

# NMC progress review

A review of the NMC's fitness to practise  
directorates' progress since 2008

January 2011

## About CHRE

The Council for Healthcare Regulatory Excellence promotes the health and well-being of patients and the public in the regulation of health professionals. We scrutinise and oversee the work of the nine regulatory bodies<sup>1</sup> that set standards for training and conduct of health professionals.

We share good practice and knowledge with the regulatory bodies, conduct research and introduce new ideas about regulation to the sector. We monitor policy in the UK and Europe and advise the four UK government health departments on issues relating to the regulation of health professionals. We are an independent body accountable to the UK Parliament.

## Our aims

CHRE aims to promote the health, safety and well-being of patients and other members of the public and to be a strong, independent voice for patients in the regulation of health professionals throughout the UK.

## Our values and principles

Our values and principles act as a framework for our decision making. They are at the heart of who we are and how we would like to be seen by our stakeholders.

### *Our values are:*

- Patient and public centred
- Independent
- Fair
- Transparent
- Proportionate
- Outcome focused.

### *Our principles are:*

- Proportionality
- Accountability
- Consistency
- Targeting
- Transparency
- Agility.

## Right-touch regulation

Right-touch regulation is based on a careful assessment of risk, which is targeted and proportionate, which provides a framework in which professionalism can flourish and organisational excellence can be achieved. Excellence is the consistent performance of good practice combined with continuous improvement.

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<sup>1</sup> General Chiropractic Council (GCC), General Dental Council (GDC), General Medical Council (GMC), General Optical Council (GOC), General Osteopathic Council (GOsC), General Pharmaceutical Council (GPhC), Health Professions Council (HPC), Nursing and Midwifery Council (NMC), Pharmaceutical Society of Northern Ireland (PSNI).

# Contents

<b>1. Introduction</b> .....	<b>4</b>
<b>2. How we carried out the review</b> .....	<b>5</b>
<b>3. The context</b> .....	<b>6</b>
<b>4. Progress report</b> .....	<b>7</b>
Case handling.....	7
Decision making .....	17
Customer care .....	20
Timeliness.....	24
Record keeping.....	27
Overall management of the fitness to practise function .....	28
<b>5. Conclusion</b> .....	<b>31</b>
<b>6. Follow-up arrangements</b> .....	<b>33</b>
<b>7. Annex 1: Third party feedback</b> .....	<b>34</b>
<b>8. Annex 2: The judgement framework</b> .....	<b>36</b>

# 1. Introduction

- 1.1 In April 2010, the Nursing and Midwifery Council (NMC) invited the Council for Healthcare Regulatory Excellence (CHRE) to undertake a review of the progress that it had made in its fitness to practise work. The NMC asked us to consider its progress since our *Special Report to the Minister of State for Health Services on the Nursing and Midwifery Council* published in June 2008 ('our Special Report') and our *Fitness to Practise Audit Report* published in February 2010 ('our Audit Report').<sup>2</sup> We had reported the results of that audit to the NMC in September 2009.
- 1.2 In both of these reports, we expressed concerns about the standards of casework. Our concerns fell broadly into the following areas:
- Case handling
  - Decision making
  - Customer care
  - Timeliness
  - Record keeping
  - Overall management of the fitness to practise function.
- 1.3 In response to both reports, the NMC produced action plans to address the identified areas of deficiency.
- 1.4 We have already reviewed the NMC's progress in implementing these plans as part of the performance review 2008/09 and 2009/10. These highlighted that we still had serious concerns about the NMC's performance particularly in relation to customer care, timeliness and the recording of decisions. At the request of the NMC, this progress review looks more widely and in greater detail at the issues identified in our Special Report and in our Audit Report and assesses the NMC's efforts to address the areas of concern.

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<sup>2</sup> Both reports can be found on our website: [www.chre.org.uk](http://www.chre.org.uk)

## 2. How we carried out the review

- 2.1 We carried out our progress review in July and August 2010. We carried out a review of the structures, procedures, policies and systems in place at the NMC to support its fitness to practise function. We applied a similar process to that used in the performance review and in other investigations that we have carried out. We asked the NMC to provide us with evidence of action taken by it in light of the two reports and the impact on the NMC's performance. We also met with three senior members of staff, received the results of a recent staff survey and a summary of the feedback given by panel chairs in their recent appraisals.
- 2.2 As part of the review, we sought the views of third parties who had had experience of the NMC's performance over the last two years. We placed an open invitation to participate in our review on our website. We wrote directly to our public stakeholder network, to the registrants' unions and to employers across the United Kingdom to ask for their views on the NMC's progress. Details of those that responded can be found at Annex 1.
- 2.3 We took account of our preliminary analysis of the sample of 100 NMC cases that we reviewed as part of our annual audit of the cases closed during the initial stages of the fitness to practise process by each of the health professional regulators. The sample was drawn from those cases closed in the six months immediately before CHRE started the audit (January to June 2010).
- 2.4 We also observed two investigating committee meetings.
- 2.5 The NMC's performance was measured against CHRE's casework framework, which sets out the essential elements we would expect to see when reviewing cases closed at the initial stages of the fitness to practise process. Our report of the findings of that audit is due to be published in early 2011.
- 2.6 We assessed the NMC's progress using a two-stage process. First, we looked at whether the NMC had addressed the areas of concern and had implemented the recommendations from the two reports. Then we looked at whether this had improved the NMC's performance in the areas set out at paragraph 1.2. In addressing these two questions, we used our judgement framework as a reference tool and took account of what we had been told by third parties about their experiences of working with the NMC. The judgement framework can be found at Annex 2.
- 2.7 There has been a delay in the publication of this report due to CHRE wishing to reflect some of the NMC's actions in addressing our concerns since we first presented our draft findings to the Chief Executive, Director of Governance and Director of Fitness to Practise in September 2010. We consider it appropriate for our published report should include reference to the actions that the NMC has initiated since we presented our draft findings.

## 3. The context

- 3.1 During the last two years, the NMC has experienced considerable organisational change and development. In 2008, following our Special Report, the NMC developed an action plan to reform its governance and improve its performance, particularly in fitness to practise.
- 3.2 As we reported in our performance reviews in 2008/09 and 2009/10 the NMC has made progress despite some setbacks and delays, for instance in the design and delivery of the electronic case management system. During the last two years, the NMC has had three chief executives and three directors of fitness to practise. It now has experienced and effective leadership in permanent positions in both these roles. The chief executive has recently implemented a restructuring to enhance corporate working including the creation of assistant director posts in all directorates.
- 3.3 The NMC has made far-reaching and modernising changes to its governance. It has moved to a fully appointed board with an appointed chair. It has reduced its committees from 14 to four. Reporting mechanisms to Council are greatly improved and the quality of information provided is accurate and relevant. Responsibility for recruitment, training and appraisal of panellists has been separated from the fitness to practise directorate and placed with human resources and organisational development.
- 3.4 We do not underestimate the scale of the transformation the NMC and its staff have made so far. However, the CHRE and the NMC are also clear about the extent of the changes still required. We will continue to support the NMC's leadership and staff in the efforts they are making to bring about the required changes.
- 3.5 We understand that it can take time for the impact of wide reaching and significant changes to become evident in an organisation's day-to-day activities. This is particularly true in an organisation as large as the NMC and in an area of work as complex as fitness to practise. We will continue to work with the NMC to assist it in monitoring the impact of the improvements it is making and plans to make.

## 4. Progress report

- 4.1 Fitness to practise is generally the most high profile of the regulators' functions. Ensuring that fair, proportionate and timely action is taken when a registrant's fitness to practise is called into question is crucial for public protection and for maintaining public confidence in the professions and their regulation. In order for this to happen, there needs to be an effective fitness to practise process which:
- Ensures that patients are protected from direct harm
  - Maintains public confidence in the profession
  - Maintains public confidence in the system of regulation
  - Ensures that registrants are treated fairly
  - Ensures that registrants have confidence in their own regulatory body.
- 4.2 Over the last two years, we have reported several times on concerns about the effectiveness of the NMC's fitness to practise processes. It is therefore important for public confidence in the system of regulation that we report on the progress that the NMC has made.
- 4.3 We have considered the NMC's progress against the six main areas of concern. We detail below our original concerns, the action the NMC has taken to address them, any outstanding actions, how we consider that this work has affected the NMC's performance and our thoughts on whether this is sufficient progress.

### Case handling

- 4.4 We have raised concerns about the quality of the NMC's case handling over the last two years. We have seen that there have been:
- Inconsistencies/inadequacies in the way decisions are made and in how cases are assessed and investigated, in part due to the lack of guidance for staff and committee members
  - Inadequate management of cases, in part due to the lack of an effective case management system
  - Inadequate prioritisation processes for serious cases, with the effect that cases have not been identified or referred quickly enough for an interim order and there has been some delay in hearing the interim order application.
- 4.5 We have also seen that interim orders have not been reviewed (or extended by the High Court) before expiry. This has meant that registrants have been able to return to practice without their fitness to do so being reconsidered, in circumstances where a committee has previously considered it necessary to suspend them or place restrictions on their practice. This is a very serious concern.
- 4.6 We set out below the actions the NMC has taken to address these identified areas of deficiency.

