



Annual review of performance 2015/16

Health and Care Professions Council



About the Professional Standards Authority

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

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

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

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

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

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

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

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About the Health and Care Professions Council

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

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

As at 1 June 2016, the HCPC was responsible for a register of 340,902 practitioners. The annual registration fee is £90.



At a glance

Annual review of performance

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

Standards of good regulation

Core functions

Met

Guidance and Standards

4/4

Education and Training

4/4

Registration

5/6

Fitness to Practise

8/10

1. The annual performance review

- 1.1 We oversee the nine health and care professional regulatory organisations in the UK, including the HCPC.³ 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 (Guidance and Standards)
 - Setting standards for and quality assuring the provision of education and training (Education and Training)
 - Maintaining a register of professionals (Registration)
 - Taking action where a professional's fitness to practise may be impaired (Fitness to Practise).
- 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

³ 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.

believe the regulator has performed against the Standards in the previous 12 months. We use this to decide the type of performance review we should carry out.

- 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
 - 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.
- 1.9 We will recommend that a 'targeted' or 'detailed' performance review is undertaken if we consider that there are one or more aspects of a regulator's performance that we wish to examine in more detail because the information we have (or the absence of relevant information) raises one or more concerns about the regulator's performance against one or more of the Standards:
- 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 function
 - 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.
- 1.10 We have written a guide to our performance review process, which can be found on our website www.professionalstandards.org.uk

2. What we found – our decision

- 2.1 In January and February 2016 we carried out an initial assessment of the HCPC's performance from 1 April 2015. Our review included an analysis of the following:
- HCPC Council agenda, papers and minutes including performance, policy and committee reports
 - Policy and guidance documents
 - Statistical performance dataset (see sections below)
 - Third party feedback
 - A check of the HCPC register
 - Information available to us through our review of final fitness to practise decisions under the Section 29 process.⁴
- 2.2 As a result of this assessment, we recommended to our internal panel of decision-makers on 17 February 2016 that a targeted review be carried out. This was agreed and we carried out a more detailed review of the HCPC's performance against Standard 2 of the *Standards of Good Regulation* for Registration and Standards 4, 5, 6 and 9 of the *Standards of Good Regulation* for Fitness to Practise.
- 2.3 We sought and obtained further information from the HCPC relating to these Standards, and carried out a detailed consideration of that information. As a result, we recommended to our internal panel of decision-makers on 22 June 2016 that all but three Standards were met by the HCPC. This recommendation was accepted. The reasons for this are set out in the following sections of this report.

Summary of the HCPC's performance

- 2.4 Aside from 2010/11 and 2011/12 when the HCPC did not meet Standard 3 for Education and Training, the HCPC has thus far met all of the *Standards of Good Regulation*. We expressed concerns about its performance in fitness to practise in 2013/14 and 2014/15 in relation to risk assessments, timeliness and data protection.
- 2.5 For 2015/16 we have concluded that the HCPC:
- Met all of the *Standards of Good Regulation* for Guidance and Standards
 - Met all of the *Standards of Good Regulation* for Education and Training

⁴ Each regulator we oversee has a 'fitness to practise' process for handling complaints about health and care professionals. The most serious cases are referred to formal hearings in front of fitness to practise panels. We review every final decision made by the regulators' fitness to practise panels. If we consider that a decision is insufficient to protect the public properly we can refer them to Court to be considered by a judge. Our power to do this comes from Section 29 of the [NHS Reform and Health Care Professions Act 2002 \(as amended\)](#).

- Met all but one of the *Standards of Good Regulation* for Registration. The HCPC did not meet Standard 2
- Met eight of the ten *Standards of Good Regulation* for Fitness to Practise. The HCPC did not meet Standards 4 and 6.

2.6 In January 2016 the Secretary of State for Education announced that the regulation of social workers was to be removed from the HCPC. We recognise that the government's intention is to address public concerns around social work rather than being a reflection of the HCPC's performance since it took over the regulation of social workers from the General Social Care Council (the GSCC) in August 2012. However, the announcement prompted criticisms of the HCPC's performance which we did not consider to be warranted given its previous performance against the Standards.

