



Annual review of performance 2015/16

# General Dental Council



## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care<sup>1</sup> promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

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

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

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

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

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

<sup>2</sup> *Right-touch regulation revised (October 2015)*. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

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## About the General Dental Council

The General Dental Council (the GDC) regulates the dental professions (dentists, dental nurses, dental hygienists, dental technicians, dental therapists, orthodontic therapists and clinical dental technicians) in the United Kingdom. Its work includes:

- Setting and maintaining standards of practice and conduct
- Maintaining a register of qualified professionals. Only those appropriately registered with the GDC may practise dentistry in the UK
- Assuring the quality of dental pre-registration education and training
- Requiring dental professionals to keep their skills up to date through continuing professional development
- Taking action to restrict or remove from practice registrants who are not considered fit to practise.

As at 30 June 2016, the GDC was responsible for a register of 110,797 dental professionals. Its Annual Retention Fee is £890 for dentists and £116 for dental care professionals.



# At a glance

Annual review of performance

Regulator reviewed: **General Dental Council**

## Standards of good regulation

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### Core functions

**Met**

Guidance and Standards

**4/4**

Education and Training

**4/4**

Registration

**6/6**

Fitness to Practise

**7/10**

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# 1. The annual performance review

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

## The Standards of Good Regulation

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

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

- months. We use this to decide the type of performance review we should carry out.
- 1.7 We will recommend that additional review of their performance is unnecessary if:
- We identify no significant changes to the regulator’s practices, processes or policies during the performance review period; and
  - None of the information available to us indicates any concerns about the regulator’s performance that we wish to explore in more detail.
- 1.8 We will recommend that we ask the regulator for more information if:
- There have been one or more significant changes to a regulator’s practices, processes or policies during the performance review period; but
  - None of the information we have indicates any concerns or raises any queries about the regulator’s performance that we wish to explore in more detail.
- 1.9 This will allow us to assess the reasons for the change(s) and the expected or actual impact of the change(s) before we finalise our performance review report. If the further information provided by the regulator raises concerns, we reserve the right to make a further recommendation to the panel that a ‘targeted’ or ‘detailed’ review is necessary.
- 1.10 We will recommend that a ‘targeted’ or ‘detailed’ performance review is undertaken if we consider that there are aspects of a regulator’s performance that we wish to examine in more detail because the information we have (or the absence of information) raises concerns about the regulator’s performance.
- A ‘targeted’ review may be carried out when we consider that the information we have indicates a concern about the regulator’s performance in relation to a small number of specific Standards, usually all falling within the same performance review area
  - A ‘detailed’ review may be carried out when we consider that the information we have indicates a concern about the regulator’s performance across several Standards, particularly where they span more than one area.
- 1.11 We have written a guide to our performance review process, which can be found on our website [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

## 2. What we found – our decision

- 2.1 During July 2016 we carried out an initial review of the GDC's performance from 1 April 2015 to 30 June 2016.<sup>4</sup> Our review included an analysis of the following:
- Council papers, including performance reports and updates, committee reports and meeting minutes
  - Policy, guidance and consultation documents
  - The GDC's response to the report of our special investigation, *A report on the investigation into the General Dental Council's handling of a whistleblower's disclosure about the Investigating Committee* (see paragraphs 2.8 to 2.17 below)
  - Statistical performance dataset (see paragraphs 2.18 to 2.20 below)
  - Third party feedback
  - A check of the GDC register
  - Information available to us through our review of final fitness to practise decisions under the Section 29 process.<sup>5</sup>
- 2.2 As a result of this assessment, we recommended a targeted review to look at the GDC's performance against Standards 2 and 3 for Registration and Standards 4, 5, 6, 7, 8, 9 and 10 for Fitness to Practise. The panel considered that Standard 9 for Fitness to Practise was met on the basis of the information available at that point. It agreed that a further review of the other Standards was required.
- 2.3 We obtained further information from the GDC relating to these Standards, and carried out a detailed consideration of that information. Our internal panel of decision-makers decided on 15 September 2016 that all but three of the Standards were met. The reasons for this are set out in the following sections of the report.

### Summary of the GDC's performance

- 2.4 For 2015/16 we have concluded that the GDC:
- Met all of the *Standards of Good Regulation* for Guidance and Standards
  - Met all of the *Standards of Good Regulation* for Education and Training
  - Met all of the *Standards of Good Regulation* for Registration

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<sup>4</sup> This year's review covered a longer period than usual due to the change in our performance review process.

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

- Met seven of the ten *Standards of Good Regulation* for Fitness to Practise. The GDC did not meet Standards 4, 8 and 10.

- 2.5 We are pleased to report that the GDC's performance this year represents a significant improvement since last year. In the 2014/15 performance review, the GDC did not meet one of the Standards for Registration, and it only fully met one of the Standards for Fitness to Practise. Of the other Standards for Fitness to Practise, its performance against one was inconsistent, and we were unable to take a view on whether it had met two others (see paragraph 2.8); it did not meet the remaining six. This was a decline in performance from the 2013/14 performance review.
- 2.6 The GDC has made clear in this performance review year that it understands that there is considerable work to do for it to resolve the issues that have led to it failing to meet Standards in previous reviews. The GDC has engaged positively with this task and, as a result, has demonstrated that it has made significant progress this year.
- 2.7 One of the issues we reported in last year's review was the challenge faced by the GDC in re-engaging with the dental profession following the increase in the Annual Retention Fee in 2015 and concerns expressed by the profession about the GDC's approach to fitness to practise. We encouraged the GDC to be clear and transparent in reporting its performance to Council, and in the way it recorded Council decisions. We are pleased to note in 2015/16 a significant improvement in the amount and quality of information made available to professionals and the public about the GDC's work and how it has made decisions through the publication of Council papers. We also received positive feedback from professional organisations about the way the GDC has consulted and engaged with them this year.