## *Resources*

- 4.7 In response to our Special Report, the NMC developed an action plan. This plan required the NMC to review the resources available to the fitness to practise directorate to ensure that they could support the NMC in achieving its objectives. We consider that in order for a fitness to practise process to deliver outcomes that protect the public, there needs to be well-established and effective systems and processes. However, we acknowledge that without appropriately skilled, motivated, supported and managed staff in sufficient numbers, effective case handling cannot be achieved.
- 4.8 Over the last two years, the NMC has reviewed the structure of its fitness to practise directorate. It has created the role of junior case officer and senior case officer. These were developed as a way of providing personal development opportunities for staff. The creation of a senior case officer position is intended to provide more supervisory and technical expertise within the teams. The NMC has also recruited additional case presenters, council officers (staff who support the hearings process), lawyers, paralegals and support staff to help with case progression. A new role of assistant director of operations has recently been created. It is intended that the assistant director will take the lead in raising standards and improving efficiency and performance across the case teams.
- 4.9 The NMC is also reviewing how it uses its existing resources. It is about to change the structure of the casework teams. From 10 January 2011, there will be one team that manages cases from receipt of a complaint until its first consideration by the investigating committee. This will be called the screening team. The NMC considers that this will reduce the number of case handovers, decrease the likelihood of delays and decrease the number of errors occurring within the initial information gathering stage.
- 4.10 It is also in the process of creating an escalation team, which it is hoped will be operational early in 2011. The escalation team will concentrate on progressing specific types of cases once the investigating committee has decided that there is a 'case to answer'. The NMC has developed referral criteria so that it is clear which cases will be the responsibility of the standard casework teams, and which the responsibility of the escalation team. The criteria indicating that a case will be allocated to the escalation team include features that may make a case high profile or complex, including the involvement of multiple registrants or the potential need for an interim order. Those recruited to the escalation team will have greater investigative responsibilities and will be required to undertake a more proactive role than the current caseworkers whose role is facilitative. This proactive way of working will be piloted with the escalation team, and if successful, will be rolled out across the department. In the longer term, the NMC hopes to bring more of the investigation work in-house. The intention is to pilot in-house investigation in spring 2011, before implementing any permanent changes.
- 4.11 The NMC is starting to analyse staff activity in more detail in order to check whether staff are being used in the most effective way. The assistant director of operations is currently analysing the complexity of the caseloads managed by the current caseworkers, in order to help identify an appropriate caseload and case mix for each member of the team. By the end of January 2011, the NMC should be able to better understand what makes an appropriate caseload in terms of complexity. It will use this information to improve staff caseloads over time.

- 4.12 As well as reviewing its team structures, the NMC has also recently started to look more closely at how it recruits caseworkers. The NMC considers that it has become apparent from exit interviews that some staff had not fully realised the nature of some of the work they would be doing – some of it very sensitive and distressing. The NMC is reviewing the competencies, job role and its interview techniques to focus more specifically on the type of casework to be undertaken and the need for good customer service. To support an improved recruitment process, the NMC is also beginning to develop standardised induction training for all staff. Current staff members have been asked to input into this development process.
- 4.13 The NMC asserts that it has been working to better support and manage existing staff. It is working to create a culture of learning and development through training and coaching and addressing learning needs identified through the appraisal process. Amongst other things, it has held ‘learning at work’ days and is running a managerial course for staff. The NMC has also developed a performance framework. This document clearly sets out the standards expected of all staff and managers and describes how staff will be developed, managed and supported to meet these standards. The performance framework has been introduced to improve management of staff and to set down standards against which staff can be monitored.
- 4.14 The NMC has also begun to improve its internal communication with staff through monthly manager meetings, quarterly directorate meetings and weekly staff briefing sessions. The director of fitness to practise also updates the whole directorate as and when necessary on any changes or news. It is hoped that this will improve knowledge, understanding and engagement with the work that is underway within the fitness to practise directorate and across the organisation.
- 4.15 The NMC has begun using its quality assurance tool to critically review any adverse event that impacts negatively on customer service or resources. The senior management team now reviews critical incidents each week, in order to identify learning points or to assess training needs.
- 4.16 We consider that all these things are positive initiatives. It appears going forward that staff will be better supported and developed by the NMC. However, we are concerned that without a reduction in caseloads and robust monitoring processes being put in place, staff may not be able to reach the standards required to work effectively. In August 2010, we found that staff had very high caseloads;<sup>3</sup> this included the case managers and senior case officers who are supposed to provide a level of support and supervision to the caseworkers and junior caseworkers. We consider that it is inevitable that with such high caseloads across the teams, effectiveness and efficiency of case handling is affected. We note that the NMC has completed a review of staff caseloads and that it considers that the changes that they make will result in staff having more manageable caseloads (in terms of quantity) in the near future. The NMC has informed us that monitoring of caseloads is now a regular activity.
- 4.17 In addition, without robust monitoring in place, it is difficult for the NMC to be sure that the standards are being adhered to consistently. There needs to be effective oversight of the work undertaken by each member of staff and good communication between case workers, senior case managers and the senior

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<sup>3</sup> The electronic case management system reported that caseworkers held an average of 121 cases each.

management team. As mentioned later in this report, it is also vital that staff are supported through comprehensive and appropriate procedural manuals. Without all these factors, we consider it will be difficult for staff to contribute effectively in their role of protecting the public and to engage in the improvements underway in the department.

- 4.18 Another important requirement for real improvement is cultural change. The NMC also recognises this. There is a need for a positive 'can do' culture so that staff are able and willing to take the initiative to improve the quality of the output of the fitness to practise department. The NMC agrees that there is a need for staff to understand the importance of their role in protecting the public and to have a clear commitment to adhering to good practice when dealing with fitness to practise complaints. This should help the NMC improve its performance, customer care, staff morale and accountability. The NMC has informed us that action has been taken to deal with staff who have consistently failed to perform.
- 4.19 We are satisfied that the NMC has plans in place to identify the resources that it needs to run an effective fitness to practise department. We are also confident that the NMC is aware of the need to reduce staff caseloads and to enforce robust monitoring processes.

#### *Electronic case management system*

- 4.20 In 2008, we identified that the absence of an IT-based formal case management system (CMS) was a fundamental weakness. The lack of such a system, for a regulator with a high fitness to practise caseload, meant that the NMC's ability to manage cases effectively was hampered. For example, it was difficult for managers to track the progress of cases and to identify those cases that had become delayed, or for staff to ensure that they followed up correspondence or case issues in a timely manner. During the compiling of our Special Report, the NMC recognised the importance of having an integrated CMS, and prioritised the development of such a system.
- 4.21 The NMC's IT-based CMS was originally scheduled to be integrated into the fitness to practise directorate by June 2009. However, delays occurred which the NMC attempted to limit by sending a team to work with the suppliers to progress the implementation of the system. The NMC kept CHRE and its other stakeholders updated on progress. Following extensive testing, the system was implemented on 14 December 2009. In our performance review report 2009/10, we recognised that this delay had had a considerable impact on the NMC's ability to improve its case handling.
- 4.22 The system is now being used by the fitness to practise department. However, we found during our review that it was still not fully functioning. Parts of the system were not working effectively. For example, functions that enabled all relevant papers for hearings to be bundled and enabled the recording and monitoring of internal and external legal investigations were not live. Other parts also required updating because the NMC's processes had changed since the original system was designed and developed in 2008. We note that the NMC says that it has plans to deliver quarterly updates to bring the system in line with its current working practices.
- 4.23 We had hoped that once the system was in place, we would see significant improvements in the NMC's case handling. However, we recognise that these

outstanding issues have prevented this from occurring. The NMC has not been able to effectively manage and prioritise staff caseloads, as the data in the CMS does not accurately reflect the correct stage cases have reached. We note that the NMC has an ongoing programme of checking data accuracy which is intended to achieve accurate recording of case stages on the system. This should mean that staff will be alerted to perform tasks at the correct time (as originally envisaged) and performance management of staff can be based on accurate case data.

4.24 The integrity of the electronic and paper copies of the case files was also affected by the system difficulties, as the work of the legal team had not been incorporated within the CMS. The quality and speed of case preparation and the accuracy of papers was another area affected, as the system did not help staff bundle the required papers for the hearing. We note that the NMC has now told us that these issues have now been addressed by the latest fixes prepared by the CMS provider. We consider that these changes should significantly improve the administration of the fitness to practise process, an area that currently causes great frustration to registrants, complainants and others.

4.25 There appeared to us to be some weaknesses within the structure of the CMS. For example it was possible for a case officer to close a case before all necessary actions had been completed. During our audit of 100 sample cases in 2010 we found one case that was recorded as 'closed' but in which closure letters had not been sent. We also found one case which was shown as 'closed' although it appeared to be active. We also had concerns about the effectiveness of the safeguards in the interaction of the CMS with the WISER registration database. The system in place should ensure that a 'flag' is placed on a registrant's WISER record if they leave the register before an outstanding fitness to practise investigation has been closed. However, we identified during our audit various cases in which either no flag was in place or a flag was in place without any reason, or where despite a flag being in place, no action was taken when an individual sought to rejoin the register. In the latter example, even when this was brought to the NMC's attention, the CMS was not promptly rectified. We have serious concerns about these areas of administrative weakness and their impact on the NMC's effectiveness as a regulator. The NMC says that these weaknesses have been rectified and we look forward to seeing evidence of this in our next audit.

4.26 In addition to the technical difficulties, the NMC has told us that its staff are also not using the system effectively. The NMC is unclear as to the reasons for this and has undertaken work to identify these issues, which have been fed back to IT support staff for resolution. Provision has also been made for the fitness to practise staff to raise queries directly with the IT support team. Further, the NMC intends to recruit a full-time CMS trainer to provide a greater degree of ongoing support to the fitness to practise department, early in 2011. We note that the NMC reports that all staff were trained on how to use the system prior to implementation.

