather than amend them.
- 5.34 Following this review the HCPC published revised CPD and registration guidance in June 2017. A link to this document is provided on its website.<sup>16</sup>
- 5.35 The HCPC has taken appropriate action to identify that its CPD scheme remains fit for purpose, and has taken steps to make the requirements clearer for registrants. We therefore conclude that this Standard is met.

<sup>15</sup> BIOS is a professional and educational body for the UK and Republic of Ireland representing orthoptists.

<sup>16</sup> Link as follows: [HCPC - Health and Care Professions Council - Our standards](#)

## 6. Fitness to Practise

6.1 The HCPC has met four of the Standards of Good Regulation for Fitness to Practise during 2016/17. Examples of how it has demonstrated this are indicated below each individual Standard.

6.2 This year, we conducted a targeted review of Standards 1, 4, 5, 6 and 8. The information we received in the targeted review also raised concerns about the HCPC's performance against Standard 3, and we concluded that Standards 1, 3, 4, 5, 6 and 8 are not met. The reasons for our judgements are set out below.

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

6.3 This Standard is not met. We have particular concerns about the way in which the revised Standard of Acceptance (SOA), which the HCPC uses in deciding whether or not to investigate a complaint, is being applied.

6.4 The HCPC revised its SOA for complaints in May 2015 and again in July 2016. The SOA is the threshold that the HCPC has set in order to establish whether a complaint should be investigated. It requires a complaint to be made in writing, to identify the registrant about whom the complaint is made, to be clear as to the allegation being made, and to provide credible evidence. Where appropriate, the HCPC will make further enquiries to satisfy itself that the complaint does not raise fitness to practise concerns. Complaints which do not meet the SOA are closed without further investigation.

6.5 In our last report, we noted the revisions to the SOA in May 2015, and said that we would look at how it was being applied when we next carried out an audit of the HCPC's initial stages fitness to practise process.

6.6 This year we decided to undertake a targeted review of performance against this Standard for the following reasons:

- There has been a considerable increase in the number of complaints closed for not meeting the SOA since its revision in May 2015. The increase has continued since its further revision in July 2016
- This increase has been above that forecast by the HCPC
- As a result of the higher rate of initial closures, fewer complaints than forecast have been considered by the Investigating Committee
- The HCPC's internal reports on corporate complaints have identified the standard of acceptance as a source of such complaints throughout 2016/17
- We have also received a small number of concerns about the SOA.

6.7 The HCPC Fitness to Practise report to its Council in May 2017 identified that the number of complaints closed in 2016/17 because they did not meet the SOA had increased by 12 per cent from the previous year (against a 6 per cent increase in the number of new concerns received) and was 6 per cent above the forecast.

6.8 The report also identified that this number has continued to increase since the revision of the SOA in May 2015. According to the data in the report, the HCPC received 2,259 complaints in 2016/17. In the same period, 1,854 complaints were closed for not meeting the SOA. The figures can be seen in the table below:

Year	Complaints received	Complaints closed as SOA not met
2014/15	2170	1042
2015/16	2127	1661
2016/17	2259	1854

6.9 The HCPC Fitness to Practise report from May 2017 (which covers the period to March 2017) identified that 17 per cent fewer complaints were considered by the Investigating Committee Panel (ICP). We noted that the HCPC’s [Review of Feedback and Complaints](#) covering the period April to December 2016 said that the SOA *‘that was put in place in May 2015 means that the threshold for referring cases to a Panel is higher’*.

6.10 The [Review of Feedback and Complaints](#) also identified that decisions not to progress complaints to the ICP stage were a source of corporate complaints made to the HCPC every month throughout that period. The report explained that more than half of the complaints received about registrants from members of the public *‘are closed at the earliest stage pre-ICP stage when these concerns are not deemed to have met’* the SOA.

6.11 We received information about the HCPC’s SOA from complainants who had raised concerns with the HCPC in relation to their complaints being closed because *‘credible evidence’* was not provided. From the information provided, the HCPC’s definition of *‘credible evidence’* appeared to differ from complaint to complaint. These concerns contributed to our decision to carry out an audit to review the issues raised.

**Our audit findings and the HCPC’s response**

6.12 We undertook a review of 100 closed complaints. Of these, 90 were closed by the HCPC between 1 August 2016 and 31 January 2017. The remaining 10 complaints were closed between 1 May 2015 and 31 July 2016. These 10 complaints were reviewed to assess the impact of the revised SOA on 1 May 2015. Our audit included complaints that had been closed by the HCPC because the SOA had been deemed not to be met.

6.13 We found that, throughout the period 1 May 2015 to 31 January 2017, the application of the SOA in the complaints we reviewed was inconsistent. We found 79 complaints where the way the SOA was being applied caused us concern, both in relation to the decision to close some complaints as well as how the closure decisions were communicated. We identified the following issues:

- In 18 complaints we reviewed the SOA was recorded as met then subsequently recorded as not met, with no substantive reason given for why the status had changed

- In 52 complaints, we noted that information given about the SOA to relevant parties was confusing, inaccurate or lacked transparency, for example:
  - Complainants were advised that their complaints were not pursued because ‘*credible and independent*’ evidence was not available, importing an additional requirement to that in the SOA
  - Complainants were asked to specify the statutory grounds under which they were making their complaint
  - Complainants were informed that, as the HCPC has the burden of proof in fitness to practise proceedings, that it was unable to draft allegations based solely on the complainant’s account of what had happened
  - Complainants were told that it was not for the HCPC to create a ‘climate of fear’ among registrants
  - Complaints were closed for not meeting the SOA because the HCPC stated that ‘*documentary evidence*’ had not been provided to support the concerns raised.

- 6.14 The HCPC told us that the SOA sets out a ‘*moderate and proportionate threshold*’ designed to ensure public protection while avoiding resources being used to investigate complaints that do not indicate fitness to practise concerns. It explained that the SOA was revised in May 2015 to provide more detail and clarification on the types of complaints that should be progressed as well as the evidence required. It listed a number of safeguards to ensure the quality and consistency of SOA decisions and told us that there was ongoing monitoring of complaints where the standard of acceptance was not met, which it acknowledged had increased since its revision in May 2015. The SOA was further revised in July 2016 but the changes were not substantial. The HCPC informed us that training has been provided to staff on SOA decisions and communications since the revision, as part of ongoing staff development.
- 6.15 The HCPC further informed us about the new structure of the Fitness to Practise Department. In December 2016, a new Case Reception and Triage Team became operational. It anticipates that this team will provide a more specialist approach to increase consistency in the way the SOA is applied. The HCPC informed us that a dedicated audit programme was being developed to review the impact of the new fitness to practise structure and to ensure continued improvement of quality and consistency.
- 6.16 In respect of corporate complaints made to the HCPC about cases closed at the SOA stage of their process, the HCPC told us that it reviews these complaints on a case-by-case basis and in its complaints reports. It explained that the increase in cases being closed for not meeting the SOA has resulted in an increased number of complaints about those cases, but added that the increase in complaints does not necessarily mean that the SOA decisions were wrong, which we accept. It told us that the percentage increase in complaints received was less than the percentage increase in the cases closed for not meeting the SOA. It is not clear to us that this is relevant.