### Special investigation report and response

- 2.8 We could not determine whether the GDC had met Standards 3 and 5 for Fitness to Practise in our last performance review. This was because we were undertaking an investigation which was relevant to those Standards. A whistleblower contacted us in 2013 to raise concerns about the way the GDC's Investigating Committee (the IC)<sup>6</sup> worked. The whistleblower also said that the GDC treated them unfairly after they made their disclosure. We published our investigation report in December 2015.
- 2.9 Our investigation found numerous failings:
- There were failings in the IC processes and support during 2013, which jeopardised the IC's independence and infringed upon the appropriate separation of powers within a regulator. The GDC at the time had not recognised this risk and had not done enough to mitigate it when it was identified
  - The failings in the IC processes arose because those designing them had little relevant experience, and because of a lack of effective support and

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<sup>6</sup> The Investigating Committee is a statutory committee of the GDC. Its role is to consider allegations of impaired fitness to practise and decide whether such allegations should be referred for a hearing.

feedback mechanisms. This was despite the issues being similar to those we had investigated in a previous report in 2013

- The GDC at the time had missed opportunities to identify the developing problems
- Oversight of these issues by the Council and the Audit & Risk Committee<sup>7</sup> was inadequate. We also had serious concerns about the way information was reported to the Council and committees
- There were serious flaws in the GDC's handling of the whistleblower's disclosure and their subsequent complaint about the way they were treated. The GDC's whistleblowing policy was inadequate.

2.10 Our report noted that the GDC had taken some action to address these issues. The GDC had instructed a law firm, Penningtons, to review how its IC processes worked. Penningtons' report identified a number of '*objectionable practices*' by GDC staff. It said that these practices could have compromised the independence of the IC, although it did not find that this had actually happened in any of the cases it reviewed. Penningtons made a number of recommendations for improvement and subsequently carried out a further review, to check that its recommendations had been implemented. It reported that '*the objectionable practices had ceased*'. However, our report concluded that because of the seriousness of the concerns we had identified, the GDC needed to do more to demonstrate that it had effectively addressed them so that they would not recur.

2.11 The GDC drafted an action plan in response to our report. In January 2016, its Council discussed the investigation report and the draft action plan. The Council approved the action plan, after it had sought further information about the work already undertaken and the way progress and outcomes would be reported.

2.12 The GDC published its action plan in February 2016. It comprised around 30 projects to address our findings. The projects included: training for staff, Council and committee members; revisions to policies, including new policies and guidance around whistleblowing; and improvements to staff induction arrangements. Our Board considered the action plan, and we wrote to the GDC to say that we thought that the action plan was likely to be effective in addressing the concerns outlined in our report.

2.13 The action plan involved input from other organisations. The GDC instructed an independent review of a further sample of IC decisions to consider if there were any instances where the IC's independence was compromised. It worked with Public Concern at Work, a whistleblowing charity, in developing its updated guidance and policies around whistleblowing. It arranged for the National Audit Office to review the effectiveness of the Audit & Risk Committee, in advance of a wider governance review to take place in 2017.

2.14 The GDC's Council regularly monitors progress against the action plan. It receives updates at its meetings. The Audit & Risk Committee also considers

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<sup>7</sup> The Audit & Risk Committee is a standing committee of the GDC. Its responsibilities include monitoring the GDC's governance and internal control and risk management systems.

the plan's progress at each of its meetings. Papers presented to the Council are published on the GDC's website. This means that registrants and the public can find information about the GDC's action plan and the progress it has made. The GDC has kept its action plan under active consideration. It has continued to identify further activities to help achieve the plan's overall objectives, and has revised the plan along the way to include them. By July 2016 the action plan included 49 initiatives.

- 2.15 We have considered the progress the GDC has made against its action plan. We note that the action plan is still at a relatively early stage. Work on some of the projects has not yet begun. Others are in progress but are not scheduled to be complete yet. Furthermore, as the GDC has noted, evaluating the success of some of the activities in the plan will only be possible over the longer term. This is particularly true of the projects aiming to bring about change in the organisational culture. For example, in May 2016, the GDC held workshops with staff to develop a set of staff behaviours that it would incorporate into the appraisal process; it expects to be able to gauge the impact of this project by mid-2017 and into 2018.
- 2.16 Reports to the GDC's Council show that some projects in the action plan have fallen behind schedule. However, the reports identified the cause of the delay in each case and, where appropriate, set new completion dates. Some completion dates changed because the scope and aims of the project changed. None of the projects were identified as having serious problems which might prevent them from being completed successfully.
- 2.17 The GDC's Council has arrangements in place to oversee progress against the action plan. We have seen that the Council has appropriately challenged GDC staff to develop clear and robust objectives and ways to measure performance against them. We have seen no evidence to change our initial view that the GDC's action plan is an appropriate way to address the issues identified in our report. However, because many of the projects were not scheduled to be completed within the period of this review, we do not consider that there is enough information available at this stage for us to draw a conclusion about the impact of the plan. We will continue to monitor how the action plan is implemented, and the outcomes from it, through our performance review process.

### **Key comparators**

- 2.18 We have identified and agreed with all of the regulators the numerical data that they should collate, calculate and provide to us, and what data we think provide a helpful context about each regulator's performance. Below are the items of data identified as being key comparators across the Standards.
- 2.19 We expect to report on these comparators both in each regulator's performance review and in our overarching reports on performance across the sector. We will compare the regulators' performance against these comparators where we consider it appropriate to do so.

## 2.20

Set out below are the comparator data provided by the GDC for the period under review.

|   | Comparator   | April 2015-<br>March 2016         | April-June<br>2016               |
|---|--|-----------------------------------|----------------------------------|
| 1 | The number of registration appeals concluded, where no new information was presented, that were upheld   | 0                                 | 0                                |
| 2 | Median time (in working days) taken to process initial registration applications for <ul style="list-style-type: none"> <li>• UK graduates</li> <li>• EU (non-UK) graduates</li> <li>• International (non-EU) graduates</li> </ul>   | 15<br>16<br>70                    | 14<br>27<br>51                   |
| 3 | Time from receipt of initial complaint to the final Investigating Committee/Case Examiner decision <ul style="list-style-type: none"> <li>• Median</li> <li>• Longest case</li> <li>• Shortest case</li> </ul>   | 40 weeks<br>336 weeks<br>8 weeks  | 39 weeks<br>193 weeks<br>9 weeks |
| 4 | Time from receipt of initial complaint to final fitness to practise hearing <ul style="list-style-type: none"> <li>• Median</li> <li>• Longest case</li> <li>• Shortest case</li> </ul>  | 94 weeks<br>333 weeks<br>34 weeks | Data not available <sup>8</sup>  |
| 5 | Median time to an interim order decision from receipt of complaint   | 35.5 weeks                        | 25 weeks                         |
| 6 | Outcomes of the Authority's appeals against final fitness to practise decisions <ul style="list-style-type: none"> <li>• Dismissed</li> <li>• Upheld and outcome substituted</li> <li>• Upheld and case remitted to regulator for re-hearing</li> <li>• Settled by consent</li> <li>• Withdrawn</li> </ul> | 0<br>0<br>0<br>0<br>0             | 1<br>0<br>1<br>0<br>0            |

<sup>8</sup> We collect this data annually rather than quarterly.

|   |  |   |                                 |
|---|--|---|---------------------------------|
| 7 | Number of data breaches reported to the Information Commissioner | 1 | 2                               |
| 8 | Number of successful judicial review applications                | 0 | Data not available <sup>9</sup> |

### 3. Guidance and Standards

- 3.1 The GDC has met all of the *Standards of Good Regulation* for Guidance and Standards during 2015/16. Examples of how it has demonstrated this are set out below each individual Standard.