4.27 During our audit of 100 sample cases this year we found many instances where the CMS computerised record was incomplete or unclear. In some instances key documents were missing from the electronic file, or it was not clear which version of a letter the NMC had sent. In other cases there appeared to have been misfiling

by staff, including one case in which a police notification of a conviction had been wrongly filed and therefore not investigated.

- 4.28 It is clear that the NMC has worked hard to implement a comprehensive and effective CMS. The NMC has told us that the technical difficulties with CMS have been resolved. It has also said that other improvements are being identified and that it will review progress in April 2011. We look forward to seeing evidence of the benefits of the resolution of the technical difficulties and of staff correctly using the system and that the CMS is improving the NMC's case handling in our next audit.

#### *Guidance for staff*

- 4.29 In our Audit Report, we identified that the lack of effective guidance to staff was a serious deficiency in the NMC's procedures. We said that staff needed a comprehensive manual of guidance covering all aspects of their consideration of cases, including the procedure for the assessment of cases and guidance about the extent of the investigation that should be carried out to prepare a case for consideration by the investigating committee.
- 4.30 In the past months, the NMC has published guidance for staff and committee members on 'what is a 'case to answer'', when to apply for an interim order and imposing an interim order. It has introduced a number of standard operating procedures for various key processes such as obtaining internal legal advice, scheduling hearings and substantive order review bundle preparation. A new assessment sheet has also been introduced to ensure that each new case is assessed (the use of which is to be audited by the NMC). The NMC plans to introduce a number of other standard operating procedures shortly. A casework manual that incorporates all aspects of casework (including how to assess cases) is also under preparation and will be implemented in February 2011. The NMC is supporting this work with staff briefings and training, including the development of a detailed induction programme for fitness to practise staff. The NMC intends to appoint a new learning and development officer this year who will be responsible for assessing and analysing training needs, through training needs analyses, and for inducting new members of staff.
- 4.31 The NMC plans to monitor staff adherence with the guidance through an internal quality assurance process that is currently under development. The new quality assurance process will focus primarily on the timeliness of investigation activities, the quality of administration, and compliance with agreed policies and procedures. In the first instance it will be targeted at high risk areas. Learning from the quality assurance process will be used to continuously improve processes.
- 4.32 The effects of the new guidance and standard operating procedures were not yet apparent in our recent audit of cases closed at the initial stages of the fitness to practise process. We found inconsistency in how staff approached cases and cases still appeared to be closed without sufficient information being sought from third parties - both of which were concerns we raised in the Audit Report. Failings in investigations that we noted included failing to check a registrant's account of events or their alleged mitigation, or accepting an employer's decision without seeking further evidence in circumstances where the evidence available from the employer's investigation was not sufficient for the NMC's purposes. These findings could be considered unsurprising, given that most of the documentation issued to

staff is very recent. However, we are very aware that these are decisions that could affect patient safety.

#### *Expert advice*

- 4.33 In our Audit Report, we highlighted that the lack of formal systems for gaining internal or external advice on appropriate nursing and midwifery practice was a risk. We considered that nursing or midwifery expert advice could help staff who have to make decisions about whether to close a case at the triage stage (the first stage of the process) or when preparing a brief for the investigating committee.
- 4.34 The NMC has carried out a short pilot of the use of midwifery expert advice in the department. Clinical advisers in nursing and midwifery practice are currently being recruited. Their role will be to provide staff with clinical advice at the triage stage of the process. The use of clinical advice will be incorporated into standard operating procedures for the case officers, lawyers and paralegals to ensure that there is a consistent approach to when and how advice is requested and how it is used.
- 4.35 We are satisfied with the progress made by the NMC in addressing this area of risk. The NMC has assured us that we will see the impact that the clinical advisers have on the NMC's decision-making and case handling within the next six months.

#### *Drink-driving*

- 4.36 In our Audit Report, we identified that it appeared rare for the NMC to seek further information about a registrant's health in regards to drink-driving or drug-related offences. It seemed that the NMC investigating committee routinely assumed that an offence or caution was a one-off offence. We considered that this created a risk that registrants suffering from addiction or substance misuse problems might not be identified, which could affect patient safety.
- 4.37 In response to our Audit Report and recommendation, the NMC has introduced a policy for nurses and midwives who have received a caution or a conviction for an alcohol or drug-related offence. The policy has been implemented in the registration directorate and applies to those individuals applying for admission, renewal, or readmission to the register. Those individuals with relevant cautions/convictions will have to either provide evidence from their GP or occupational health service of their health status (if a first offence) or undergo a medical examination (if a second offence). The policy is being extended to individuals whose fitness to practise has been called into question in relation to such offences.
- 4.38 During our audit of 100 sample cases this year, we again found cases in which there appeared to be insufficient checks in regards to registrants' health. We hope that in future, by putting such a policy in place, the NMC will be able to ensure that patients are safeguarded from those registrants who have a serious personal or health issue, as well as being able to support nurses and midwives by directing them to the appropriate services for help. In developing such a policy, we suggested that the NMC considers the General Medical Council's practice of contacting employers to establish if there are any further issues before the investigating committee considers each case. The NMC has said it will do this subject to approval by its Council early in 2011.

### *Prioritisation of serious cases*

- 4.39 In our Audit Report, we highlighted that there was a risk that serious cases were not being prioritised or interim order applications made, even in cases involving serious allegations such as assault, child pornography and clinical incompetence. This is a serious concern.
- 4.40 We had also received feedback as part of the performance review 2009/10 that interim orders were expiring without the registrant's fitness to practise being reviewed. We had concerns that this may endanger patient safety, as nurses and midwives who may be unfit to practise were being allowed to resume practice without restrictions. This is also a very serious concern.
- 4.41 The NMC has tried to address this risk in three ways. First by introducing a case complexity rating to ensure that cases are appropriately prioritised at the triage (first stage) stage of the process. There are four possible ratings: serious-interim order, potentially serious but require more evidence, 'normal' case and potential case closure. Staff are required to rate a case on receipt, to allow the NMC to monitor and prioritise its caseload more effectively. However, we note that guidance is not available for staff on what ratings should be given to cases, and currently there are no effective mechanisms for checking this work. This is a cause for concern. We note that this process has now changed. The triage stage has been replaced by a screening process. This includes an initial assessment of all new complaints to see if an interim order is necessary. Caseworkers will be supported by a lawyer and three clinical advisers during this decision making process. The NMC considers that this will provide better risk assessment at the initial stages of the fitness to practice process.
- 4.42 Secondly, when a case is passed from the first stage of the process to a case manager, a case manager is required to review the case to assess its seriousness and/or complexity, before allocating it to a case officer with the required expertise. We note that currently there is no formal process for undertaking this work. The NMC is planning to develop a case complexity matrix for cases once they have been allocated to a case manager.
- 4.43 Thirdly, the NMC has introduced a new management process for interim order cases, and instigated a priority workstream to tackle existing cases that need to be referred for an interim order application. A senior case manager will work with a case officer to ensure that an interim order case is expedited appropriately. They will do this by ensuring each interim order request is actioned on the day of the committee, that the scheduling team allocates the case to a date within the target time, and that the notice has been sent correctly to the registrant. The senior case officer also reports to the head of business support and development and head of case management on the progress of all new interim order cases that week, with explanations for cases that do not match the timescale.
- 4.44 The NMC has also identified six key areas that it needs to focus on when assessing and recording interim orders. These are:
- The prioritisation of legal investigations for a substantive order, where an interim order is in place
  - Developing process guidance for managing interim order applications/renewals/cases

- Providing staff training on preparing the bundles for an interim order
- Developing a process for mapping interim order renewals to ensure that renewals occur before the order expiry date
- Reviewing how it schedules its panel members to ensure that there is no duplication of members on both the interim order panel and the investigation committee
- Researching how it compares with other regulators on the types of cases considered for an interim order and the decisions made.

4.45 While we can see that the NMC is working to implement proper processes to risk assess and manage interim order cases, as a result of feedback we have received from third parties and our preliminary analysis of the sample of cases we audited this year, we consider that prioritisation of cases is still a significant area of weakness in the NMC's performance. We have seen evidence that interim orders have expired without a registrant's fitness to practise being reviewed. This is because the NMC has not scheduled a review hearing in time. We have also seen delays in the organisation of hearings of interim order applications, for example where the required notice to the registrant was not properly sent out or because of issues with the composition of the committee to hear the application. We have seen evidence that the case complexity rating is used inconsistently at the triage stage, in that the relevant information is not always recorded on the CMS. Further to this, it appears if the relevant data is recorded on the CMS, the case's complexity status is not regularly reviewed, even if new evidence is received.

4.46 We consider that it is important to have established processes for assessing and managing serious cases/interim order cases. These processes should ensure that cases being considered for an interim order should be dealt with as a priority on the investigating committee's agenda, and that those cases in which an interim order has been imposed should be prioritised to ensure that the substantive hearing is scheduled to complete before the interim order expires. We recognise that the NMC is working towards achieving this. We also consider that it is essential that there is effective oversight of the implementation of these processes through monitoring of this workstream by managers and through the proposed internal quality assurance process. We recognise that staff members' high caseloads could impact on the effectiveness of the processes for assessing and managing serious cases/interim order cases. However, due to the importance of this work to public protection, it must be made clear to staff that appropriate risk assessment and prioritisation of cases is one of their main tasks in case handling. We note that the NMC has introduced a new KPI requiring interim order hearings to take place within 28 days from date of receipt. Assessing compliance with this KPI will help the NMC to monitor the effectiveness of their new processes for managing and assessing new serious cases. The NMC will carry out a post-implementation review of this new KPI in May 2011.