- 6.17 Prior to our audit, the HCPC told us it was confident that correct SOA decisions were being made. It provided us with details of the process and procedural changes it has made to its fitness to practise function throughout 2016/17 and details of staff training that took place before and after the performance review period. It also sent us specific details of SOA training and process development from March to August 2017.

### Standard of Acceptance guidance

- 6.18 We do not think the way in which the SOA threshold is described by the HCPC in its guidance on how to apply the SOA is sufficiently clear.
- 6.19 The HCPC has told us that the purpose of the revision of the SOA in May 2015 was to provide greater detail and clarity on the types of complaints that should be progressed and the evidence required. We reviewed the SOA document in our last performance review and, again, this year, as a result of our audit findings. After further study of the SOA guidance, in the context of our audit findings, we consider that the drafting of the document is contributing to the inconsistency in the decisions being made.
- 6.20 The SOA document refers to the '*modest and proportionate threshold which allegations must normally meet before they will be investigated by the HCPC*'. The document then goes on to describe the ways in which this threshold should be applied. One section sets out that '*the applicable test is that fitness to practise is impaired [...] the need to establish impairment at the time a case is heard is often an important factor in deciding whether to pursue fitness to practise allegations*'. The subsequent section sets out that an allegation meets the SOA if '*it provides credible evidence which suggests that the registrant's fitness to practise is impaired*'. Later in the document (in a section entitled '*Matters resolved locally*'), a list of instances where current impairment is unlikely to be found is provided, including the demonstration of insight by the registrant and where the behaviour is unlikely to be repeated, or relates to relatively minor conduct, competence or health issues. This emphasis on current impairment suggests to us an application of the realistic prospect test. The realistic prospect test is the test applied by the Investigating Committee Panel (ICP) to determine whether there is a case to answer or not. It is for the ICP to make that judgement.
- 6.21 A large part of the SOA document provides guidance on how to decide whether complaints meet the SOA threshold. In our view, the focus throughout the document on the various ways a complaint may not meet the SOA has further contributed to the inconsistent approach we identified through our audit of closed cases. As mentioned at 6.20, the wording in the guidance implies a consideration of the realistic prospect test when deciding whether or not the SOA is met. It is not the appropriate test at the SOA stage, where often the information provided may raise concerns about a registrant's fitness to practise, but is not yet sufficiently detailed for a conclusion to be reached as to whether there is current impairment. The guidance may, therefore, be contributing to an inappropriately high threshold being required for some complaints by the HCPC.
- 6.22 We considered the inconsistency in the interpretation of the term '*credible evidence*' and how it is further impacting on the SOA threshold.

- 6.23 We note that there is a section in the SOA guidance that refers to evidence being '*more likely to be regarded as credible*' if it is supported by contemporaneous notes or other documents. While it may not be the intention, this may also be contributing to complaints being prematurely closed because no documentary evidence has been provided. We saw a number of complaints that were closed as being not credible due to the lack of documentary evidence to support the complaint, but where the subject matter of the complaint made was such that either the HCPC should have requested further information or undertaken some investigation before deciding to close the complaint, or it should have taken the view that the complaint met the threshold from the information provided in the initial referral.
- 6.24 In our view, and from the evidence we saw in our audit, the way in which the SOA document is set out and is being used in practice, has led to inconsistent and often incorrect interpretations of the test to be applied when assessing complaints. As we set out at 6.13 above, complainants have been informed that their complaints have been closed for reasons that go beyond the guidance in the SOA document and ignore the '*moderate and proportionate*' approach that the documents seeks to apply. In some of the complaints we reviewed, text from the SOA document has been quoted directly but inappropriately in support of the decision to close the complaint at the initial stage. While we recognise that this may not be the intention of the document, using it in such a way has meant that the test has been inappropriately applied.
- 6.25 There is no reference to the HCPC's *Standards of conduct, performance and ethics* (SCPE)<sup>17</sup> anywhere in the SOA document. The SCPE is a crucial statement of what is expected of registrants. It is, therefore, surprising that there is no reference to the SCPE in the document.

### Conclusion against this Standard

- 6.26 People who wish to raise concerns to the regulator must be able to do so. Regulators need to ensure that these complaints are considered fairly and proportionately, and investigations taken forward where there are matters that may require regulatory intervention.
- 6.27 The HCPC's aim was that the SOA should provide a '*moderate and proportionate threshold*' for complaints to pass through at the start of any fitness to practise investigation. We agree that such a threshold is necessary in order that only matters that require regulatory intervention are taken forward by the regulator. We recognise that the HCPC clearly sets out for complainants how to raise concerns, and explains how it decides whether to take forward a complaint using the SOA.
- 6.28 However, in the complaints that we looked at as part of our review, we saw many instances where the SOA was inappropriately applied, and complaints closed for reasons inconsistent with the '*moderate and proportionate*' threshold set out in the SOA. This meant that the SOA acted as a barrier to complainants, and prevented cases that should have passed the threshold for investigation from doing so. We were particularly concerned that a small number of the complaints

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<sup>17</sup> The *Standards of conduct, performance and ethics* (SCPE) are the ethical framework within which HCPC registrants must work

appeared to raise significant concerns about a registrant's fitness to practise and these were not taken forward. Included in these complaints were concerns relating to dishonesty, alcohol abuse and inappropriate behaviour with patients. In others, the decision to close at an early stage, due to the absence of what the HCPC deemed to be 'credible' evidence, meant that the matters that should have been pursued by the HCPC were not.