2.7 We are clear that the HCPC strives hard to be an efficient regulator; our concern is to ensure that the regulators we oversee are not only efficient but also – and equally importantly – effective in protecting and promoting the health, safety and wellbeing of the public, and promoting confidence in the profession and in the system of regulation. Our review of performance against the Standards is our method of assessing this. The HCPC meets the great majority of the standards. However, in the last two performance reviews of the HCPC we identified areas of concern and, this year, have concluded that three Standards are not met. The HCPC needs to address these and other concerns that we identify in this report if its performance is not to decline further. These issues have no bearing on the HCPC's suitability to regulate social workers.

Key comparators

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

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

2.10 Set out below is the comparator data which the HCPC has provided to us for the period 1 April 2015 to 31 March 2016:

1	The number of registration appeals concluded, where no new information was presented, that were upheld	Not known ⁵			
2	Median time (in working days) taken to process initial registration applications for <ul style="list-style-type: none"> UK graduates EU (non-UK) graduates International (non-EU) graduates 	Q1	Q2	Q3	Q4
		2	8	8	7
		3	6	42	53
		14	61	32	45
3	Time from receipt of initial complaint to the final Investigating Committee/Case Examiner decision <ul style="list-style-type: none"> Median Longest case Shortest case 	41 weeks	37 weeks	37 weeks	39 weeks
		165 weeks	181 weeks	144 weeks	174 weeks
		10 weeks	9 weeks	7 weeks	8 weeks
4	Time from receipt of initial complaint to final fitness to practise hearing <ul style="list-style-type: none"> Median Longest case Shortest case 	88 weeks			
		252 weeks			
		30 weeks			
5	Time to an interim order decision from receipt of complaint	23.8 weeks	13.1 weeks	6.4 weeks	12.5 weeks
6	Outcomes of the Authority's appeals against final fitness to practise decisions <ul style="list-style-type: none"> Dismissed Upheld and outcome substituted Upheld and case remitted to regulator for re-hearing 	0			
		0			
		2 ⁶			

⁵ See Standard 2 of Registration.

⁶ One of these appeals related to a fitness to practise decision made in in 2014/15 but the appeal was not concluded until this year.

	<ul style="list-style-type: none"> • Settled by consent • Withdrawn 	0
7	Number of data breaches reported to the Information Commissioner	0
8	Number of successful judicial review applications	0

- 2.11 Where we had concerns about comparators we looked at these as part of our targeted review. These are discussed in the relevant sections below.

3. Guidance and Standards

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

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

- 3.2 In January 2016 the HCPC published revised *Standards of Conduct, Performance and Ethics* (SCPE) for registrants following a review of the existing standards which commenced in 2012 and included a consultation on draft standards in 2015. Consequently it reviewed and published revised *Guidance on Conduct and Ethics for Students* to ensure this reflected the changes to the SCPE.⁷

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

- 3.3 Together with the overarching SCPE which apply to all registrant groups the HCPC regulates, the HCPC sets profession-specific *Standards of Proficiency*. In 2015/16 the HCPC published revised *Standards of Proficiency* for practitioner psychologists.
- 3.4 It also published a set of specific *Standards for Podiatric Surgery*. Chiropodists and podiatrists who complete a qualification in podiatric surgery may have their entry on the HCPC register annotated to that effect. This set of standards sets out the HCPC's requirements for educational institutions providing the qualification, and for the knowledge and skills registrants are required to have on qualification.

⁷ This guidance was published in June 2016, after the period under review.

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

- 3.5 The HCPC continues to demonstrate that it engages with stakeholders and monitors regulatory developments. For example:
- A service user involved in the review of the SCPE wrote a blog piece on the HCPC's website entitled *Why are our Standards of conduct, performance and ethics important for service users?*
 - The revised SCPE introduced a 'duty of candour': a standard requiring registrants to be open and honest when things go wrong, placing a duty on them to report concerns and to support service users and family carers in raising concerns about their care or treatment. This arises from Sir Robert Francis QC's call for a more open and transparent culture within healthcare following the failures in patient care at Mid Staffordshire NHS Foundation Trust.