#### *Wider improvements to case handling*

4.47 As well as addressing specific areas of improvement that we identified in our Special Report, Audit Report and performance review reports, the NMC has looked to see what wider improvements it can make to its fitness to practise directorate.

- 4.48 It has moved to new premises that have specific facilities for fitness to practise hearings. It has introduced new posts that will assist with the development of an effective fitness to practise function. For example, it has created the post of quality assurance manager, with responsibility for implementing and co-ordinating a range of proactive and reactive quality assurance activities to maintain and improve standards of accuracy, consistency and integrity.
- 4.49 It has also recognised that its rules and legislation hamper its ability to work more effectively and is aware that other regulators have legislation that enables them to take decisions more quickly and to have fewer committee stages. For example, the power to investigate or to refer a case for an interim order lies with the NMC's investigation committee; the registrar has little discretion to investigate. The requirement for a decision to apply for an interim order and to investigate a case to be taken by an investigating committee at a meeting builds in delay to a key function of public protection. To address this, the NMC is working with a legal firm to see how it can use its current powers more effectively and its new director of fitness to practise will shortly carry out a fundamental review of the NMC's legislation and rules to see how they can be changed.
- 4.50 The NMC has also introduced two processes for reviewing how and why errors have occurred. It has introduced a cause and effect analysis that it applies to errors that it considers are critical incidents, such as delays in holding a hearing because a notice of hearing has not been properly sent or a registered medical practitioner has not been requested for a hearing. In doing this work, the NMC says that it has been able to make a number of operational improvements. For example, it has improved its process for recording proof of delivery and has seen a reduction in the number of hearings being cancelled because it has been unable to prove that the notice of hearing has been served.
- 4.51 The NMC has also introduced case reviews to identify how and why errors have occurred in specific cases. As a result of such reviews, the NMC has identified the need for staff to undergo training on the Freedom of Information Act (FOIA), and for staff guidance on how to recognise FOIA requests when reviewing correspondence.
- 4.52 The NMC says that staff are beginning to show a real willingness to participate in these processes. However, we note there is still a concern that staff are not identifying critical incidents themselves, nor are they identifying potential cases for case reviews, thereby limiting the opportunities for change. We consider that there needs to be an established process for recognising and referring matters for consideration through the cause and effects analysis and case reviews. Carrying out such work should be a responsibility of all staff, and managers should monitor the fulfillment of this role. It is important that the NMC is aware of all areas in which it needs to improve so that they can be addressed at this time of significant change.
- 4.53 In early 2010, the NMC also commissioned an audit by its external solicitors on the quality of its fitness to practise committees' work. The auditor observed a sample of committee meetings/hearings from January to March 2010. The key finding from the audit was that the panels behaved in a professional manner, taking their role seriously, following the correct procedures and taking account of the legal tests to be applied when making decisions. However, it was also observed that there was a need for better administration of the handling of hearings. For example, it was found that the quality of the paperwork provided to

panels was poor. Errors included the insertion of irrelevant material, the inclusion of prejudicial papers, and the omission of relevant documents. Our concern regarding the drafting of decisions was also echoed in this report, in which it was observed that a considerable amount of time was spent drafting decision documents due to practical issues such as poor typing skills or an inability to use the laptop. The report also identified one other particular area for improvement: the drafting of allegations. The report observed that allegations were often unhelpfully drafted, or that insufficient care had been taken to ensure that the allegations reflected the evidence. The NMC has drafted an action plan in response to the report, and are implementing the recommended action suggested by the external review. The NMC plans to repeat the audit exercise later this year.

- 4.54 As part of our work in reviewing final fitness to practise determinations, we have identified that immediate suspension and conditions of practice orders have not been considered in all situations where erasure, suspension or conditions have been the final outcome, even in circumstances where the registrant concerned has been under an interim order in the period leading up to the hearing. This has meant that some registrants have technically been able to continue to practise during the appeal period before the coming into force of the substantive sanction (the appeal period is 28 days or unless any High Court appeal that is lodged by the registrant is concluded). We have been assured by the NMC that it will review its procedures and train staff and panellists to ensure that this risk is mitigated in future. The NMC has told us that this work will be completed by the end of March 2011.
- 4.55 We recognise that recently the NMC has taken the opportunity to introduce a number of initiatives and to plan significant review work. While we are satisfied with this development, we have concerns that it has taken some time to reach this point.

### Decision making

- 4.56 In our reports over the last two years, we have highlighted our concerns about the decisions made by NMC committee members and staff as well as the way in which these decisions have been recorded and then communicated. We were concerned that decisions were being made without effective oversight, which meant there was scope for inconsistency. We were concerned that the lack of guidance about what amounts to a 'case to answer' meant that decisions made by the investigating committee may have been made based on insufficient evidence and that decisions to close cases may therefore have been unsafe. Additionally, we were concerned that inadequate recording of decisions in the initial stages may reflect poor case analysis (as well as resulting from insufficient evidence having been presented to the investigating committee) and may lead to difficulty in understanding the reasons for a decision made at any stage. This in turn impacts on public confidence in the effectiveness of the NMC's case handling.

### *Committee member training and appraisal*

- 4.57 In our Special Report, we highlighted our concerns about the appraisal and training arrangements for fitness to practise committee members. In response to our report, the NMC planned to undertake a training needs analysis of its committee members to ensure that they had received appropriate and relevant training to undertake the role, and to put in place an appraisal system.
- 4.58 The NMC has undertaken one training needs analysis for its committee members (August 2008) and is in the process of undertaking another analysis and should be completed by the end of March 2011. As a result of this work, the induction training for committee members has been extended to provide further time for discussion and for understanding the legal frameworks, provision has been made for committee-specific training and updates and networking events have been held as well as refresher events. These latter events have included workshops on drafting determinations and giving reasons, and have incorporated other learning from our review of final fitness to practise determinations. Members' views are sought after every training event and the feedback is generally positive. However, the more recent feedback has highlighted that some members consider that due to the NMC's hearing allocation process they are not able put their skills into practice quickly or regularly enough.
- 4.59 Work began on the committee member appraisal system in October 2007 with the process of 360 degree feedback followed by an appraisal meeting being agreed in August 2008. The first roll out of the appraisal schedule was completed in July 2010 (this was for all committee chairs) and the next cycle of member appraisals began in October 2010. The delays incurred in implementing this system appear to be due to changes to its Appointments Board, the members of which would act as the appraiser in the appraisal process. The initial feedback from the appraisees has been positive about the process. However, it has highlighted issues regarding inadequate communication between the fitness to practise directorate and committee members regarding changes that are being made to the process, lack of guidance and poor administration of the fitness to practise process (such as incorrect papers being given to committee members and poorly-drafted charges).
- 4.60 We note that a code of conduct and a complaints process for committee members has also been put in place. These will be used in conjunction with the appraisal process to ensure that the committee members meet the standards required of them.
- 4.61 It has taken longer than we would have liked for the NMC to set up an appraisal system for committee members. However, we consider that the new system and the NMC's approach to training are a good start to improving the quality of the support provided to committee members and the quality of their work. In order to maximise the benefits of this work it is important that the NMC takes action to address any feedback arising from the appraisals. It is also important that the committee members see that only members who have demonstrated their competence are reappointed (a committee member can be appointed for a maximum of two terms, each up to four years). Having an effective appraisal process through which both the committee members and the NMC continue to improve is key to an effective fitness to practise function.

### *Tools and guidance*

- 4.62 The NMC is introducing a number of tools to aid staff and committee members in their decision making. In October 2010, it introduced a triage assessment form, which is designed to allow proper consideration of all aspects of a complaint and measure the potential allegations against the NMC code. It also enables the staff member to record the potential lines of inquiry in an investigation and to assess whether a case should be referred for an interim order. This document is then used as the basis for a case plan which must be agreed with a case manager. The devolved decision-making form (which has been reviewed by the new director of fitness to practise) details the cases that the investigating committee has said can be closed without individually being considered by the committee. This form allows the reasons for closure of such cases to be recorded. Forms are retained as part of the audit trail. Following concerns we raised during our audit of 100 sample cases this year, the NMC has also changed the permissions on its CMS to ensure that only case managers have authority to close a case. This should provide more effective oversight of the decisions being made using the devolved decision-making criteria.
- 4.63 The NMC began to pilot a determinations tool in August 2010. This tool is currently being used by conduct and competence committees (CCCs). The versions for health committee and interim orders panels are currently being finalised. The piloting of these versions is likely now to start in February/March 2011. We continue to raise concerns about the quality of the reasoning in the NMC's CCC determinations. In line with the NMC's stated plan, we would expect the NMC to review whether this tool leads to an improvement in the number of learning points identified by CHRE and/or by the NMC itself, and if not, to amend it appropriately. We hope that this tool will help panellists to provide adequate reasons for their decisions.
- 4.64 We are also keen for the tool to be used by the investigating committee. This year we observed two investigating committee meetings whilst carrying out our audit of 100 cases. We observed that the quality of the committee's reasoning appeared to decline as the meeting progressed, and that it took a long time for the committee to draft its decisions. This appeared to be due in part to the lack of guidance given by the supporting staff members about the essential elements of a decision, the repetitive nature of retyping similar phraseology, and practical difficulties in typing the decisions.
- 4.65 Given the work being undertaken by the NMC on improving its decisions, this may also be an appropriate time for its indicative sanctions guidance to be reviewed. We note that the NMC's guidance is significantly shorter than some other guidance, including that of the General Medical Council. The review could usefully ensure that the guidance is helpful to committee members and guides them in making sufficiently reasoned and appropriately structured decisions.
- 4.66 The NMC has also introduced a mechanism for logging and monitoring the learning points that CHRE issues following our review of the NMC's fitness to practise committees' final determinations. The NMC uses these points to inform operational staff improvements and member training. We understand that, where necessary, points are fed back to individual committee members.
- 4.67 The feedback we received from third parties as part of our review was generally positive about the quality of the NMC's recorded decisions. However, over the last

two years we have continued to raise concerns about the quality of the NMC's fitness to practise committees' determinations through the learning points we identify, our audit and through referrals to the High Court.