- 6.29 We think that the HCPC's application of the SOA is, in some cases, resulting in complaints being closed when they should instead progress to the ICP. Closure of these complaints at this early stage potentially poses risks to patient safety and may affect public confidence in the HCPC.
- 6.30 We recognise that the HCPC has made structural and procedural changes aimed at improving the process, and appreciate that it is continuing to develop its processes and to train staff. We will review the results of these changes in the next performance review.
- 6.31 We welcome the additional measures the HCPC has outlined to us. However, based on the findings of our audit and the increase in the number of complaints closed for not meeting the SOA, our view is that the threshold being applied at the SOA is inconsistent and often inappropriately high, and is therefore creating a barrier to complaints being accepted into its fitness to practise process. For this reason, we have concluded that this Standard is not met.

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

- 6.32 In May 2016, the HCPC signed a Memorandum of Understanding (MoU) with the States of Jersey Health and Social Services Department. The MoU outlines how the two organisations will share information about possible allegations of impaired fitness to practise.
- 6.33 We have considered the impact of the concerns we have identified relating to the SOA and risk assessments throughout our review of this Standard. We are concerned that, if a case fails to meet the SOA and is serious, then it means that other regulators will not be informed of the issue and opportunities to protect the public may be missed.
- 6.34 Despite this risk we have seen no evidence to suggest that the HCPC is not sharing fitness to practise information with other organisations in accordance with its protocols. We have concluded that this Standard is met.

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

- 6.35 This Standard is not met.
- 6.36 We set out (under Standard 1 for Fitness to Practise above) our concerns that the way in which the HCPC is applying its SOA is creating a barrier for complaints.

- 6.37 We have concluded that the problems we have identified with the HCPC's approach to applying its SOA mean that the HCPC is failing to appropriately and consistently determine whether there is a case to answer in the complaints it receives, because a number of complaints will not reach the appropriate stage.
- 6.38 As part of our audit of 100 cases, we reviewed 50 complaints where the HCPC had decided that the SOA was not met. In six of these complaints, our view was that the information provided by the complainant was sufficient to determine that the SOA threshold was met, and the complaint should have progressed to the ICP. In 26 complaints, we were of the view that further investigation should have been undertaken by the HCPC before reaching a conclusion about whether the SOA was met, and so the complaint was closed before an appropriate decision could be made.
- 6.39 Where registrants have self-referred, the HCPC seeks legal advice as to whether these matters should proceed or whether they should be closed. The HCPC told us that the role of the legal advice was to assist decision-making and it did not constitute a case management decision. However, we found that in 21 of the 36 self-referral cases we reviewed there was no record of any decision about proceeding with or closing the self-referral apart from the legal advice itself, or the legal advice was cited as the sole reason for closure or for proceeding. There was no evidence of a decision-maker actually assessing the legal advice. In our view, therefore, this advice is, in effect, the decision.
- 6.40 This is problematic because legal advice is not intended to determine whether a case should proceed or whether it should be closed. Its purpose is simply to provide background advice for a decision-maker to consider.

### **Investigating Committee Panel decisions**

- 6.41 In fitness to practise complaints where it is decided that the SOA is met, allegations are drafted, and these, together with the evidence obtained during the investigation, are reviewed by the Investigating Committee Panel (ICP) at a meeting. The ICP then determines whether there is a case to answer. If the ICP finds there is no case to answer, the complaint is closed. If there is a case to answer, the ICP will refer the case to a final hearing by either the Conduct and Competence Committee (CCC) or the Health Committee (HC) as appropriate.
- 6.42 The HCPC told us that its operational guidance document outlines how investigations should be carried out in complaints where the SOA has been met and the complaint is progressing to an ICP meeting. It explained that, at this stage, HCPC investigations should be objective and fair and that detailed investigations may need to be carried out in many complaints prior to allegations being drafted.
- 6.43 However, in the complaints we reviewed, we saw very little evidence of any independent HCPC investigation. In some complaints, we found that information about employer investigations had been relied upon to determine the finding that the SOA was not met, without any independent investigation by the HCPC. We saw instances where the wording of the drafted allegations was taken directly from the employer's investigation, which affected their quality and, potentially, the consideration of the complaint by the ICP. In some complaints we saw, due to the over-reliance on the employer's documents, the allegations did not accurately



reflect the full facts of the matter which, in turn, led to the ICP finding there was no case to answer. In our view, if a proper HCPC investigation had been completed in these cases and the allegations drafted accordingly, the findings of the ICP may have been different.

- 6.44 These findings reflect learning points from our Section 29 process which has identified cases where, at final fitness to practise hearings, allegations have to be amended or dropped. We have also noted failures to investigate issues and provide evidence to panels which reflect similar issues we identified in our audit.
- 6.45 In cases where we found there was inadequate investigation up to the SOA decision, there were corresponding omissions in some of the allegations raised and/or the evidence submitted to the ICP. We cannot, therefore, be assured that the ICP decisions are always fully informed and that they are making the appropriate decisions about whether there is a case to answer.

### **Conclusion against this Standard**

- 6.46 We consider that the HCPC's approach to the SOA means that complaints where there may be a case to answer are being closed at too early a stage. We saw evidence that decisions made by the ICP were based on allegations drafted where the HCPC investigation was insufficient and overly reliant on employer investigations. Consequently, in some instances, the allegations were poorly drafted and did not reflect the full facts of the complaint, which may have affected the ICP's review of the case and its decision. In other instances, the HCPC's lack of investigation may have resulted in cases being closed prematurely at the ICP stage instead of being referred for a final hearing. In addition, we saw a number of occasions where in our view the ICP failed to request further investigation where this would have been appropriate. We, therefore, conclude that this Standard is not met.

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

- 6.47 This Standard is not met.
- 6.48 This Standard was not met in the 2015/16 performance review for the following reasons:
- The HCPC's internal audit reports identified failures and delays in carrying out risk assessments
  - The HCPC's internal audit reports identified concerns about the quality of risk assessments
  - The concerns around risk assessments identified in the internal audit reports appeared to be ongoing since our 2014/15 report
  - The number of adjournments of interim order hearings had significantly increased
  - The high success rate of interim order applications to orders being imposed suggested that interim order applications were only being made

when there was certainty that an order would be imposed, instead of when a case presented a risk that warranted interim order review.

- 6.49 We undertook a targeted review against this Standard to consider any changes or improvements to the HCPC's performance in this area.