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

- 3.2 The GDC's *Standards for the Dental Team* came into effect in September 2013. We have not seen any evidence that it needs revision.

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

- 3.3 The GDC published several pieces of guidance to help registrants understand their obligations around specific issues, including guidance about new legal requirements. The GDC changed its rules on indemnity after a change in the law enabled it to require registrants, and those applying for registration, to confirm that they have appropriate indemnity cover. The GDC sent an update about the new requirements to its registrants, and published further information on its website. It published updated guidance for registrants in June 2016.
- 3.4 Another change in the law gave the GDC the power to require those applying for registration to demonstrate that their knowledge of English is sufficient to allow them to practise safely. In March 2016 it published guidance about the new requirements and the types of evidence applicants could provide to show they met them. In June 2016 it also published updated guidance about the use of social media, including links to the relevant standards and information about the appropriate channels for raising concerns.
- 3.5 In our last review we noted that the GDC had, with seven other regulators we oversee, signed up to a joint statement on the professional duty of candour. The GDC has since consulted on and, in July 2016, published guidance entitled *Being open and honest with patients when something goes wrong*. This guidance explains what the duty of candour means in practice for registrants, and what they may need to consider in order to meet a patient's needs.

<sup>9</sup> We collect this data annually rather than quarterly.

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

- 3.6 The GDC continues to demonstrate that it engages with stakeholders in developing and revising its guidance and standards. It carried out several public consultation exercises during the performance review period. As noted above, this included a public consultation as part of the development of the guidance on candour. We have seen that the GDC actively considered the responses to the consultation and revised the draft guidance accordingly. It engaged with professional representative organisations in developing the guidance, and held workshops with members of the public to understand their expectations from the guidance. The published guidance also explained about the different legal framework applying to the statutory duty of candour in each of the UK's four countries.

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

- 3.7 The GDC continues to publish its standards and guidance on its website. It continues to offer information leaflets for patients and service users. Some publications are available in different formats and languages on request. The website has features to improve accessibility.
- 3.8 The GDC's *Focus on Standards* microsite continues to make further information about the standards available to registrants. The site is written in plain English and designed to be accessible on mobile devices. It includes FAQs and case studies to illustrate the requirements of the standards.

## 4. Education and Training

- 4.1 The GDC has met all of the *Standards of Good Regulation* for Education and Training during 2015/16. Examples of how it has demonstrated this are set out below each individual Standard.

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

- 4.2 In our last report, we noted that the GDC had reviewed its *Standards for Education*. These are the standards and requirements which education providers must meet in the training programmes they offer, to enable their

students to meet the GDC's registration requirements. It published the revised version of the standards in May 2015. The standards cover three areas: patient protection; quality evaluation and review; and student assessment. The document emphasises that patient safety is paramount.

- 4.3 The GDC also published a revised version of the learning outcomes for students. Learning outcomes are the knowledge and skills that a student must have gained by the end of their training course in order to be registered. The document *Preparing for Practice*, published in June 2015, sets out for each of the GDC's seven regulated professions the skills and knowledge a student must acquire to practise as a safe beginner.
- 4.4 *Standards for Education* and *Preparing for Practice* both draw clear links between the requirements for training and the standards for practising registrants. *Preparing for Practice* includes signposting to specific guidance and standards for registrants to explain the relevance of some of the learning outcomes.

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

- 4.5 In 2015, the GDC published its second *Annual review of education*. This described its quality assurance activity in 2013/14. The annual review highlighted good practice by training providers, and recommended further action on areas where training providers frequently found it difficult to satisfy the requirements. Sharing learning in this way demonstrates a focus on ensuring the training providers can equip students to meet the GDC's standards.
- 4.6 The review also included feedback from training providers about the quality assurance process. The GDC said that it would make some changes to the process based on the feedback it received. These included changing the monitoring cycle to follow the academic year rather than the calendar year, and giving providers guidance about the amount of information and evidence they should supply for the GDC's annual monitoring exercise.
- 4.7 The GDC intends to publish in spring 2017 its third *Annual review of education*, which will cover its quality assurance activity in 2014/15 and 2015/16.

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

- 4.8 The GDC continues to act on concerns identified by its quality assurance process. It published reports of two re-inspections of dental training programmes in 2015. In both cases, the previous year's inspection had identified concerns that the training provider needed to address. The re-inspections were undertaken to establish whether the providers had taken appropriate remedial action.

- 4.9 The re-inspections found that both providers had made significant improvements since the previous inspections. The inspection team was satisfied that the first provider had adequately addressed the concerns. While the second provider had engaged positively with the inspection process, and had made marked progress, the inspection team considered that it would take time for the work underway to show sustained improvements. Therefore it scheduled a further re-inspection for 2015/16.

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

- 4.10 The GDC continues to publish on its website information about the approved training programmes. The website also features inspection reports and further information for training providers about the approval process. Information about historic qualifications is also available.

## 5. Registration

- 5.1 As we set out in Section 2, we identified concerns about the GDC's performance against Standards 2 and 3 and carried out a targeted review. The reasons for this, and what we found, are set out under the relevant Standards below. Following the review we concluded that both these Standards were met. Therefore the GDC has met all of the *Standards of Good Regulation* for Registration in 2015/16.

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

- 5.2 We have not seen any information which suggests that the GDC has added to its register anyone who has not met the registration requirements. Therefore this Standard continues to be met.