- 4.68 In our audit of 100 sample cases this year we identified various cases where there were inadequate reasons for case closures. For example we saw a letter that said 'there was insufficient evidence to prove some of the allegations against the registrant and where allegations were capable of proof there was no real prospect of finding impairment'. This did not provide sufficient explanation to the complainant as to why this case was not taken forward. Inadequate reasoning such as this has a real impact on public confidence in the NMC's ability to investigate cases. We also identified cases which had been closed:
- On the basis of action taken by the employer, although it was not clear that the employer had investigated the circumstances fully
  - Although it appeared that the investigating committee had not fully considered all the allegations
  - In which it appeared that the investigating committee had failed to take due account of the registrant's admissions before closure.
- 4.69 The initiatives that the NMC is introducing should help to improve decision making and we would expect to see evidence of this following their implementation. We also hope that the NMC will consider including within the 'case to answer' guidance that committee members should not place undue reliance upon on other organisations' investigations, and should ensure that sufficient evidence has been obtained for the committee to make an informed decision.

#### *External/internal audit*

- 4.70 The NMC is trying to identify improvements and manage performance through a range of quality assurance mechanisms. As noted above, the NMC is undertaking cause and effects analyses and case reviews, and is developing an internal quality assurance process. The responsibilities of the quality assurance team will include reviewing cases closed prior to or at investigating committee meetings, and reviewing decisions by final fitness to practise hearings. The team will consider whether there has been adherence to the NMC's processes, whether appropriate decisions have been made and then identify what action (if any) is needed to remedy any identified problems.
- 4.71 We are supportive of the proposed work of the quality assurance team. We have previously recommended that the regulators develop their own internal audit process. We consider that this work is important for driving up standards within the fitness to practise function. It also provides an extra layer of oversight that is necessary to a directorate that is undergoing such significant change. The NMC has told us that its quality assurance process will be considered by its Council in February 2011 and implemented immediately after it has received the Council's approval.

#### **Customer care**

- 4.72 In our Special Report, we highlighted that we had received complaints about delays in replying to complainants' correspondence as well as about the quality of the NMC's responses. Complainants felt that the NMC's responses were not

always helpful, accurate or sensitive. In our performance review reports and our Audit Report, we subsequently highlighted that the NMC has not made significant progress in improving its customer focus in terms of improving the quality of its correspondence or the responsiveness of its staff. We have broken down the action the NMC has taken to improve its customer care into the four categories below.

#### *Reviewing correspondence and communications*

- 4.73 The NMC has undertaken several rounds of reviewing its standard letters. As a result, the quality of its standard letters has improved. Further improvements will be made to the letters once leaflets for registrants and the public are published, because the leaflets will contain some of the standard text that is currently included in the letters, which will mean that the letters can then be made simpler.
- 4.74 However, a problem we identified during our audit of 100 sample cases this year, as well as from third party feedback received during this review, is the indiscriminate use of standard letters. We have seen on many occasions that standard letters are sent to complainants, registrants and others without appropriate alteration to fit the circumstances of the particular case. For example, we have seen cases where the standard letter template is used to ask the complainant for information that they have already provided, or which they are not likely to possess. This causes frustration and confusion for recipients and might also lead them to question the thoroughness of the NMC's consideration of their case. The NMC has also used a standard letter that asks the complainant to contact the NMC if they have not heard from the NMC by a certain date. We regard that as poor customer service, which is unlikely to sustain confidence in the NMC. As a result of these issues, the NMC has implemented processes to ensure that case managers or senior case officers check all correspondence that is sent out, to ensure that it is fit for purpose and is free of spelling and typographical mistakes.
- 4.75 Given the current workload of individual case managers and senior case officers, we are concerned that these checks may not be carried out effectively or consistently. Additionally, given their high caseloads, it is inevitable that some staff will feel the need to deal with matters quickly, which may mean that quality is sacrificed for speed. With these two things in mind, we remain very concerned about the quality of the NMC's correspondence and communications with parties in fitness to practise cases.

#### *Customer service*

- 4.76 Since 2008, NMC staff have received training in letter writing, plain English and telephone call handling. However, due to limitations in the monitoring tools available to the NMC, it has been difficult for the NMC to ascertain the impact of these courses on the quality of its communications. For instance, the NMC is not able to record telephone calls and therefore is unable to check whether calls are being handled appropriately. There are also currently only limited checks on the quality of the NMC's correspondence, as described above. However, from our audit of 100 sample cases this year and from third party feedback received during the review, it is clear that the quality of the NMC's communications has not yet significantly improved.

4.77 We have seen that it can take months to receive an acknowledgement of a letter or to receive a substantive response to a letter from the NMC. Furthermore, we have seen examples of circumstances in which the NMC has not sent decision letters to the parties to a fitness to practise case, or where such letters have not been sent promptly. This clearly has the potential to undermine those parties' confidence in the NMC as a regulator.

4.78 The NMC has recently introduced interim customer service standards. These are that:

- Phone messages/voicemails should be returned within 24 hours
- Emails should be acknowledged within 24 hours, stating a date by which a substantive response will be sent by the NMC
- Letters and faxes should be acknowledged within three working days, stating the date by which the person can expect to receive a substantive response from the NMC.

While we are pleased that these measures have been introduced, we have seen no evidence to demonstrate compliance with them. Unless effective monitoring arrangements are put in place, there will be limited action that the NMC can take to check if these standards are being met, and to establish whether the timeframes are realistic. This is a concern.

4.79 The NMC has appointed a head of external liaison and support who began their role on 8 December 2010. The postholder has responsibility for managing complaints about customer service, and will be responsible for devising key performance indicators to measure the quality and timeliness of the NMC's handling of complaints.

4.80 The NMC is planning to introduce a customer feedback form for those involved with a fitness to practise complaint to complete following the closure of a case. We are supportive of this, as it will provide a mechanism to monitor customer service. We have recommended such activity to other regulators as part of the performance review and this is already being carried out.

#### *Building relationships with employers and others*

4.81 The NMC has undertaken several initiatives to improve relationships with employers and other key stakeholders since 2008. It has undertaken this work for several reasons: to improve information gathering, to gain a better understanding of its stakeholders needs and to inform others about its work. It has:

- Held employer roadshows to gain a better understanding of employers' perceptions of the NMC
- Commissioned qualitative research to establish the information and communication needs of its stakeholders
- Introduced new leaflets for employers and witnesses
- Held 10 'Meet the NMC' events where employers are invited to the NMC to receive information on how it carries out its work
- Developed memorandums of understanding with other key organisations such as the General Medical Council and the Care Quality Commission,

which has helped with the sharing of information around concerns raised at Mid Staffordshire NHS Foundation Trust

- Held a series of regular meetings with other stakeholders such as registrant unions to improve information sharing.

- 4.82 We have seen from the feedback received from employers that the NMC's increased communications with them appears to be having a positive effect on their perception of the organisation. However, there is still room for improvement. From our review of 100 sample cases this year we found that in some cases in which the employer is involved, the NMC has failed to notify them of the outcome. This fails to assist employers in their public protection role and also represents a missed opportunity to improve relationships with employers. Until such issues are resolved, it may be that the NMC's objective of improving relationships with employers to improve the quality of referrals will not be achieved.
- 4.83 The new head of external liaison and support will play an important role in providing greater advice and support to employers in relation to potential referrals, and will oversee the implementation of a dedicated advisory telephone helpline for employers by the end of February 2011.
- 4.84 We have previously expressed to the NMC our concerns about the quality of the 2010 leaflet for employers, which we consider could discourage referrals and place the onus of investigation on the employer. We consider that there is a risk in suggesting within this leaflet that the NMC will rely on employer investigations. We consider that this may damage public protection.

### *Complaints*

- 4.85 We have received concerns from complainants and others about the apparent lack of a formal complaints procedure at the NMC. Whilst we were aware of a corporate complaints policy for the chief executive's office, it became clear that complainants and others were not being informed of this policy. We have become increasingly concerned at the inconsistent manner in which complaints have been dealt with by the NMC's fitness to practise department.
- 4.86 The NMC is developing a corporate complaints manager role. This role would assume responsibility for the management, co-ordination and investigation of all complaints received by the NMC. However, the relevant staff within the fitness to practise directorate will be required to provide information so that the complaint can be investigated. The complaints manager will sit in the chief executive's office to maintain their objectivity from the individual NMC departments. All staff will be told that all complaints received should be sent to this person, and the public will be informed of the process. We consider that staff should be trained to recognise complaints, in the same way that they have been trained to recognise Data Protection and FOIA requests. The new role of head of external liaison and support will oversee the handling of all complaints.
- 4.87 We are supportive of the expanded corporate complaints policy and the introduction of a complaints manager role. We consider that it is a sensible approach to have an independent complaints manager role, and to involve the relevant staff in the resolution of the complaint. This achieves objectivity of response but provides a form of accountability for staff. It is apparent that without this strategic approach, a clear understanding of the nature of the complaints

received, a clear and corporate response, and identification of learning from the complaints cannot be achieved.