### **Risk assessments**

- 6.50 The HCPC provided to us a copy of its internal audit report from October 2016. The internal audit looked at risk assessments completed in the three months prior to the internal audit. It identified that in 81 per cent of cases risk assessments had been carried out when required, compared to 50 per cent in the previous internal audit in May 2016. This indicates a significant improvement in risk assessments being completed at specified stages of the FTP process. The audit report also recorded that the majority of risk assessments were completed to a satisfactory timescale. However, the report recorded issues relating to the quality of 77 per cent of the risk assessments it reviewed. The report indicated that while the risk assessments demonstrated consideration of whether an interim order was required, a number of them did not record any assessment of the risk or any rationale for the conclusion reached. The report records that 13 per cent of the issues identified were severe.
- 6.51 Further to the findings from the internal audit, the report made recommendations that there should be training for all staff in completing the risk assessment form, the forms should be revised and there should be increased monitoring of high priority cases. The HCPC told us that all these recommendations have been implemented. It revised its guidance for risk assessments in June 2016 and December 2016. It also explained its new Fitness to Practise Department structure, which became operational in December 2016, will enable increased oversight and prioritisation of higher risk complaints upon their receipt. It told us that it will continue to evaluate the impact these changes have on the risk assessments and that it has further training and an internal audit planned for 2017.

### **Our audit findings**

- 6.52 As set out above, we reviewed 100 complaints where risk assessments were undertaken. Ninety of these were closed between 1 August 2016 and 31 January 2017 and the remaining 10 complaints were closed between 1 May 2015 and 31 July 2016. In 73 of these complaints we had concerns relating to risk assessment.
- 6.53 We were reassured that risk assessments were being completed when required and in line with the HCPC's process in the majority of instances. However, we found that the risk assessments often appeared to be case summaries with little analysis of available information or identification of the risks. In some cases, there was little or no explanation recorded for the risk rating given. We found there was limited recognition of serious concerns, and that complaints were given the lowest risk rating based on a lack of information provided to the HCPC at the time of the assessment, instead of the risk profile reflecting the seriousness of the concerns raised, and identifying the need to prioritise the complaint. We saw a number of examples where the risk category applied to complaints would

change over the course of the investigation, but with no reasoning to explain why the risk rating had changed.

- 6.54 This meant that it was difficult for us to ascertain from the assessment why a particular risk rating had been given, or why the rating had changed from one assessment to the next. Therefore, we could not be satisfied that the risk assessment process being undertaken was consistently identifying the risks identified from the information available.
- 6.55 We found that consideration of whether an interim order application was required was usually evident in the assessment, but this was being used to determine the risk rating without any consideration of any other features of the complaint. This meant that where a decision was taken that an interim order should not be sought, there was little if any consideration of the risks presented by the complaint that might still require prioritisation by the HCPC. This, in our view, suggests that the risk assessment process is being used solely as a method to determine whether an interim order should be sought, rather than as a tool for ensuring that complaints where there is greater concern are managed and prioritised effectively.
- 6.56 We are concerned that risk assessments completed by the HCPC are failing to identify risks and prioritise complaints accordingly. These omissions may result in registrants whose fitness to practise is impaired continuing to practise without required conditions or orders being in place and, thereby, may be jeopardising public protection.
- 6.57 The issues we found in the HCPC's risk assessments are very similar to the findings of its own internal audit report from October 2016. We recognise the efforts the HCPC has told us it is making to improve risk assessments and will review the 2017 internal audit report when it is available.

### Interim orders

- 6.58 The HCPC provided us with annual data for the time taken from receipt of a complaint to an Interim Order Committee decision. The data recorded that the median time for this process in 2016/17 was 18.9 weeks, which is longer than three of the quarterly medians in 2015/16 (of 23.8, 13.8, 6.4 and 12.5 weeks respectively) but an improvement on 2014/15, when it was 20.4 weeks. The time taken for 2016/17 is similar to that of other regulators.
- 6.59 The HCPC also provided us with data for the times taken from the decision that there is information indicating the need for an interim order to the Committee's decision. According to the data, the median time for this process has increased to 2.9 weeks in 2016/17 from quarterly medians in 2015/16 (of 3.1, 2.8, 2.5 and 2.1 weeks respectively) and 2.4 weeks in 2014/15.
- 6.60 In our last report, we noted that the HCPC told us that it does not apply for an interim order where it does not think the threshold for an order is met or where it does not believe there is a realistic prospect of the panel making an order. We were concerned that applications for interim orders were only being made where there was a certainty that an order would be imposed, instead of where the risk indicated that an interim order should be sought. As a result, cases which ought

to be subject to an interim order may not be being put before panels. We reviewed this area as our concerns from last year persisted.

- 6.61 The table below records the figures for the number of interim order applications made to orders granted since 2013/14:

Year	2013/14	2014/15	2015/16	2016/17
Applications considered	97	80	89	142
Applications granted	85	71	78	128
Applications refused	12	9	11	14
Percentage granted	88%	89%	88%	90%

- 6.62 There has been a steep increase in the number of interim order applications considered in 2016/17. The HCPC told us that the focus on risk assessments in 2016/17 may be the reason for the higher number of applications considered.
- 6.63 Our audit identified 11 complaints where we could not see that an application for an interim order was made, when, in our view, such an application was appropriate, or insufficient information was assessed to determine whether an interim order was required.
- 6.64 The inconsistent approach to risk assessment we describe in this section of the report suggests that not all complaints where an order might have been sought have been taken forward by the HCPC, notwithstanding the increase in applications considered. This raises concerns that only in complaints where there is compelling evidence that an order would be made are orders being sought. This adds to our view that the HCPC's approach to risk assessment does not focus appropriately on the nature of the risks of the complaints they receive.

### Interim order adjournments

- 6.65 In our last report we expressed concerns about the number of interim orders hearings that were adjourned. The HCPC has confirmed that the guidance for proceeding with a hearing in the absence of a registrant applicable to final hearings was also applicable to interim order hearings. This provides some assurance to us that there is relevant guidance for the interim orders panel when making decisions about whether to adjourn.
- 6.66 We set out in our last report that the rate of adjournments of interim order hearings was 21 per cent for the first three quarters of 2015/16. Data provided by the HCPC for 2016/17 indicates that the rate of adjournments had dropped to 13 per cent.
- 6.67 The HCPC provided us with reasons for the interim order panel adjournments. It told us that it had reviewed the decisions made and was satisfied that the reasons demonstrated the panel was appropriately considering the risk when deciding whether to allow an adjournment. The HCPC informed us that revised guidance on proceeding in the absence of the registrant for staff and the panel became operational in September 2016 and, again in March 2017. However, we found the wording in the revised practice note unclear. We explore the practice note in greater detail at paragraph 6.87 below. The HCPC also informed us that

the training programme for the panel has been amended to include a session on this issue and that the additional session will start in 2017/18. We will consider the impact of the revised guidance and training in the next performance review.