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

- 5.3 We identified a potential concern in the annual data we received from the GDC. The data showed an increase in the number of registration appeals since last year. It also appeared that several appeals had been granted without any new information being provided, which might indicate flaws in the original decisions. When we asked the GDC about this, it clarified that, in fact, there were no appeals granted without further information being provided. It said that in all five successful registration appeals, the Registration Appeals Committee received evidence which was not available when the original decision to refuse registration was made. It explained that, in order to submit an appeal, an appellant has to state the grounds on which they are appealing against a decision not to register them. They may also provide further supporting documentation. The GDC explained that when it receives a notice of appeal, its Registration Team considers whether there is new information which might warrant considering the application again. It

explained that during our review period there had been six cases where applications had been considered again in this way and the applicant registered without the need for an appeal hearing.

- 5.4 The GDC's further explanation addressed our initial concern about possibly flawed initial registration decisions. However, we wanted to understand the process it was using. It appeared from the GDC's explanation that the Registration Team was in effect resolving some appeals, when only its Registration Appeals Committee has the power to do this. Therefore we carried out a targeted review of this Standard, and sought further information from the GDC.
- 5.5 The GDC confirmed that the Registration Team assesses the information provided with a notice of appeal to decide whether, had that information been available when the application was considered, it might have led to a different decision about registration. If so, it contacts the appellant to explain that the application can be considered afresh in light of the new information if they withdraw the appeal. If the appellant agrees, the application, with the new information, will be considered and a new decision about registration made, with a new right of appeal if the application is refused. If the appellant chooses not to withdraw their appeal, it will proceed as normal and be determined by the Registration Appeals Committee.
- 5.6 Based on the further information the GDC has provided, we are satisfied that its registration appeals process is consistent with its legal powers. The option to carry out a fresh consideration of an application instead of an appeal is more cost-effective for the GDC and quicker for the applicant. Thus it is a proportionate way for the GDC to deal with the situation where an appellant provides further information which might address the shortcomings identified in their original application for registration. But the GDC only takes this approach where an appellant has agreed to withdraw their appeal. Therefore the outcome of the appeal is one allowed for by the GDC's rules, which permit an appellant to withdraw their appeal at any time before it is determined.
- 5.7 The GDC further explained that it did not consider there to be a single cause for the increase in registration appeals. It told us that it reviews all appeal determinations to see what learning it can take from them. The numbers remain small: there were 22 appeals during this review period, compared with 10 in the previous year. We have not seen any evidence to show that there are problems in the way the GDC makes registration decisions. Accordingly, we have concluded that this Standard is met.

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

- 5.8 In our 2014/15 review, we concluded that the GDC did not meet this Standard due to errors in publishing fitness to practise outcomes on the register and allowing lapsed registrants to remain on the register. These

errors came to light as part of our check of the register or in our 2014 audit,<sup>10</sup> the GDC also told us about other errors.

- 5.9 We found no errors during this year's register check. The GDC told us about action it took during the year to ensure that its register is accurate. This included a project (completed in January 2016) to improve the accuracy of the sanctions published on the register. It transferred responsibility for updating hearing outcomes to a single team, and introduced additional safeguards. These included additional mandatory checks by staff before and after a sanction is published. We carried out a targeted review to check whether any errors were identified by the GDC during the period under review.
- 5.10 The GDC told us that when it made changes to its registration database to support the new process, it carried out a full audit of all live sanctions to ensure they were properly displayed on the online register. The audit checked over 450 cases, and only two were incomplete. These two cases showed that the registrants in question had conditions on their practice, but the conditions themselves were not displayed. This was due to a data transfer error. The GDC told us that within three hours of the database update it corrected these entries so that the details of the conditions were available on the online register. In our view, this was a minor issue arising from the technical changes the GDC made. It affected a very small proportion of cases for a short period of time and was promptly rectified.
- 5.11 We have taken into account the further information the GDC has provided about the action taken to ensure its online register is accurate. We have not seen any evidence of errors in the register this year. Accordingly, we conclude that this Standard is met.

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

- 5.12 The register remains prominently displayed on the GDC's website. The GDC uses social media to remind the public of the importance of checking that a dental professional is registered.

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

- 5.13 The GDC continues to take action against unregistered individuals who practise dentistry. During 2015, it completed more than 30 prosecutions and sent over 600 letters warning individuals not to practise dentistry without being registered. Most of this related to illegal tooth whitening. The GDC took steps to raise awareness about this issue through broadcast and social

<sup>10</sup> From time to time we carry out audits of a sample of cases that the regulators have closed at the initial stages of the fitness to practise process. These are cases that have not proceeded to a final hearing. We last audited the GDC in 2014. A copy of our audit report is available on request.

media, and by liaising with relevant organisations, such as trading standards services and beauty industry event organisers.

- 5.14 The GDC also announced that it had worked with the police to prosecute an unregistered dentist<sup>11</sup> who had used the identity of a former colleague to get a job as a dentist. The individual was found guilty of fraud and five counts of assault occasioning actual bodily harm. He received a five-and-a-half year prison sentence. The assault charges arose from harm he had caused to patients by incompetent treatment.

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

- 5.15 In our last report, we explained that the GDC was working towards implementing an enhanced continuing professional development (CPD) scheme in 2017. The enhanced CPD scheme would change how dental professionals are required to show that they remain fit to practise. This year the GDC has run a pilot scheme, in which over 1,000 registrants took part. We note that the GDC continued to work to the timetable it told us about last year.

## 6. Fitness to Practise

- 6.1 As we set out in Section 2, we identified concerns about the GDC’s performance against Standards 4, 5, 6, 7, 8 and 10, and carried out a targeted review. The reasons for this, and what we found, are set out under the relevant Standards below. Following the review we concluded that Standards 5, 6 and 7 were met but Standards 4, 8 and 10 were not met.

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

- 6.2 The GDC continues to receive concerns about registrants’ fitness to practise from a wide range of sources. About two thirds of the cases it considered during the review period came from concerns raised by patients and service users. Over 250 cases were opened as a result of concerns identified by the GDC or another regulator. We have seen no evidence to suggest people cannot raise concerns with the GDC.