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

- 3.6 The HCPC continues to publish standards and guidance on its website, together with information about how to make a complaint if these are not followed and the outcomes of fitness to practise cases. The standards and guidance are available in large print and easy read format. The HCPC continues to promote awareness of the standards and guidance through a variety of means including blogs, social media, events, newsletters and webinars.

4. Education and Training

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

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

- 4.2 The current version of the HCPC's *Standards of Education and Training* were published in 2009 and in 2014 a periodic review began, to take place over a period of three years in three phases. The first phase of research and

stakeholder engagement has been completed and the HCPC has moved into the second phase by establishing a Professional Liaison Group comprised of members of the HCPC Council and stakeholder representatives. This group finished its work in March 2016 and a consultation has been launched on the draft revised standards.

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

- 4.3 There were no significant changes to the HCPC's process for quality assuring education programmes in 2015/16.
- 4.4 The HCPC became the regulator of social workers in England in 2012 and took on responsibility for approving qualifying social work education programmes. In 2015 it carried out a review of its work in this area and published a report on this in January 2016.

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

- 4.5 In annual reports on education and in reports to its Council, the HCPC outlines the actions taken when concerns are identified about educating and training establishments. We noted in the report to Council in February 2016 that four concerns had been raised in 2015/16, two of which remained under investigation. Of the concerns concluded in 2015/16, both were concluded following enquiries and/or a visit to the establishment. All concerns are reported to the HCPC's Education and Training Committee (the ETC) which directs what action should be taken.

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

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

5. Registration

- 5.1 The HCPC has met five of the six *Standards of Good Regulation* for Registration in 2015/16. Examples of how it has demonstrated that it met these five Standards are indicated below each individual Standard.
- 5.2 We carried out a targeted review of Standard 2 and concluded it was not met. The reasons for this are set out under the relevant heading below.

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

- 5.3 We have not seen any information which suggests the HCPC has added anyone to its register who has not met the registration requirements, although we have some concerns about how registration decisions are made following an appeal against a refusal to register. These are set out as part of our discussion on Standard 2 below.

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

- 5.4 This Standard is not met.
- 5.5 We scrutinised two areas of the HCPC's performance as part of the targeted review.

Registration appeals process

- 5.6 One of the key comparators we request from the regulators is the number of registration appeals that have been upheld where no new information is received from the applicant. This enables us to assess whether the initial registration decisions being made are robust; that is to say, if an application is rejected at first instance but approved on appeal on the basis of the same information as was previously available, this may suggest the initial decision was incorrect in some way. We therefore check to see whether the numbers of such cases are significant or increasing, as this may indicate a concern with registration decisions and we will want to understand with the regulator how they identify and learn from such cases.
- 5.7 The HCPC provided, under this category, information about the number of cases concluded by an appeals panel and the number concluded at a 'case conference'. We were unable to identify a provision in the HCPC's legislation or processes that enabled it to conclude cases at a 'case conference' and we therefore carried out a targeted review to better understand what this meant. As part of this, we reviewed a selection of the HCPC's registration appeals files.
- 5.8 Registration decisions are made by the HCPC's registration officers under delegated authority from the ETC. The HCPC's Order⁸ allows an applicant for registration to appeal against a decision to refuse registration⁹ to the Appeal Panel. The applicant may elect to have a hearing on the documents alone, or request an oral hearing. The HCPC told us that when it receives an appeal it obtains legal advice on behalf of the ETC as to whether the appeal should be defended; in effect, whether the ETC is likely win or lose the appeal. This advice is given at a 'case conference'. If the legal advice is that the appeal should not be defended, the applicant is registered and the appeal is closed.

⁸ The HCPC was established by the Health and Social Work Professions Order 2001.

⁹ A decision to refuse registration can be made as a result of an application for first registration, to renew registration or to be restored to the register after a lapse in continuous registration.

There is no involvement of the Appeal Panel in the case conference or the decision to allow registration and close the appeal.