### **Conclusion against the Standard**

- 6.68 The information and data provided by the HCPC, and our audit findings, identify that there has been an improvement in the regularity and timeliness of risk assessments in fitness to practise cases since our last report. It also indicates that there is an improvement in the proportion of interim order hearing adjournments.
- 6.69 However, both the HCPC's internal audit and the findings from our review of complaints identify continuing concerns about the quality and consistency of risk assessments. In order that serious complaints are prioritised, risk assessments need to ensure that even where an interim order may not be necessary the risks presented by the information received are properly assessed so that any other necessary actions can be taken in a timely manner. From the evidence we have seen, we are not satisfied that the HCPC is undertaking this in a consistent manner.
- 6.70 We continue to have concerns about HCPC's approach to interim order applications. As we said in our previous report, the HCPC appears to base its decisions as to whether to apply for an interim order on the certainty of an order being imposed instead of where the risk indicates that review by an interim orders committee is appropriate. We accept that the HCPC is revising its training and guidance documents but have not seen evidence of the impact of these changes during this review.
- 6.71 We have therefore concluded that this Standard is not met.

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

- 6.72 This Standard is not met.
- 6.73 Over the course of this review period, we identified a number of areas relating to the HCPC's approach to its fitness to practise work that raised concerns relevant to this Standard. We therefore carried out a further review of these areas. The areas we looked at, and what we found, are set out below.

### **The standard of acceptance**

- 6.74 We have set out above our concerns about the HCPC's approach and application of its SOA, and how it is in our view preventing complaints being taken forward by the HCPC appropriately. As we mention at paragraph 6.13 above, in 18 cases we audited, the SOA was recorded as met then subsequently recorded as not met with no substantive reason for why the case status had changed. Our understanding of the HCPC's process is that once the SOA decision has been taken, then cases should progress to the ICP for a decision to be made. In the complaints we saw where this did not happen, we are concerned that the decision to close the complaints in this way was neither transparent nor fairly

applied. It also prevented the complainant from properly having their complaint considered by the ICP.

### The HCPC's discontinuance process

- 6.75 If a Practice Committee Panel decides that an allegation cannot be established and should not be pursued they can 'discontinue' the allegation or the relevant part of it so that it will not be reviewed at a final hearing. For a case to be eligible for discontinuance, it needs to have been reviewed by the ICP and a decision made by it that there is a case to answer. The HCPC's discontinuance practice note<sup>18</sup> explains that discontinuance of part or all of an allegation may be considered where there is no longer a realistic prospect of the HCPC being able to establish the allegation.
- 6.76 We identified that the HCPC had discontinued cases where in our view a full hearing may have been appropriate in the public interest. In particular, we saw cases where the panel had granted discontinuance without any significant change in the evidence available since the ICP referred the case to a final hearing. We were also concerned that the panel reviewing the discontinuance application was not in possession of the full document bundle presented to the ICP or the ICP decision when considering the application.
- 6.77 We explained our concerns to the HCPC. It responded that it does not consider it essential for new information to have been received for a discontinuance application to be considered, as the panel may examine the evidence in greater detail. It said that if there is no additional evidence received since the ICP decision, it does not agree that the discontinuance panel needs to see all the original documents and the ICP decision.
- 6.78 In addition, the HCPC told us that three applications to discontinue were approved in January 2017 since the revision of the practice note: two relating to the discontinuance of part of the allegations and one relating to the full allegations. The HCPC explained that it has safeguards in place to ensure that only suitable cases are recommended for discontinuance applications. It also informed us that it would initially be auditing 100 per cent of discontinuance decisions following the change to the FTP Department structure in December 2016. The purpose of the audit is to provide assurance that the decisions are appropriate. The HCPC told us the resulting audit data and recommendations would be regularly reviewed and actions taken, as required. The HCPC made a second revision to the practice note in March 2017.
- 6.79 Notwithstanding the changes made by the HCPC to the practice note, our concerns relating to the HCPC's approach to discontinuance remain. The revised practice note does not address our view that discontinuance is only likely to be appropriate where there is a material change in the state of the evidence since the ICP's decision to refer the case for a hearing. We are concerned that the approval of discontinuance applications made by the HCPC (with no additional evidence since the ICP decision) may indicate that the ICP is failing to identify that there is no case to answer. We are also concerned that cases that should have progressed to a full hearing are being closed too soon and that, in doing so,

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<sup>18</sup> The HCPC issue a number of practice notes for guidance of Panels and to assist those appearing before them.

there has been insufficient consideration of the allegations against the registrant to ensure protection of the public.

- 6.80 We will review the outcome of its audits, and any resulting actions taken, when they are available, in addition to our analysis of the data recording the number of discontinuance applications and approvals. Our Section 29 scrutiny will continue to identify any concerns with the HCPC's applications for discontinuance or approvals of it.

### Disposal by consent cases

- 6.81 In addition to the process for discontinuing cases above, the HCPC can close cases without a full hearing with the consent of the registrant and the agreement of an FTP panel. Disposal by consent is only an option after the ICP has found there is a case to answer. The process requires a registrant and the panel to agree an appropriate outcome to the case. If either party is not in agreement the case will proceed to a full hearing.
- 6.82 The HCPC's practice note for disposal by consent explains that the process can reduce the time taken to deal with allegations. The guidance explains that a case should not be resolved this way unless the panel is satisfied that the outcome ensures an appropriate level of public protection and takes account of the wider public interest.
- 6.83 The HCPC's internal Fitness to Practise report from March 2017 records that 36 cases were disposed of via consent in 2016/17, which is consistent with the figure of 38 cases in 2015/16.
- 6.84 The HCPC revised its practice note on disposal by consent in December 2016. The previous version required the registrant to '*admit the allegation in full*', whereas the revised version requires him or her '*to admit both the substance of the allegation and that his or her fitness to practise is impaired*'. A footnote to the new version specified that '*a registrant should not be prevented from resolving a case by consent simply because he or she disputes a minor aspect of the allegation*'. The practice note does not give any guidance for panels about the terms '*substance of the allegation*' or '*minor aspect*'. This may mean that registrants who lack insight into the full effect of their misconduct may be subject to an inappropriate sanction.
- 6.85 We were also concerned about the transparency and brevity of determinations from the disposal by consent process in three cases determined between January and March 2017. The determinations, in our view, did not demonstrate that the panel considered the full facts of the case, nor how they approved the sanctions imposed. In our opinion, the panel's determination did not provide adequate reassurance that the outcome was sufficient to protect the public. We also had concerns about whether the documents presented to the panel fully reflected the facts of the case and were, therefore, sufficient to enable the panel to make an informed decision. In addition, we were concerned that where allegations referred to '*misconduct and/or lack of competence*', the panel's determination did not record its findings in this regard.
- 6.86 The HCPC further revised the practice note in March 2017. As this falls outside of this period of review we are not yet able to assess the impact of the revisions on