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

- 6.3 Although the GDC met this Standard last year, we expressed some concern about its information-sharing arrangements, particularly with overseas regulators. We concluded that its performance against the Standard was inconsistent. This year, the GDC has provided us with details of the work it

<sup>11</sup> The individual had qualified as a dentist abroad but was not registered to practise in the UK.

has undertaken to establish appropriate arrangements with relevant organisations in the sector. It has agreed information-sharing arrangements and memoranda of understanding with organisations such as Healthcare Improvement Scotland, the NHS Practitioner Health Programme and the Scottish Public Services Ombudsman. It now has information-sharing arrangements in place with relevant organisations across the UK. The GDC and the Care Quality Commission (CQC) have set up a Joint Working Group to agree further guidance and joint working protocols.

- 6.4 In January 2016, the GDC implemented the European Alert Mechanism. This is a system whereby regulators of healthcare professions across Europe share information about professionals who might present a risk to the public (for example, because their fitness to practise is impaired). The GDC said that it has issued over 200 European alerts. It has received around 20 alerts about professionals currently on its register, of which one led to a referral to fitness to practise proceedings.
- 6.5 The GDC told us that it has made changes to its internal processes to ensure that information is shared appropriately. Its staff have received further training, with contributions from representatives of the CQC and the Medicines and Healthcare products Regulatory Agency. It has updated its guidance and standard operating procedures for staff about information-sharing. When a concern is received about a registrant's fitness to practise, the GDC's process now requires staff to check the NHS England Performers List<sup>12</sup> and check with any relevant NHS contacts whether there are any concerns about the registrant's fitness to practise. The GDC liaised regularly with NHS commissioning staff in London and piloted a similar arrangement with Lothian Health Board, with plans to roll it out across the rest of the Scottish Health Boards.
- 6.6 We identified concerns in our 2013 and 2014 audits and said in our last report that we would follow up to see what action the GDC had taken to ensure it shares information with overseas regulators in a consistent way. The GDC told us it has updated its casework guidance for staff. We note that it has published guidance about the factors the Registrar will consider when deciding whether or not to grant voluntary removal. This guidance makes it clear that the GDC will share information with overseas regulators where it deems it appropriate.
- 6.7 We have taken into account the GDC's progress in developing information-sharing agreements and updating guidance for staff. We have seen no evidence of failures to share information appropriately with other regulators. Therefore we have concluded that this Standard is met.

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<sup>12</sup> This is a list of the primary care professionals (GPs, dentists and opticians) who hold a contract to provide NHS services in England.

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

- 6.8 We were unable to determine whether the GDC had met this Standard last year, because our special investigation was still in progress (see paragraph 2.8). The investigation was relevant to this Standard because the matters we were investigating included concerns about the IC, which decides whether there is a case to answer.<sup>13</sup>
- 6.9 We explained in paragraphs 2.8 to 2.17 above the findings of our investigation and how the GDC has responded to it. The Penningtons report commissioned by the GDC concluded that the objectionable staff practices around the IC had ceased by the end of 2014. We have not seen any evidence to the contrary. Therefore we have concluded that this Standard is met this year.
- 6.10 The GDC's process for deciding whether there is a case to answer is about to change. It is introducing case examiners, who will take over much of the IC's work. This is a significant change to the GDC's fitness to practise process. We will therefore need to look carefully at its impact in our next performance review.
- 6.11 The GDC recently announced another initiative to change how it approaches some complaints. It said that, following a pilot scheme with NHS England, when the GDC receives '*low-level concerns*' about NHS dental care, it will refer them to the NHS for resolution. We will seek to understand from the GDC how it assures itself that it only refers cases that do not need to be considered as fitness to practise allegations, and how it ensures that information about potential risks to the public is captured.

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

- 6.12 The GDC has not met this Standard this year. We identified concerns about how long the GDC was taking to make a decision about an interim order once it received a complaint.<sup>14</sup> We had similar concerns which contributed to the GDC not meeting this Standard in our last two performance reviews.

<sup>13</sup> 'Case to answer' is the test that decision-makers apply to determine whether an allegation should be referred for a final fitness to practise hearing. This test is set out in the legislation of the regulators we oversee but the terminology differs; the GDC's legislation says that its IC must determine whether the allegation 'ought to be considered' at a final hearing. In common with the majority of the regulators we oversee, the GDC's IC uses what is called the 'realistic prospect' test to reach this determination. This means that a case will not be referred for a hearing unless there is a 'realistic prospect' that the panel at such a hearing would find the facts of the allegation proved, and also a 'realistic prospect' that the panel would find the registrant's fitness to practise to be impaired.

<sup>14</sup> An interim order restricts a registrant's ability to practise while their case is being investigated. An order is only imposed if the registrant is assessed as being a potential or actual risk to themselves or the public whilst the investigation is ongoing.

- 6.13 We ask the regulators to provide two statistical measures of their work around interim orders. The *median time from receipt of a complaint to the interim order decision* indicates how well the regulator's initial risk assessment process is working: whether it is risk assessing cases quickly on receipt, identifying potential risks and prioritising higher risk cases so that further information can be obtained quickly. The *median time from receipt of information indicating the need for an interim order to the decision* indicates how quickly the regulator is acting once the need for an interim order application is identified.
- 6.14 In 2013/14, we found that the GDC was taking too long to make interim order decisions from receipt of the complaint (45 weeks) and we were concerned about failures to carry out and record risk assessments. In 2014/15, we found some limited evidence of improvements, but not enough to meet the Standard. Our 2014 audit found improvements in the recording of risk assessments, but we still had concerns about the adequacy of the reasons given, and the median time taken to make decisions remained too long, at 39.3 weeks from receipt of the complaint.
- 6.15 The annual data we received from the GDC for April 2015 to March 2016 showed that the median time from receipt of a complaint to an interim order decision in that period was 35.5 weeks. That was only a slight improvement from the previous year, and significantly longer than the median time reported by any other regulator we oversee. The median time from receipt of information indicating the need for an interim order was within the range of the other regulators' performance, at around three weeks. Because of our concerns, we carried out a targeted review of this Standard.
- 6.16 We requested further information from the GDC, and it provided details of changes to its interim orders process. It explained that it has updated its guidance to triage staff, and has provided further training to all casework staff, particularly around risk assessments. A lawyer now works alongside its triage team; the lawyer's role is to assess cases at the triage stage to identify where an interim order may be necessary, and to escalate cases where appropriate to the Registrar, who can in turn expedite referral directly to the Interim Orders Committee.
- 6.17 Several of these changes took effect in April 2016. This means that they were in place for only one of the five quarters covered by our review. The median time taken by the GDC to make interim order decisions during that quarter was 25 weeks from receipt. This is a marked improvement on the time taken during the four quarters from April 2015 to March 2016, although it is still longer than any other regulator we oversee.
- 6.18 The GDC considers that its revised interim orders process is working effectively. It said that it is often not apparent whether there is a risk to the public when it receives a case; in many cases, the information about risk only comes to light from further enquiries. Its view was that the time taken to make interim order decisions could most accurately be measured from the point at which there was information to show that there was a risk. However, as explained above, we consider that both measures of interim order timescales are relevant in assessing performance against this Standard.