- 5.9 We scrutinised the HCPC's Order, Rules¹⁰ and Schemes of Delegation¹¹ but we were unable to find a provision that allowed a decision to be made on an appeal other than by the Appeal Panel.
- 5.10 We reviewed a number of the HCPC's case files for registration appeals which had been decided in the way outlined above. A particular concern arose with regard to cases where applicants for registration had made a declaration relating to their character (such as, for example, practising whilst not registered, employment dismissal, a criminal caution or conviction). Such declarations are considered by a Registration Panel which is made up of panellists who serve on the HCPC's fitness to practise panels and, therefore, can be considered an 'expert' panel. The Registration Panel makes a recommendation to the ETC as to whether the declaration should prevent the applicant being registered. Where registration is refused and the applicant appeals, the procedure for a 'case conference' described above is followed and the appeal may be closed without any further reference to the Registration Panel. We were concerned that the recommendation of an expert panel was being overturned by legal advice rather than by an Appeal Panel decision, and also that it was not clear that feedback was being given to the Registration Panel about its original recommendation. It is important that learning is identified and applied when decisions are reversed. In our view this is particularly so when the decision-makers (in this instance the Registration Panel) carry out a dual purpose and will be applying similar expectations of conduct to both applicants and registrants.
- 5.11 We were also concerned that the process being operated was not sufficiently transparent. We checked the information for applicants which was available through the HCPC website and that which was provided to applicants in the files we reviewed. We also checked the HCPC's internal process documentation. None of this material referred to the process being operated as set out above.
- 5.12 We recognise that the HCPC's intention is to ensure that their processes are efficient and that applicants are allowed on to the register at the earliest opportunity where their appeal is likely to succeed. However, procedural rules must be followed otherwise decisions made may not be legitimate. Our assessment was that the HCPC's process may not be fully in accordance with their governance rules and that there was a lack of transparency.
- 5.13 The HCPC does not agree with our view that it is operating its appeal process in any way that it is improper. In its view, the ETC is not acting in a quasi-judicial role and, moreover, it has pointed out that, instead of appealing, an applicant could simply re-apply to the ETC providing new information and the ETC could register the applicant. This latter point is undoubtedly correct, but it does not affect our view for two reasons. First, the applicant has actually appealed and it is appropriate that the correct appeals

¹⁰ The HCPC's Order and Rules are available in consolidated format on its [website](#).

¹¹ The HCPC's corporate governance documents are available on its [website](#).

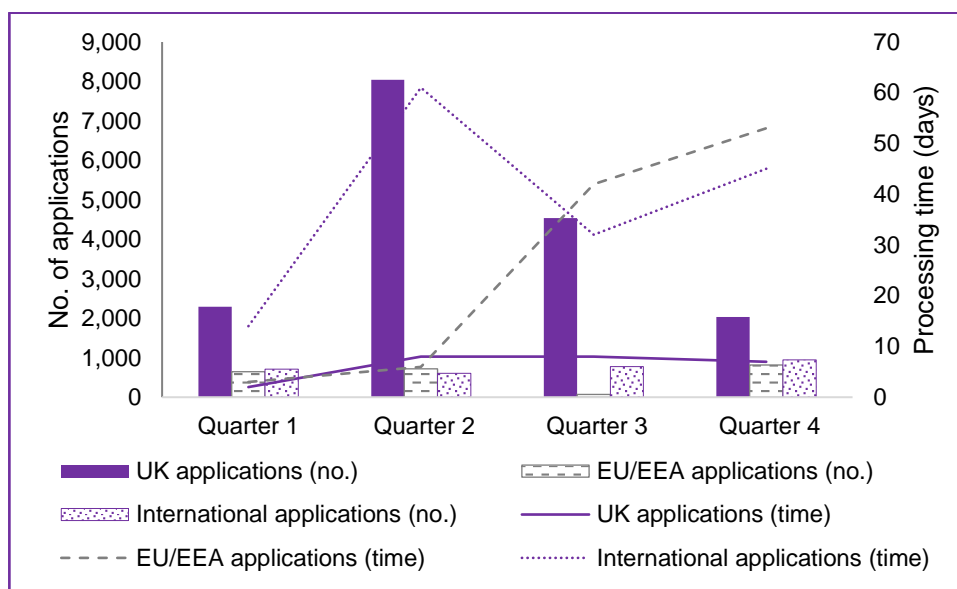
procedure should be followed in that case. Second, if the applicant re-applied, it would go through the normal route for scrutiny of that application.