disposal by consent cases. The HCPC has told us that it revised the practice note following a thorough review of its consensual disposal processes over recent years. It explained it had publicised the review to a range of stakeholders and taken input from the Authority. It told us that, as with its discontinuance cases, it would initially be auditing 100 per cent of disposal by consent decisions to ensure that the decisions are appropriate.

### Proceeding in absence

- 6.87 The HCPC revised its practice note for proceeding in absence in September 2016. In our view, the revised practice note does not make it clear whether the Panel’s priority should be fairness to the registrant or protection of the public when considering proceeding with a Tribunal in the absence of the registrant. This lack of clarity poses the risk of adjourning cases unnecessarily. The HCPC has confirmed that this practice note applies to interim order (IO) hearings as well as final hearings. We have examined the issue of IO adjournments at paragraph 6.65 at Standard 4. While providing some reassurance that there is guidance for IO hearings, this information simultaneously added to our concerns that public protection may not be prioritised when adjournments of interim orders are considered. The HCPC revised its practice note again in March 2017, but the wording remains.
- 6.88 The table below records the number of final and IO hearings that were adjourned, part heard or cancelled in 2015/2016 and 2016/17 compared to the overall number of cases listed for a final/IO hearing.

	Listed final hearings	Final Hearings Adjourned/ Part Heard/ Cancelled	Listed IO Hearings	IO Hearings Adjourned/ Part Heard/ Cancelled
<b>2016/2017</b>	554	108	160	17
<b>2015/2016</b>	403	82	103	14

- 6.89 These figures demonstrate an improvement from last year.

### The HCPC’s approach to potential health concerns

- 6.90 In the CHRE<sup>19</sup> Fitness to Practise Audit Report published in 2010, we recommended that regulators should routinely arrange health assessments of registrants who were convicted of drug/alcohol offences, to establish whether they have an underlying health problem which might impair their fitness to practise. We continue to take the view that problems with drugs and alcohol can significantly affect patient safety and that regulators should satisfy themselves that there is no underlying problem in such cases.
- 6.91 The HCPC has declined to follow that recommendation and in addition, they have rejected the findings of independent research that recommended the HCPC should undertake routine health assessments in cases arising from drug/alcohol convictions. The HCPC informed us that it made the decision not to act upon the

<sup>19</sup> The Council for Healthcare Regulatory Excellence (CHRE) was a UK health regulatory body set up under the National Health Service Reform and Health Care Professions Act 2002 – CHRE has now changed its name to the Professional Standards Authority for Health and Social Care (the Authority) under the Health and Social Care Act 2012 section 222.



findings because it had concerns about the quality of the study and felt that many of the recommendations demonstrated a misunderstanding of professional regulation.

- 6.92 The HCPC has told us that it deals with these complaints on a case-by-case basis. Consequently, we reviewed some of these complaints during our targeted review to better understand the HCPC's approach to fitness to practise matters involving drugs and/or alcohol.
- 6.93 As part of our audit, we reviewed 34 complaints that progressed to an ICP hearing and where the panel determined there was no case to answer. Of these 34 complaints, we found 10 complaints relating to drink-driving convictions where there was no or very limited consideration of whether the conviction may indicate an underlying problem with alcohol. While we acknowledge that not all of these complaints will reflect health problems, in the majority we saw there was no evidence of any consideration by the HCPC whether they might do so and allegations were drafted on the grounds of the conviction only. We saw some complaints where the circumstances of the drink-driving conviction strongly indicated that the registrant had underlying problems with alcohol, but most of these were progressed as a conviction allegation with little to no consideration of any associated health risk.
- 6.94 In one of the complaints we saw, the concerns raised related directly to health issues. However, the drafted allegations referred only to misconduct with no reference to the health conditions. The ICP considered the complaint only on the grounds of the alleged misconduct and found there was no case to answer but sent learning points<sup>20</sup> to the registrant regarding ensuring their health did not affect their performance or pose a risk. The potential repercussion of this is that registrants with serious health concerns may not be appropriately managed by the HCPC in order to prevent risks to patients and to themselves.
- 6.95 Furthermore, the HCPC told us that it does not approach drink-driving convictions differently according to the registrant's profession. Thus, professions where driving is likely to be a pre-requisite for the role, such as paramedics, are treated in the same way as those where driving is less likely to be required, such as hearing aid dispensers. In our view this raises concerns that the HCPC is not considering the greater risks attached to professions where driving is an essential part of the role.
- 6.96 We also saw complaints which did not relate to convictions where the concerns raised related directly to the registrant's health. Nevertheless, in these complaints, none of the drafted allegations addressed the health concerns. Instead, they alleged misconduct. In these complaints, there was inadequate investigation into the registrants' health and the allegations did not reflect the concerns raised. We saw no evidence in these complaints of any referrals to a medical expert for a report or assessment being made, and very few referrals in general by the ICP to the Health Committee. Consequently, the registrant's condition at the time the case is assessed is unknown and may continue untreated.

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<sup>20</sup> In 'no case to answer' decisions, if there are matters arising which the Panel considers should be brought to the attention of the registrant, it may include a learning point. Learning points are general in nature and are for guidance only.

- 6.97 By considering complaints which might raise concerns about registrants' health as misconduct only, the HCPC risks neglecting to address potential health problems, which may have an impact on patient safety.

#### **Conclusions against this Standard**

- 6.98 In addition to our concerns about the consistency and fairness of the HCPC's SOA and risk assessment processes, we cannot be satisfied that its discontinuance, disposal by consent and proceeding in absence decisions adequately focus on public protection. We will continue to monitor the outcomes of cases where these processes are adopted, in light of the revisions to the relevant practice notes.
- 6.99 Our findings from the audit suggested continuing lack of consideration by the HCPC of risks where there are indications of drug or alcohol misuse, or other health issues. As we have described, the absence of consideration by the HCPC of any underlying health issues in a number of complaints may mean that potential fitness to practise concerns may not have been explored, with resulting risks to patient safety and to the registrant themselves.
- 6.100 On this basis, this Standard is not met.