- 6.19 Based on the information the GDC has provided, we consider that its process for risk-assessing and prioritising cases is now more robust. We have also noted the significant improvement in the timeliness of interim order decisions since the new process was introduced. But for the great majority of the period covered by this review, the GDC was still taking too long to make decisions about interim orders. Taking account of all the evidence for the whole review period, we have concluded that this Standard is not met this year. As part of our next performance review, we will consider whether there is evidence that the new process has led to sustained improvement in the timeliness of interim order decisions.

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

- 6.20 We were unable to determine whether the GDC had met this Standard last year, because our special investigation was still in progress (see paragraph 2.8). The investigation was relevant to this Standard because the matters we were investigating included concerns about the fitness to practise process being operated by the GDC. We explained in paragraphs 2.8 to 2.17 above the findings of our investigation and how the GDC has responded to it. The Penningtons report commissioned by the GDC concluded that the objectionable staff practices around the IC had ceased by the end of 2014. We have not seen any evidence to the contrary.
- 6.21 However, we carried out a targeted review of this Standard because we had identified a number of concerns about aspects of the fitness to practise process being operated by the GDC. We wrote to the GDC to share learning points in cases where, although we did not think the outcome was insufficient to protect the public, we were concerned about the extent to which the prosecution and hearing process had been focused on public protection. These concerns included: the GDC's approach to prosecuting failures to hold indemnity insurance; the drafting of allegations; the legal advice provided to final fitness to practise panels; and the GDC's use of expert witnesses. We wanted to explore whether these concerns – individually or collectively – indicated that the fitness to practise process was not focused on public protection.
- 6.22 The GDC engaged positively with the learning points we raised. It said it would incorporate the lessons learnt into further training for staff and fitness to practise panellists, and would revise guidance where necessary. For example, it undertook to revise the guidance to panels about registrants who fail to have appropriate indemnity cover.
- 6.23 In view of the GDC's positive response to our investigation report, and its engagement with the learning points we shared with it in relation to final fitness to practise hearings, we have concluded that this Standard is met.
- 6.24 As we note above, the GDC plans to change its fitness to practise process in 2016. It plans to introduce case examiners, who will have the power to agree undertakings with registrants. We responded to the GDC's consultation about guidance for its case examiners, to emphasise the importance of public protection. As explained above, the Authority reviews all fitness to practise

cases resolved at a final hearing. We do not have powers to review those cases resolved by agreeing undertakings instead of a hearing. As such cases would not be subject to the same degree of independent scrutiny, we stressed to the GDC the importance of having clear guidance for its case examiners in order to maintain public and professional confidence in the process. We will monitor the impact of the changes to the GDC fitness to practise process in our next performance review.

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

6.25 This Standard was not met in 2013/14 and 2014/15 due to the time taken to progress and conclude cases. We had also identified concerns about an increase in the number of extensions to interim orders required.<sup>15</sup> We noted that the GDC had taken action to clear a backlog of cases from its assessment stage (see next sub-section). This would have involved taking forward a proportion of those cases to the later stages of the fitness to practise process, and we warned that the additional cases might put pressure on the system as they moved through.

6.26 We carried out a targeted review of the GDC's performance against this Standard this year. We wanted to understand whether it had taken effective action to improve the timeliness of its casework, and whether the specific concerns identified in our 2014/15 report had been resolved.

#### **2014 assessment backlog**

6.27 The GDC provided further information about how it had managed the cases from the 2014 assessment backlog as they moved through the fitness to practise process. It increased the number of IC meetings and the secretarial resource available to each meeting until it had reduced the number of cases waiting for IC consideration to the level identified as sustainable for this stage of its process.

6.28 As well as dealing with more cases at the IC stage, the GDC took steps to increase its capacity to take cases from the IC to a final hearing. It increased the number of lawyers and paralegal staff in its in-house prosecution team. It said that the standard directions for hearings it introduced in 2014 helped it reduce the number of wasted hearing days and the average length of hearings. These measures allowed the GDC to complete more hearings. It scheduled 1,866 hearing days in 2015, as against 1,246 in 2014. Its dataset showed that between April 2015 and March 2016 the GDC completed final hearings in 274 cases, compared with 192 in the previous year.

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<sup>15</sup> A regulator can apply to the High Court for an extension to an interim order if the case has not been resolved before the original interim order is due to lapse. The GDC's Interim Orders Committee can impose interim orders for up to 18 months.

- 6.29 The action taken by the GDC meant that, while the earlier delays inevitably impacted on the end-to-end time taken to deal with individual cases, there was no repeat of the backlog later in the fitness to practise process.
- 6.30 The GDC introduced a forecasting model during 2015. The model allowed it to monitor projected closures and caseloads at each stage of the process up to 18 months in advance. It uses the forecasting model to inform its budgeting and business planning. The GDC gave us evidence about the model's effectiveness and what it has done to assure itself of the model's robustness. We consider that the forecasting model should enable the GDC to respond to emerging trends in its casework more effectively than it could when the 2014 assessment backlog developed.

### **Statistical performance**

- 6.31 The statistical information the GDC gave us showed that it had made some significant improvements in the timeliness of its casework. The median time from receipt of a case to a decision by the IC reduced from 48 to 40 weeks. The number of open cases older than a year reduced from 473 to 423.
- 6.32 Some of the other measures of the GDC's timeliness stayed about the same. The overall median time from receipt to final hearing decision increased very slightly, from 93.3 to 94 weeks. This year, the median time taken from the IC decision to the final hearing outcome was 41 weeks, compared with 39.1 in 2014/15 and 46 in 2013/14.
- 6.33 We noted that the measures which had not improved were those which included the later stages of the fitness to practise process. As we have seen, the GDC closed more cases at final hearings in 2015/16 than in previous years (274 as against 192 in 2014/15). It also reduced the number of its oldest cases. Closing more old cases in this way would tend to increase the average age of closed cases. Therefore the fact that the median age of cases closed by the GDC remained stable indicates improved performance overall.