- 4.88 Overall, we consider that customer care is still an area of significant deficiency. We recognise that many of the other workstreams, if effective, will improve the quality of customer care. However, the NMC considers that it will only begin to make significant inroads to improve customer care once the case progression timeframe improves. We repeat our statement from our performance review report 2009/10 that the NMC should be able to effectively manage case progression and improve customer service as a joint enterprise. Quality of service should not be sacrificed to efficiency in processing and closing cases.

### Timeliness

- 4.89 We noted in our Special Report that it was not in the interests of complainants, registrants or the public for there to be delays in resolving fitness to practise complaints. While we recognised that some cases become unavoidably delayed because of ongoing criminal investigations or difficulties in obtaining witness evidence, we considered that much of the delay in the NMC's processes could have been avoided. At the time of the Special Report, it took an average period of 29 months between receipt of an allegation and the closure of a case at a final hearing.
- 4.90 In our performance review report 2009/10, we stated that the NMC had made great progress in improving the overall efficiency of its case progression. We noted that it took on average 15 months from the initial receipt of an allegation to closure at a final hearing. We recognised that significant work had been undertaken to monitor and progress cases that had been referred to a final hearing, that additional panellists and staff had been appointed, and that there had been some redesign of the NMC's fitness to practise processes. However, we raised serious concerns that there had not been a similar improvement in the timeframe for those cases that are concluded at the investigating committee stage – which represent the majority of the complaints received by the NMC.
- 4.91 During our review of 100 sample cases this year we identified various ongoing problems relating to delays. In one case we reviewed, there had been a delay of three years during the investigation, which ultimately impacted negatively on the available evidence when it came to be considered by the investigating committee. In other cases lack of proactive case management (including failing to chase up outstanding information, failing to identify promptly that the subject of the complaint was not an NMC registrant, and failing to refer a case for an investigating committee meeting within a reasonable period) caused unnecessary delays to the overall process.
- 4.92 The NMC has said that it is now concentrating on reducing delays in the initial stages of its fitness to practise processes. In particular, it wants to reduce delays between the date when an investigating committee decides to seek further evidence and asks for a legal investigation to be carried out, and the date when the committee considers the outcome of that investigation. Currently, there are significant delays in this part of the process, which is due in part to the NMC's past lack of monitoring of the service standards it had agreed with its external legal advisers. This lack of enforcement of service standards meant that a large number of cases referred to the NMC's external legal advisers took a significant amount of

time to investigate. The acknowledged effect of this backlog is that cases have become delayed (which means that by the time they are dealt with by committees the allegations may be very old) and that a large number of interim order extensions have been required.

4.93 The NMC agreed with its external legal advisers that approximately 500 cases (which would have exceeded the service standard that investigations should be completed within 13 weeks) would be completed and returned to the NMC by the end of September. This was achieved in all but 23 cases. In those 23 cases, an extension was agreed between the NMC and the external legal advisers. The NMC was aware that this would have an immediate impact on its workload. To address this increase in workload the NMC has:

- Increased the number of investigating committee meetings it will hold per month
- Increased the resources it has available for health and conduct and competence committees
- Added a temporary staffing resource
- Introduced a formal extension request process to review cases where the legal team has exceeded the 13 weeks target
- Included the matter as an item for review at its weekly senior management team meetings.

The NMC said that its performance against the key performance indicator of the average number of days taken to investigate conduct and competency related allegations (the time between the two investigating committee meetings) was 56 weeks in October 2010. This was a reduction from 90 weeks in April 2010. The NMC's current performance against the indicator is 62.7 weeks. The NMC accepts, that is still unacceptably high compared to the target of 21 weeks. As explained above, the NMC intends to introduce revised key performance indicators shortly.

4.94 The NMC is continuing to hold fortnightly meetings in which case management is discussed, in order to address delays. Previously these were only held for CCC cases, but are now held for cases referred to each of the NMC committees. Regular review of each committee's caseload should enable the NMC to better manage and understand its caseload. It should also help the NMC to carry out modelling to forecast closure dates for the oldest cases.

4.95 The NMC has also identified that the medical reports produced for the health committees require improvement, to ensure that they are sufficiently robust to be relied upon. Currently, inadequate reports lead to adjournments and further delay in closing a case.

4.96 The measures mentioned in other parts of this report should also help to reduce the delays within the process. These include:

- Reviewing rules and legislation to improve the NMC's ability to case manage effectively
- Reducing staff caseloads
- Introducing procedural manuals setting out the investigation and case preparation processes

- Introducing new key performance indicators
- Changes to the structure of the triage team (including a change of name to the screening team, as of January 2011) and the introduction of an escalation team
- Improved monitoring of staff
- Better use and functionality of the CMS
- Improvements to the administration of the fitness to practise process.

It is clear from the evidence that poor administration, inadequate record keeping and high caseloads all impact on the timeliness of the process. Therefore if these areas can be improved, delays should be reduced.

- 4.97 As part of this review we have received feedback from third parties, which overwhelmingly states that the timeliness of the NMC's fitness to practise process has not improved over the last two years. We have also received legitimate complaints from both registrants and complainants about the delays that they have experienced in the fitness to practise process over the last two years. We have independently raised concerns about delays as part of the learning we identify from our reviews of final fitness to practise committee determinations. In our audit of 100 sample cases this year we saw examples of cases that appear to have been forgotten about whilst they were with the NMC external legal team. This meant that some cases considered by the investigating committee between February and July 2010 were very old. While we cannot be certain, it is possible that such delays may have impacted on public protection, as the length of time since the incident occurred is a factor considered by panels when deciding whether there is a real prospect that an individual's fitness to practise may currently be impaired.
- 4.98 We remain concerned about the timeliness of the fitness to practise process. Delays in the process have significant implications for:
- Registrants, as it is unfair for them to have unresolved cases against them for long periods of time
  - Witnesses, who have to make arrangements to be involved including time off work and may have difficulty recalling events as time passes
  - Employers, who have to support those involved with the process including financial support
  - Panellists, who have increased difficulties if the quality of the evidence before them is lessened because of the length of time that has elapsed
  - Complainants, who may not be able to move on from the event they have complained about until it is resolved
  - The public, as there could be patient safety implications in relation to the failure to resolve cases quickly and/or to put interim orders in place promptly where serious allegations are made.
- 4.99 We note that the NMC's current performance against its key performance indicator of 90 per cent of fitness to practise cases concluded within 15 months is 69.6 percent from 55 percent in the summer of 2010.

4.100 The NMC's intention is to introduce from January 2011 a new set of key performance indicators that will track the progress of each case across each milestone, and which will be monitored throughout the case's lifetime. It is intended that the fitness to practise directorate will provide monthly reports to the NMC's Council demonstrating compliance with these indicators. The introduction of such key performance indicators should assist the NMC in the long term in identifying 'bottlenecks' within its processes so that it will be able to target resources at those areas in need of most improvement. It should also assist in improving customer satisfaction with the NMC's performance.

### Record keeping

- 4.101 In our Audit Report, we highlighted that record keeping was a significant area of risk for the NMC and stated that it should be addressed urgently. We found that there was a risk that due to poor file archiving all the information received by the NMC may not be retrievable, that original documentation was being returned without a copy being kept by the NMC, and that this could affect the current fitness to practise case and any future cases against registrants. We also found that there was a risk that during the introduction of the CMS, cases may not be progressed as a result of being incorrectly recorded as closed.
- 4.102 The NMC have told us that in August 2010 it gave staff guidance on the principles of good filing, and introduced a new archive and retention policy. It is hoped that this, along with the effective use of the CMS, will improve the NMC's record keeping. The NMC has also confirmed that it has stopped the process of returning all original documentation without keeping a scanned copy for its own records.
- 4.103 It is planned that case managers will carry out spot checks on files to ensure their accuracy and completeness. It will be the head of case management's responsibility to ensure the quality and consistency of the checks. When it is time for paper files to be destroyed, in line with the archive and retention policy, it will be the library staff's responsibility to check all the paper files against the CMS to ensure that all records are maintained. If there are any differences between the paper file and the CMS, the file will be returned to the caseworker to rectify the problem. The NMC hopes that this series of checks will improve the integrity of its files.
- 4.104 In our review of 100 sample cases this year we found that record keeping had improved, but errors that we found indicate that improvements still need to be made. We found several cases where:
- Key pieces of documentation such as decision letters or complaint letters were not available on the CMS
  - There were inconsistencies between the date of the decision letter and the date the case was closed on the CMS
  - There were no records of why decisions had been taken for certain key actions such as closing or reopening a case
  - There were no records of Police National Computer checks having been undertaken, or checks to see whether the registrant had had previous complaints raised against them
  - It was difficult to distinguish between draft and final letters to complainants and registrants.

- 4.105 We are satisfied that the NMC is making progress in improving its record keeping. However, we consider that there is still room for considerable improvement. It is important that staff are reminded about the importance of record keeping and that their adherence to the principles of good filing is monitored through spot checks and the internal quality audits.