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

- 6.101 This Standard is not met.

- 6.102 This Standard was not met last year for the following reasons:

- In the 2013/14 and 2014/15 performance reviews, we noted an increase in the time taken to progress complaints through the fitness to practise process. In 2014/15 we concluded that the HCPC was at risk of not meeting the Standard in future if it did not demonstrate improvement
- In 2015/16 we undertook a targeted review to understand the reasons for the continuing decline in timeliness and to assess measures that were being undertaken by the HCPC to improve its performance in this area. These measures included a number of activities to monitor the length of time taken for fitness to practise cases and to enable case progression. The HCPC also told us it had carried out two pilot schemes aimed at reducing the time taken between a case being ready for a hearing and the hearing taking place, and an FTP departmental restructure. The HCPC informed us that learning from the former has been applied in practice and the latter has now been implemented
- However, we were not satisfied that the HCPC had taken sufficient action to address the causes of the decline in 2015/16. We said that we would continue to monitor the impact of changes the HCPC told us it was making to improve timeliness.

## Our findings in 2016/17

- 6.103 The HCPC told us that its hearing scheduling pilot had been successful and learning from it had been applied more widely. It expected that this would lead to savings in the time taken to list cases for hearings. The HCPC said that it was focusing on older cases, adjourned cases and part-heard cases, but also ensuring that newly referred cases progress in line with its optimum case length targets.
- 6.104 From the data provided by the HCPC, we can see that it has successfully reduced the number of older cases (those over a year old) in 2016/17. At the end of 2015/16, there were 765 open cases that were more than a year old<sup>21</sup> whereas there were 668 at the end of 2016/17.
- 6.105 The HCPC told us that it was too soon to evaluate the impact of the revised FTP team structure, which became effective in December 2016. It said that it was undertaking one review of the change in structure at the start of 2017 and another after six months of its implementation. We accept that it is too soon to identify the impact of the changes and look forward to receiving the outcome from the HCPC's reviews.
- 6.106 The HCPC informed us that the age of cases concluded in 2016/17 was unlikely to be significantly different to those in 2015/16.
- 6.107 The HCPC also told us it had several initiatives under way to address the timeliness of case handling. These initiatives include greater oversight, changes of procedural guidance and monitoring processes to reflect the FTP restructure and training and guidance for panels and legal assessors for planning the hearings.
- 6.108 Data provided by the HCPC records its performance against the timeliness measures. The data for the last three years is shown in the table below:

Measure	2014/15	2015/16	2016/17
Median weeks from receipt to ICP decision	33	37	34
Median weeks from ICP decision to final panel decision	39	44	49
Median weeks from receipt to final panel decision	73	88	97
Number of open cases >52 weeks old	472	533	475
Number of open cases >104 weeks old	94	189	142
Number of open cases >156 weeks old	14	43	51

- 6.109 The dataset shows a mixed performance compared with last year. There have been some improvements in the HCPC's performance since 2015/16, especially in the overall number of older cases:
- The median number of weeks from receipt of a case to the decision by the Investigating Committee Panel (ICP) has reduced from 37 weeks in 2015/16 to 34 weeks in 2016/17

<sup>21</sup> That is, combining the returns for cases older than 52, 104 and 156 weeks in the dataset.

- At the end of 2016/17, 475 cases were over 52 weeks old compared to 533 cases at the end of 2015/16
- At the end of 2016/17, 142 cases were over 104 weeks old compared to 189 at the end of 2015/16.

6.110 However, the data also records a decline in performance in some areas:

- The median number of weeks for the full term of cases, from receipt to final panel decision, increased from 88 weeks in 2015/16 to 97 weeks in 2016/17
- The median number of weeks from ICP decision to final hearing increased from 44 weeks in 2015/16 to 49 weeks in 2016/17
- The number of cases which were more than three years old (156 weeks) increased from 43 to 51.

6.111 We recognise that closing older cases can affect the median times to close cases. However, although the data records that although there have been improvements since last year, timeliness is worse in all areas than in 2014/15.

### **Our audit findings**

6.112 We did not specifically audit the timely progression of cases as part of our targeted review. However, in the 100 cases we reviewed, we identified 19 cases where, in our view, there were instances of delay in the HCPC's progression of these complaints. Our findings included complaints where there were significant periods of unexplained inactivity, delays with case progression because required information was not sought promptly, or information was requested when it had already been received. We also saw instances where requested information was not received, but the request for this information was not followed up by the HCPC for a very long period of time, or the matter was not escalated internally. We saw very few instances where there was any evidence that the progression of a complaint was being monitored.

### **Conclusion against this Standard**

6.113 In reaching a decision about how any regulator meets this Standard, we consider carefully the data we see, and what it tells us about the regulator's performance over time. We consider (where appropriate) any trends that we can identify, as well as contextualising performance against other regulators where we consider that the context is justified.

6.114 The HCPC has described a number of measures it has taken to improve performance in relation to FTP timeliness but we have little evidence available about their impact to date. According to its data, there has been improvement since last year in certain aspects of performance, principally the reduction in the number of old cases. However, although better than 2015/16, the performance in these areas remains worse than 2014/15. Furthermore, in other areas there has been a continuous deterioration in timeliness since 2014/15.

6.115 In addition, during our audit we found numerous instances of delay in the cases we reviewed. In response to our findings, the HCPC told us it has planned measures to improve timeliness in FTP. These include further planning and

monitoring around the progression of cases within the new FTP structure, review and improvement of scheduling processes and identifying and implementing mechanisms to address delays in obtaining documentary evidence. The HCPC informed us it also plans to explore the use of case examiners. We support the HCPC in its efforts to improve the timeliness of cases and will review the impact of these measures throughout the 2017/2018 period.

- 6.116 However, from the evidence available, the performance in respect of timeliness remains below that in 2014/15, when we advised the HCPC it was at risk of failing the Standard if there was further deterioration. Furthermore, our audit findings identified concerns around timeliness in a number of complaints we reviewed. On this basis, we conclude that this Standard is not met.