### **Interim order extensions**

- 6.34 The GDC reported a further, significant increase in the number of extensions to interim orders, from 10 last year to 37 during the period of this review. The GDC told us that there were a number of contributory factors, including some that were outside its control, such as delays to investigations by external agencies. The GDC said that in several cases, the registrants applied at short notice for hearings to be postponed. This meant that the GDC needed to extend the interim order to cover the rescheduled hearing. It said that where Interim Order Committees made orders that were shorter than the maximum 18 months, it had sometimes been unable to complete the investigation in time to list a final hearing before the order was due to lapse.
- 6.35 The GDC confirmed that all of the interim order extensions it applied for were granted. Therefore there were no cases where an additional risk to the public was caused because an interim order lapsed before the hearing could take place. The GDC explained that it plans to take action to reduce the need for interim order extensions:

- It will ensure that its staff seek interim orders for the 18-month maximum, unless there are good reasons to think a shorter order sufficient
- It will provide further training for Practice Committees about the circumstances in which it is appropriate to allow late applications for postponement
- The changes to its fitness to practise process should mean cases are dealt with more quickly and it is easier to list them for hearings. Therefore there should be fewer interim order extensions needed.

6.36 We are concerned by the sharp increase in interim order extensions required during the period of this review. We recognise that interim order extensions can be required for reasons outside of the regulators' control. As these delays did not result in a risk of harm and the GDC is taking action to tackle some of the causes, we do not consider this factor alone results in the Standard not being met.

6.37 We have carefully considered the evidence about the GDC's performance against this Standard. It has demonstrated improvement by reducing the time taken to make IC decisions and clearing older cases (including those from the 2014 assessment backlog) without an adverse effect on the overall timeliness measures. We consider that this improvement is sufficient to conclude that the Standard is met this year.

6.38 In order to continue to meet this Standard in our next review, the GDC will need to ensure that the improvement is sustained, particularly as it is introducing new processes which it expects to be more streamlined and efficient.

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

6.39 We carried out a targeted review against this Standard. The GDC did not meet it last year as our 2014 audit found numerous failures to provide adequate updates to parties in fitness to practise cases. We also took into account the findings of the GDC's internal audits. We noted that compliance with the customer service criteria in the internal audits had improved during the course of 2014, but we concluded that there was not enough evidence of consistent improvement to meet the Standard.

6.40 This year, the GDC's published internal performance reporting indicated that failures to provide updates persisted. It also carried out a survey of people involved in fitness to practise investigations, whether as complainants, witnesses or registrants. A significant proportion of those surveyed said they did not feel they had been kept adequately updated about the investigation. The survey also reported low levels of awareness of, and satisfaction with, the GDC's witness support service.

6.41 We asked the GDC for more information. It explained that because its caseload had increased significantly since it set the witness support service

up in 2012, there was now a much greater demand for the service. The GDC has reviewed its witness support service and has a plan in place for a programme of work to update it over the next six months. The programme will include updates to guidance, staff training, and a review of the witness feedback process.

- 6.42 The GDC's report of its 2015 internal audit findings shows that failure to provide updates was the most frequent customer service error. However, overall, the internal audit scores for customer service were consistently better than last year, with an average of 85 per cent.<sup>16</sup> We welcome this improvement. Although we cannot determine how the GDC's own internal audit scores would translate to the findings of our audits, we are satisfied that an increase in customer service audit scores is likely to reflect improved customer service in practice.
- 6.43 Other GDC initiatives this year to improve customer service included: a wide review of its standard letter templates, with input from the Plain English Campaign; publishing a customer service charter, developed and agreed upon by staff in its fitness to practise directorate; introducing additional support for registrants who are subject to fitness to practise proceedings; and launching a helpline to give advice to registrants about whistleblowing and raising concerns.
- 6.44 We have seen evidence that the GDC has made improvements to customer service. These are wide-ranging in terms of the number and variety of initiatives undertaken, and sustained in terms of the improved audit scores throughout 2015. The GDC continues to seek improvement where appropriate. Accordingly, we have concluded that this Standard is met.

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

- 6.45 This Standard is not met. We carried out a targeted review because the GDC did not meet this Standard in 2013/14 or 2014/15, and the information available to us suggested continuing concerns about some fitness to practise decisions. In particular, the published reports of the GDC's internal audit and quality assurance activity indicated that it had identified numerous issues with the cases it reviewed. Through our review of final fitness to practise decisions under our Section 29 powers, we continued to identify and feed back to the GDC concerns around decision-making in respect of both reasoning and sufficiency for public protection.
- 6.46 According to its report, the GDC's internal audit team looked at nearly 1,000 cases in 2015. The audits looked at cases in the initial stages of the fitness to practise process, that is, up to the decision whether or not to refer to the IC. The audit team's overall assurance rating for casework quality was '*limited*'.

<sup>16</sup> In our last report, we noted that the internal audit scores for customer service were below 50 per cent in April 2014 and improved to average 81 per cent over the second half of 2014.

- 6.47 The most common error the GDC's audits identified in relation to decision-making was failure to fully explain the reasons for a decision. We had identified this issue in our 2013 and 2014 audits.
- 6.48 In spite of these errors, the internal audits reported consistently high scores for decision-making. These remained well above 90 per cent throughout 2015. However, as noted above, we cannot determine how the GDC's audit scores would reflect our audit findings. We understand that there are some significant differences between our respective approaches: for example, our audits are qualitative and we do not calculate a numerical score. We make no criticism of the GDC's audit methodology. It is quite properly a matter for the GDC to decide how it chooses to assure itself about the quality of its casework. But the differences mean that where there was apparently conflicting evidence, we found the GDC's audit report's narrative more persuasive than the numerical scores.
- 6.49 The GDC's Fitness to Practise Quality Assurance Group consists of senior staff from the fitness to practise directorate, with an independent legal representative. It looks at cases from all stages of the fitness to practise process, to identify learning points and ensure consistency and compliance with good practice. It reviewed over 200 cases in 2015. Its overall findings were as follows:
- It considered that 73 per cent of the cases it reviewed demonstrated good practice (rated 'green')
  - It identified learning points for decision makers ('amber') in a further 15 per cent
  - It considered that remedial action was necessary ('red') in the remaining 12 per cent of cases reviewed.
- 6.50 The proportions of cases in each of these categories varied quite widely for different stages of the process, as the following table shows.