## **Overall management of the fitness to practise function**

### *Quality and comprehensiveness of information and statistics*

- 4.106 In our Special Report we highlighted that a number of the then NMC Council and former Council members had raised concerns about the quality of information that the Council received about fitness to practise cases. They felt that the information, (particularly the statistical information) was not always clear, consistent or comprehensive. Following this, in our performance review report 2008/09 we noted that the NMC was then able for the first time to provide accurate and meaningful information about its fitness to practise cases.
- 4.107 The NMC currently uses a standard definition and method of calculation when reporting on its seven key performance indicators.<sup>4</sup> The senior case management team and the executive management board of the NMC, consider reports on its performance on a monthly basis. There is also a quarterly report to both the fitness to practise committee and the business planning and governance committee and reports are given at each council meeting. The new director of fitness to practise is also reporting on the department's performance on a fortnightly basis to the corporate leadership board and a monthly basis to the NMC Council. As explained above, new key performance indicators are to be introduced shortly.
- 4.108 The NMC has assured CHRE that its data is entirely accurate in relation to cases at the triage stage and cases where a decision has been made. However, due to delays and adjustments to the CMS and inconsistency in how staff use the CMS it is difficult to be certain of the information relating to cases awaiting an investigating committee hearing. The NMC has identified that there is a significant group of cases that are currently not being reported on at all. The NMC is now developing simple statistics to show the time between cases being opened and finally closed, and also the time taken between the investigating committee's ordering of an investigation and its review of the outcome of that investigation. The NMC are also now generating data about individual staff members' caseloads in order to help them (and their managers) to prioritise their work.
- 4.109 We can see that the NMC has made significant progress in improving the quality and comprehensiveness of its data. It is already clearly in a better position to understand and monitor its performance than it was in 2008. However, we consider that there is still room for further development and our view is that the

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<sup>4</sup> 90 per cent of fitness to practise cases concluded within 15 months; average number of days taken to investigate conduct and competency related allegation - target is 21 weeks; average number or days taken to create an interim order for high risk cases - target is 21 days; proportion of successful appeals of fitness to practise decisions - target is no more than 15 per cent; number of adjournment in fitness to practise cases - target is no more than 15 per cent; number of recurring CHRE learning points and number of complaints received about how NMC conducts its business relating to fitness to practise case (as a percentage of caseload) target is no more than 5 per cent.

NMC should continue to improve the quality of the data on its CMS. We are pleased to note that the NMC does intend to develop key performance indicators for the initial stages of its fitness to practise process and to report regularly on its performance. The NMC has informed us that the new key performance indicators will be implemented in January 2011. The new performance indicators will apply to all new cases which come to the NMC from 11 January 2011. We are concerned about the NMC managing two different approaches to managing performance. It will be important that the NMC is transparent in its reporting regarding the performance of its workload prior to and post 11 January 2011.

#### *Administration of the process*

- 4.110 Third party feedback we have received, feedback from the NMC's own committee members and the external audit the NMC commissioned on the quality of its committees clearly show that the administration of the fitness to practise process is poor. Anecdotal evidence suggests that quality may have been sacrificed for speed by staff in the past and this still has an effect on the fitness to practise function today. Examples of poor administration include:
- Guidance documentation is not available to committee members when it is required
  - Too many cases are allocated to one day, meaning that some cases do not get dealt with on the day
  - Allocation of committee members leads to some not being able to fully develop their skills
  - Confidentiality is breached as a result of papers being sent to the wrong individuals or in envelopes that are torn
  - Bundles of papers for the committees contain incorrect or incomplete information
  - Inaccuracies in notices sent to registrants, or failures to send notices to the registrants/their correct addresses, mean that cases have to be adjourned to a different date, and committee time is wasted
  - Poor witness liaison, for example, hearings being organised when witnesses have informed the NMC that they cannot attend, or witnesses not being informed or being informed at short notice of when they should attend a hearing (which may mean that important evidence is not available, or that hearings have to be adjourned).
- 4.111 The NMC is seeking to address these areas of deficiency through:
- Introducing better administration support for hearings
  - Introducing a new role of panel secretary (from February/March 2011) who will provide assistance to committee members in compiling their decisions
  - Use of the CMS's bundling of papers functionality
  - Better monitoring of staff output
  - Consideration of increasing the council officer's responsibilities so they assume more proactive management of committees
  - A review of the process for allocating committee members to cases.

The NMC is also reviewing the processes for witness liaison. Currently, responsibility for witness liaison is spread across several roles within the fitness to practise department. The NMC is considering where responsibility and accountability for witness liaison should lie, and what type of service its staff should be providing to support witnesses attending hearings.

- 4.112 We consider that improvements in this area will have a significant impact on the NMC's workload and public perception. Some relatively simple adjustments could reduce delays, decrease complaints and decrease the number of contacts that parties have to have with the NMC as a result of administrative errors. With such clear potential benefits to improving the administration of the fitness to practise function, we consider that it is important that work begins on this quickly and we are encouraged to note the NMC's intention to develop the new panel secretary role early in 2011.

## 5. Conclusion

5.1 We consider the NMC has made a number of significant improvements since our Special Report in 2008. This includes:

- New premises that have specific facilities for fitness to practise hearings
- The introduction of the electronic case management system
- Improved recruitment, training and appraisal of fitness to practise panellists
- The introduction of new posts that will assist with the development of an effective fitness to practise function
- Systems for reviewing and learning from errors.

Alongside this, as discussed in section three, we have seen improvements in the governance arrangements of the NMC.

5.2 However, we are still concerned about the seriousness of the amount and nature of the improvements that the NMC has to make. That said, we are satisfied that the NMC has a good understanding of its areas for improvement and that it recognises that its current performance impacts on the public's confidence in its ability to be an effective regulator and could adversely impact on public protection and patient safety.

5.3 We have seen that the NMC's approach to identifying and addressing its areas for improvement has been re-energised over recent months. As we have reported the NMC has a significant amount of planned initiatives to improve its performance which are in development, will be implemented shortly or have recently been implemented. This includes: tools and guidance to aid with decision making, the appointment of expert nursing and midwifery advisers to provide advice on fitness to practise cases, the development of a number of standard operating procedures, restructuring of the casework teams and the introduction of a quality assurance programme.

5.4 We recognise that there can only be real improvement in the NMC's performance once many of its plans have been implemented. This is because many of the changes are inter-related and therefore significant progress will be dependent on overall implementation. For example, developing standard operating procedures and a case manual are positive initiatives; however, these initiatives will have limited effect without a reduction in staff caseloads, the implementation of robust monitoring of staff outputs and a cultural change within the directorate. Consequently, we consider it is very important that there is effective oversight of one comprehensive action plan by the Council, the executive and the senior management team. It should be clear to all involved: what actions have been taken; what actions are outstanding; the impact of these actions; and what steps need to be taken to overcome any barriers to change.

5.5 We also recognise that some of these changes will take some time to have an effect, such as the cultural change required within the fitness to practise department. Other changes should have an immediate impact, such as better administration of hearings. We recognise that with any change, time must be allocated to allow for the planning, development, implementation and review of the change and that it can be difficult to identify significant improvements over a short time period. However, due to the importance of the areas that are still in need of

considerable improvement, we will be working closely with the NMC over the coming months, as set out in section six, to monitor whether the planned changes have been implemented and have had the desired effect on the NMC's performance.

- 5.6 The NMC is a large organisation with many demands on its attention and resources. We hope it will keep focused on its core regulatory responsibilities.

## 6. Follow-up arrangements

- 6.1 The CHRE and the NMC will work together over the coming months to improve the NMC's performance in its fitness to practise work. To do this, it has been agreed that:
- The NMC will update CHRE on a quarterly basis on the progress it has made on introducing the changes it has already proposed and any further changes agreed as a result of both these reports. The first quarterly update should be provided by April 2011. The NMC will provide evidence, where possible, of the impact the changes have had on its ability to protect the public and maintain confidence in the profession
- 6.2 CHRE will also continue to monitor the NMC's progress through the annual performance review and through the annual audit of cases closed at the initial stages of the fitness to practise process.

## 7. Annex 1: Third party feedback

7.1 As part of this progress review, we wrote to a wide range of organisations who we considered would have had experience of the NMC since 2008 and earlier. We invited them to share their views with us on the NMC's progress in communication, decision making, timeliness and the administration of the fitness to practise process. We explained that we would use the information provided to ensure that we had a more rounded view of the NMC's performance. We also extended a general invitation to provide views on the regulator's performance on our website.

7.2 Below is a list of the third party organisations whose feedback we took into account:

- Association of Radical Midwives
- Avon and Wiltshire Mental Health Partnership
- Birmingham and Solihull Mental Health NHS Foundation Trust
- Camden and Islington NHS Foundation Trust
- Dignified Revolution
- Devon Partnership NHS Trust
- Eastern and Coastal Kent Community Services
- Haringey NHS Trust
- Hillingdon Community Health
- Independent Midwives UK
- Leeds Teaching Hospitals NHS Trust
- NHS Fife
- NHS Grampian
- NHS Haringey
- NHS London
- NHS National Services Scotland
- NHS Sefton and Sefton Primary Care Trust
- NHS Somerset
- NHS South Central
- NHS Yorkshire and the Humber (Mid Yorkshire Hospitals NHS Trust, Sheffield Teaching Hospitals NHS Foundation Trust, NHS Doncaster, NHS Bradford and Airedale and NHS Wakefield)
- North Bristol NHS Trust
- Royal Brompton and Harefield NHS Foundation Trust
- Royal College of Midwives

- Royal College of Nursing
- Shropshire Primary Care Trust
- Solihull Care Trust
- Southampton University Hospitals Trust
- Tees, Esk and Wear Valleys NHS Foundation Trust
- The Christie NHS Foundation Trust
- The Newcastle upon Tyne Hospitals NHS Foundation Trust
- Torbay Care Trust
- Unison
- University Hospitals Bristol NHS Foundation Trust
- Warrington and Halton Hospitals
- Western Sussex Hospitals NHS Trust/Worthing Hospital
- Yeovil District Hospital NHS Foundation Trust
- Four individuals

7.3 We are grateful to the above organisations and individuals for taking the time and effort to share their experiences of the NMC with us. We found this information useful for our review.