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

- 6.117 We have considered the impact of our concerns about the application of the SOA and the transparency of the SOA correspondence on this Standard. These concerns may impact on the information about the progress of FTP complaints shared with stakeholders and the support they are given to enable them to participate in the FTP process.
- 6.118 However, the findings of our audit revealed that, although registrants were not always notified that the SOA had been met prior to the ICP notification being sent, they were sent holding letters in the period between the notifications. The HCPC told us that a dedicated SOA factsheet is sent out to relevant parties in the early stages of FTP cases. This document provides an explanation about the purpose of the SOA, the criteria for meeting it and briefly explains the FTP process in SOA met cases.
- 6.119 We have also considered the relevance of our concerns about customer service on this Standard. Some of the complaints we reviewed were not progressed efficiently and, in a number of instances, the quality of the correspondence was of concern. We saw letters that contained mixed font size or type and sections that were illegible. Conversely, however, we also saw some examples of good customer service where the HCPC appeared to have made additional efforts to clarify the FTP process or to assist vulnerable parties.
- 6.120 In the complaints we reviewed, most notifications of ICP referrals and deadlines given for registrants' observations were timely. These complaints demonstrated that registrants' requests for extensions to observations deadlines were approved and responded to efficiently.

**Conclusion against this Standard**

- 6.121 Following our audit, we have some concerns about the quality of the HCPC's correspondence and the clarity with which its decisions are communicated. However, we have seen no significant evidence to suggest that relevant parties are not being kept updated. Furthermore, we are satisfied that guidance documents and communication with parties in respect of the FTP process are effective. On balance, therefore, we have concluded that this Standard is met.

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

6.122 This Standard is not met.

6.123 We carried out a targeted review of this Standard to assess the impact of the following changes made by the HCPC:

- The launch of the Health and Care Professions Tribunal Service (HCPTS)
- Revisions of the guidance documents for panel hearings

6.124 In addition, through our Section 29 scrutiny we identified a number of cases where we had concerns about the evidence submitted to the panel, or the panel decisions.

**The Health and Care Professions Tribunal Service (HCPTS)**

6.125 The HCPTS is the HCPC's new fitness to practise adjudication service. All the HCPC's hearings panels (tribunals) now come under the HCPTS. The HCPC has informed us that the governance, management and quality assurance arrangements in place prior to the HCPTS being formed will remain. On this basis, the HCPC will retain responsibility for the panels.

6.126 A Tribunal Advisory Committee (TAC) was established to advise the Council on the recruitment, training and assessment of Tribunal panellists, panel chairs and legal assessors. The TAC is also responsible for providing guidance to the Tribunal on practice and procedure.

6.127 The HCPTS became operational in April 2017 and the Tribunal Advisory Committee (TAC) had its first meeting in May 2017. The HCPC informed us it reviewed all its practice notes in March 2017 in preparation for the launch of the HCPTS. We cannot as yet, therefore, assess the impact of the HCPTS on the HCPC's tribunals. We will monitor development of the HCPTS and TAC in the next performance review period.

**Revision of practice notes**

6.128 The HCPC revised a number of its guidance documents for tribunals in 2016/17 and reviewed all its practice notes in March 2017 in line with the HCPTS becoming operational in April 2017. We have identified concerns about the practice notes for discontinuance, disposal by consent and proceeding in absence which are explained in more detail at Standard 5.

**Section 29 case reviews**

6.129 Through our Section 29 scrutiny of final hearings, we identified learning points in 13 cases between October 2016 and March 2017. Five of these cases related to insufficient evidence being presented to the panel, including two that related to insufficient evidence about the registrants' health. Three of these cases related to the panel neglecting to consider all the available evidence; three related to allegations which did not reflect the full facts or the seriousness of the case; and two related to the brevity of the panel determination.

### Our audit findings

- 6.130 We set out (under Standard 1 for FTP) our concerns that the HCPC's inconsistent approach to the application of the SOA is impacting on its decision-making. Consequently, it appears that some complaints are being closed for not meeting the SOA when it would be more appropriate to refer them to the ICP.
- 6.131 We have further set out at Standard 5 for FTP our concerns about decisions made to discontinue cases, or close them by consent.
- 6.132 The HCPC's FTP operational guidance requires panels to give clear and detailed explanations for their decisions, to enable the reader to understand how they reached their conclusion. During our audit we reviewed 34 cases where the ICP decided there was no case to answer and the cases subsequently closed. In 15 of these cases we found that the ICP determination either failed to demonstrate that the panel had understood the facts of the case or indicated that it had neglected to address important evidence when making the decision. In seven cases, in our view, the determination was too brief to understand how the panel reached its decision. There was, therefore, no demonstration that the panel had fully considered the case.
- 6.133 The HCPC told us that the role of the ICP involves active case management. This requirement is further recorded in its guidance. However, as set out above, we have identified a number of concerns relating to HCPC investigation and decision-making at the SOA stage. The concerns we have about the quality of the HCPC investigations impact directly on the allegations and the evidence submitted to the ICP. The HCPC's reference to the ICP undertaking active case management indicates that the panel should identify cases where insufficient evidence is presented to it or the allegations do not reflect the full facts of the case, and recommend appropriate actions to address these issues. However, in a number of the cases we reviewed, the ICP appeared to rely on the evidence and allegations presented to it without question. Furthermore, in some cases, our audit findings identified that the ICP's decisions were inaccurate or unclear.

### Conclusion against this Standard

- 6.134 In conclusion, based on the cases we reviewed, we have concerns about the reported reasoning and consistency of the HCPC's FTP decision-making at both the SOA and ICP stages and in cases where decisions were taken to discontinue cases or close them by consent. On this basis, we cannot be satisfied that the HCPC's decision-making throughout the FTP process is sufficiently informed and consistent to ensure public protection or to maintain confidence in the professions regulated by the HCPC.

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

- 6.135 We experienced some delays in receiving complete and accurate transcripts of decisions from HCPC final hearings in 2016/17. We have notified the HCPC about these issues. However, this was only in a small number of cases and we did not identify a risk to public protection from these delays. We have therefore, concluded the Standard is met.

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

- 6.136 The HCPC did not report any data breaches to the Information Commissioner's Office in 2016/17. In early 2017, the HCPC was re-certified against ISO 10002, the ISO standard for complaints management. Following an annual audit the HCPC is awaiting ISO 27001:2013 re-certification, which is the international standard for information security management. It originally obtained certification in 2015. This provides assurance to us that the HCPC has robust systems for identifying, classifying, reporting and remediating data breaches. Therefore, this Standard is met.



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for Health and Social Care October 2017