| Stage                       | Number of cases reviewed | Percentage rated green | Percentage rated amber | Percentage rated red |
|-----------------------------|--------------------------|------------------------|------------------------|----------------------|
| Triage <sup>17</sup>        | 45                       | 84.4                   | 11.1                   | 4.5                  |
| Assessment <sup>18</sup>    | 7                        | 100                    | 0                      | 0                    |
| IC                          | 66                       | 66.7                   | 19.7                   | 13.7                 |
| Final hearing <sup>19</sup> | 29                       | 65.5                   | 17.2                   | 17.2                 |

- 6.51 We consider that the proportion of cases rated amber or red is high enough to be concerning, both overall and in relation to particular stages of the

<sup>17</sup> This is the initial consideration of a case to decide whether the GDC should investigate it.

<sup>18</sup> Following initial investigation, the GDC decides whether a case amounts to an allegation of impaired fitness to practise. If so, the case is referred to the IC; if not, the case is closed.

<sup>19</sup> This combines the figures for the Professional Conduct Committee and the Health Committee.

fitness to practise process. Similarly, the frequency and type of errors identified by the internal audit suggested that issues around decision-making like those we found in our 2013 and 2014 audits may still persist.

- 6.52 In reaching our view, we took into account that the sample of cases considered by the GDC's internal audit and quality assurance activity is weighted towards cases where there is more likely to be an issue. Caseworkers whose audit scores identify them as performing well have fewer cases audited. Some cases are put forward for review by the Fitness to Practise Quality Assurance Group precisely because possible concerns have been identified (although the group also reviews other cases selected at random). So the rate of errors in the sample of cases reviewed is likely to be higher than the rate of errors in the GDC's casework as a whole. Nevertheless, the samples are large, and the findings of errors within them are relatively high. Therefore we consider it fair to regard them as significant evidence. We also noted that the stages identified as the riskiest by the Fitness to Practise Quality Assurance Group (the IC and final hearings) are not covered by the internal compliance audits.
- 6.53 After careful consideration, we decided not to carry out an audit of the GDC's fitness to practise casework this year. As we have described at paragraph 6.10, the GDC will soon be making significant changes to its casework process, so an audit of its casework at this time would be of limited value.
- 6.54 We note that the GDC continues to have systems in place to promote consistent, well-reasoned decision-making. However, the evidence we have seen indicates that there are still issues around the reasoning and consistency of decisions in the GDC's fitness to practise casework. Therefore we have concluded that it has not demonstrated enough improvement to meet this Standard this year. It is likely that we will seek to audit the GDC's fitness to practise casework next year as part of our work to understand the impact of its new process.

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

- 6.55 This Standard was not met in our last review because of failures to publish information about the outcomes of fitness to practise cases. There were two instances in this performance review period where the GDC had not notified us in a timely way about final fitness to practise decisions. We need it to do this so that we can review the case to determine whether we should refer it to the Court under our Section 29 powers. In one of these instances, the GDC did not notify us of the decision until the deadline for us to appeal the case had passed. However, in the event, there was no impact on public protection, because we decided after reviewing the cases that we would not have referred either of them to Court.
- 6.56 The GDC told us that both these incidents were a result of human error. It took action to prevent such errors from happening again: it provided further training to staff and amended its notification process to include a double check and audit trail to show that all appropriate notifications had been sent.

6.57 Based on the information available to our assessment panel, we decided that this Standard is met. The errors we found had no impact on public protection, the number of errors was minimal (two out of over 300 decisions notified to us by the GDC in the period) and the GDC has taken action to prevent recurrence. There was no evidence of other errors in publishing or communicating fitness to practise decisions during this performance review period.

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

6.58 The GDC has not met this Standard this year. The Standard was not met last year because of the number of information security breaches and because two breaches were reported to the Information Commissioner's Office (the ICO). We saw that the ICO took further action as a result of information security breaches reported to it by the GDC. We identified further concerns about the GDC's performance in relation to information security this year. Therefore we carried out a targeted review.

6.59 In September 2015, the GDC signed an undertaking to the ICO that it would take further action to ensure compliance with data protection law. This was a result of two incidents the GDC had reported to the ICO. In one, the GDC sent information about a fitness to practise case to the wrong registrant; in the other, it lost a patient's dental records. The GDC undertook to ensure that all staff who process personal information would receive data protection training. It said it would set up a programme of mandatory refresher training and monitor participation to ensure that all relevant staff kept their knowledge up to date.

6.60 In March 2016, the ICO issued a follow-up assessment of the work the GDC had done in relation to its undertaking. It found that the GDC had put plans in place to address some of the requirements of the undertaking, but that more work was needed to ensure full compliance. It recommended that the GDC should document the data protection training needs of all staff (including any role specific training) in a policy, and make sure all staff knew about the policy.

6.61 The GDC told us that it has been carrying out the work agreed in the undertaking and follow-up assessment, which it expects to complete by the end of September 2016. The GDC also told us it has made wider changes to its information governance arrangements. These included recruiting additional specialist staff and introducing a new information security incident reporting system which enables it to identify, risk assess and report on information security incidents in a more consistent way.

6.62 The GDC told us that it had identified some further information security breaches during the first half of 2016. Two more incidents were reported to the ICO: in one, a registrant was inadvertently sent details of other fitness to practise cases; in the other, the GDC was unable to locate six sets of patient records. It is awaiting the outcome of the ICO's consideration of these reports.

- 6.63 We noted the work the GDC has done to implement the ICO's recommendations and to improve its information security arrangements. However, in considering its performance against this Standard during the review period, we had to recognise that the GDC has been subject to enforcement action by the ICO because of failures to keep information secure. It has also continued to experience information security incidents similar to those previously reported to the ICO and to us, including loss of patient records and sending sensitive information to registrants in error. We therefore concluded that this Standard is not met this year.
- 6.64 The GDC told us that it intends to work towards ISO 27001 certification in 2017. This is the international standard for information security management. Achieving ISO 27001 certification would demonstrate that the GDC has robust systems in place to limit the risk of data breaches and effectively address any that do occur. We will check its progress towards this objective in our next performance review.

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