## 8. Annex 2: The judgement framework

8.1 The framework sets out the minimum progress we expected the NMC to demonstrate against each part of its action plans.

Areas of concern	Minimum expected progress
<p>To undertake a review of committee members' training needs and their induction training and to complete that review by 31 August 2008. To address the issue of delays in committee members receiving agreed training on child protection issues</p>	<ul style="list-style-type: none"> <li>• A review of the committee members' training needs including induction training has been completed</li> <li>• Actions have been identified and acted upon or are in the process of being carried out</li> <li>• Training on child protection issues has been provided</li> <li>• Committee members consider that their training needs are being met</li> <li>• The NMC has identified the causes of the delays to the rolling out of training and taken remedial action to avoid repetition</li> <li>• A feedback system is in place to enable committee members to provide their views on the training</li> <li>• A decrease in the number of learning points identified by CHRE</li> <li>• A decrease in the number of successful appeals by CHRE or registrants.</li> </ul>
<p>To conduct a fundamental review of the NMC's fitness to practise work including:</p> <ul style="list-style-type: none"> <li>• Reviewing the resources available to fitness to practise to ensure that the resourcing level can support the NMC in achieving its objectives. Review to be completed and resources planned by end of August 2008</li> <li>• Conducting a training needs analysis across the Fitness to Practise Directorate to ensure that staff have the appropriate skills. Training on communications issues to be delivered by the end of September 2008 and for any other needs by the end of March 2009</li> <li>• Reviewing the processes and timelines in fitness to practise,</li> </ul>	<ul style="list-style-type: none"> <li>• A fundamental review of the NMC's fitness to practise work has been completed</li> <li>• The NMC has a clear understanding of the resources needed to enable it to achieve its objectives</li> <li>• The NMC has appropriate resources in place to achieve its objectives</li> <li>• The training needs analysis has been completed</li> <li>• Training on communication issues and other training identified has been delivered</li> <li>• Staff are competent to carry out their role</li> <li>• The review of the processes and timelines has been completed and opportunities for improving services and waiting times identified</li> <li>• An appropriate system is in place to identify risks and escalate action for urgent cases</li> <li>• There is a steady reduction in the overall time taken for cases to be completed at each stage of the fitness to practise</li> </ul>

<p>identifying opportunities for improving service and shortening waiting periods. Review to be completed by the end of December 2008</p> <ul style="list-style-type: none"> <li>• Reviewing correspondence and communications in fitness to practise to ensure that all communications are accurate, fit for purpose and meet customer service best practice standards. The NMC will also ensure that its correspondence meets the standards for plain English by the end of December 2008. Once each review has been completed, the NMC will to identify what action is necessary and agree an implementation plan.</li> </ul>	<p>process</p> <ul style="list-style-type: none"> <li>• The oldest cases have a forecasted date for completion and a plan for managing these cases is in place and being monitored</li> <li>• Appropriate processes and guidance are in place for case progression</li> <li>• Correspondence and communications have been reviewed</li> <li>• All new correspondence meet standards for plain English</li> <li>• Correspondence is clear, informative, not discouraging, correct and where appropriate, sensitive</li> <li>• Correspondence/voicemails are responded to in a timely fashion and are responded to appropriately</li> <li>• The development of an effective SMART implementation plan</li> <li>• Milestones due by the time of this review have been completed.</li> </ul>
<p>To put in place an appraisal system for committee members by 1 January 2009. This will include ensuring that those sitting as 'due regard' committee members are able to demonstrate their knowledge of contemporary practice. This should help address the issue of extending the terms of office of only appropriate committee members.</p>	<ul style="list-style-type: none"> <li>• Appraisal system has been developed</li> <li>• Appraisal system is in place and it enables due regard committee members to demonstrate their knowledge of contemporary practice</li> <li>• A system is in place for determining that only competent committee members should have their terms of office extended</li> <li>• Improvement in the quality of decision making and recorded decisions.</li> </ul>
<p>To implement an interim electronic case management system in fitness to practise by 31 January 2009.</p>	<ul style="list-style-type: none"> <li>• Electronic case management system is implemented and fully functioning</li> <li>• All staff have been trained on the case management system</li> <li>• Checks are in place to ensure that the system is working effectively and staff are using the system properly</li> <li>• Improvements to the case handling process, eg update letters sent on time, all papers correctly bundled and sent to the panel, all papers correctly stored all the system, all papers sent to CHRE on time.</li> </ul>
<p>To improve the quality and comprehensiveness of information and statistics provided by the executive to the Council on</p>	<ul style="list-style-type: none"> <li>• Statistics and information provided to the Council have been reviewed</li> <li>• Statistics and information provided to the Council enable them to fully understand</li> </ul>

<p>fitness to practise cases.</p>	<p>the performance of the NMC at each stage of the fitness to practise process.</p>
<p>The need to develop comprehensive guidance for staff and investigating committee members on how to handle all aspects of cases. This should include guidance on matters such as:</p> <ul style="list-style-type: none"> <li>• How to gather sufficient information</li> <li>• How to assess information</li> <li>• The criteria to use when reaching decisions</li> <li>• The use and full description of delegated powers.</li> </ul>	<ul style="list-style-type: none"> <li>• The guidance available for staff and investigating committee on how to handle all aspects of cases has been reviewed</li> <li>• A plan has been developed to draft relevant new guidance</li> <li>• Guidance has been developed or is significantly close to being completed</li> <li>• Plans are either in place to train staff on all new guidance and processes or training has already been carried out</li> <li>• Plans are in place to review the use of the guidance to ensure that staff are using it correctly and that it leads to decisions that protect the public</li> <li>• An improvement in decision making e.g. a reduction in the number of appeals and CHRE learning points.</li> </ul>
<p>The need to create a mechanism for staff to have access to expert advice on acceptable nursing and midwifery practice. This might be used when deciding whether to close a case under delegated authority, particularly in cases involving complex clinical issues or when preparing a brief for an investigating committee.</p>	<ul style="list-style-type: none"> <li>• A review has been carried out to establish the appropriate mechanism to enable staff to have access to expert advice on acceptable nursing and midwifery practice</li> <li>• Staff have been trained or plans are in place to train staff on how to use the mechanism</li> <li>• The mechanism is in use or is significantly close to being in place</li> <li>• Feedback is collected on the effectiveness of the mechanism and used to improve the process</li> <li>• The expert advice has improved the quality of the decision making.</li> </ul>
<p>Reviewing how it handles information, such as drink-driving convictions, that may suggest substance misuse problems by registrants. This includes exploring whether there is a need to seek medical examinations of registrants in more cases. We recommend that the NMC consult the General Medical Council and other regulators on how it handles such cases.</p>	<ul style="list-style-type: none"> <li>• A review of how it handles information such as drink-driving convictions that may suggest substance misuse by registrants has been carried out</li> <li>• As part of the review, the NMC has consulted with the General Medical Council and other regulators on they handle such cases.</li> <li>• Staff have been trained or plans are in place to train staff on how to use the mechanism</li> <li>• The mechanism is in use or is significantly close to being in place</li> <li>• Feedback is collected on the effectiveness of the mechanism and used to improve the process</li> </ul>

	<ul style="list-style-type: none"> <li>The mechanism has improved the decision making.</li> </ul>
<p>Considering ways to improve information gathering from statutory bodies and employers, by building relationships, and by understanding and explaining its own statutory powers of investigation.</p>	<ul style="list-style-type: none"> <li>A review has taken place to improve information gathering</li> <li>A plan has been developed to improve information gathering</li> <li>Some activity to improve relationships and information gathering has taken place</li> <li>Evidence of improved decision making.</li> </ul>
<p>Poor recording of decision making.</p>	<ul style="list-style-type: none"> <li>There is clear guidance on what and how decisions should be recorded</li> <li>Staff have been trained on how to use the guidance</li> <li>There are checks in place to ensure that all decisions are recorded fully</li> <li>All decisions are fully recorded.</li> </ul>
<p>Poor case file management including:</p> <ul style="list-style-type: none"> <li>Automatically returning all case documentation including the original complaint letter following closure</li> <li>Ensuring the case file contains all materials associated with the case including an audit trail of decision making.</li> </ul>	<ul style="list-style-type: none"> <li>There is clear guidance about what documentation should be kept, stored on file and returned</li> <li>There is guidance on what the case file should contain</li> <li>Staff have been trained on good case file management</li> <li>There are case file audits to check that there is good case file management</li> <li>There is good case file management.</li> </ul>
<p>Poor communication with all parties. Particular areas to be addressed were:</p> <ul style="list-style-type: none"> <li>Explanation of the process to complainants</li> <li>The use and content of standard letters</li> <li>Communicating decisions to complainants</li> <li>Quoting of statutory powers in enquiries where appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>Correspondence and communications have been reviewed</li> <li>All new correspondence meet standards for plain English</li> <li>Correspondence is clear, informative, not discouraging, correct and where appropriate, sensitive</li> <li>Correspondence/voicemails are responded to in a timely fashion and are responded to appropriately.</li> </ul>
<p>Inadequate processes for prioritising serious cases.</p>	<ul style="list-style-type: none"> <li>A review of the risk assessment processes and oversight of cases has taken place.</li> <li>A review of the cases in the initial stages of the fitness to practise process has taken place to ensure that all cases have been appropriately risk assessed and all serious cases prioritised. This is also an ongoing action</li> <li>New processes are in place</li> <li>Staff have been trained in the new process.</li> </ul>

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