- 5.14 However, the HCPC has changed the way it operates this part of the process in order to increase transparency. We understand that the new process requires that, if the ETC is advised not to defend an appeal, the consent of the Appeal Panel must be given to allow registration and for the appeal to be closed – if this consent is not given then the appeal will proceed to a hearing in front of the Appeal Panel. We agree that this appears to be a pragmatic solution which addresses our concerns and we will follow the HCPC's progress with this new approach. The HCPC may also wish to review previous registration appeal decisions made at 'case conference' stage to ensure that those decisions were appropriate and to identify and share learning amongst the registration team and panels.

Registration processing times

- 5.15 At the assessment stage we noted that there were distinct variances in the median time taken by the HCPC to process applications for registration throughout the year. We noted that the median time taken to process applications from non-UK applicants was variable, from between three and 53 days for applications from within the European Economic Area, and between 14 and 61 days for international (non-EEA) applications. This was despite the number of applications from these groups remaining in a fairly steady state over the year, unlike applications from UK applicants which peak in the summer following graduation – but the time to process applications from UK applicants varied little. The variances are demonstrated by table and graph below.

	2015/16			
	Quarter 1	Quarter 2	Quarter 3	Quarter 4
UK graduates:				
• Number of new applications	2,293	8,041	4,540	2,036
• Median time (in working days) to process new applications	2	8	8	7
EU/EEA applicants:				
• Number of new applications	648	721	680	813
• Median time (in working days) to process new applications	3	6	42	53
International (non-EU/EEA) applicants:				
• Number of new applications	708	602	780	946
• Median time (in working days) to process new applications	14	61	32	45



- 5.16 Therefore we carried out a targeted review to seek to understand from the HCPC the reason for the variances. It told us that it forecasts application volumes and plans resource allocation to enable it to meet its published service standards. The peak in applications from UK graduates in the summer is forecast and impacts on the processing times for non-UK applicants.
- 5.17 We recognise that the HCPC, together with the other regulators we oversee, has to make best use of its resources and we understand the rationale the HCPC is applying. We note that the HCPC is largely meeting its service standard of processing complete applications from non-UK qualified applicants within 60 days (this compares to its service standard for applications from UK graduates of ten days). This is within the delivery standards outlined in the Professional Qualifications Directive.¹²
- 5.18 The HCPC's response to us did not appear to us to recognise the importance of balancing operational effectiveness with fairness to all applicants. The HCPC told us in its response to our targeted review that at some points during the year it is able to process applications from non-UK applicants within five days. In our view, the fact of the differences in the service standards between the two groups, suggests potential unfairness to overseas applicants and, potentially, an inappropriate delay in their ability to take up jobs that they have been offered. We carefully considered whether this issue contributed to the Standard not being met. However, we are aware of different approaches being taken by the regulators we oversee and we decided it was appropriate to look more closely over the coming year at how all the regulators manage registration resources and whether this may impact on fairness to particular groups of applicants. We therefore concluded that,

¹² European Directive 2005/36/EC (as amended and transposed into UK law) allows for the mutual recognition of professional qualifications within the European Economic Area. A decision on an application made under the Directive must be made by the regulator within three months of a complete application being received.

this year, the HCPC's approach to managing registration resources did not contribute to the Standard not being met.

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

- 5.19 As part of our performance review we conducted a check of a sample of the entries on the HCPC's register. We found two errors which we discuss at Standard 9 for Fitness to Practise (paragraph 6.48). These were not sufficiently serious to impact on performance against this Standard for Registration, as the restrictions imposed on the registrants were accurately annotated on the register.

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

- 5.20 The register remains prominently displayed on the website. Employers are able to carry out multiple registrant searches. Information is provided about what register search results mean and members of the public are invited to contact the HCPC registration team if they need assistance.

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

- 5.21 This Standard has been met in previous years and we have not identified any changes to the HCPC's approach when it becomes aware of possible illegal practice or misuse of protected titles. We reported last year that the HCPC successfully prosecuted a non-registrant for using the protected title of chiropodist. The individual appealed against the conviction but this was unsuccessful.

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

- 5.22 We reported in the 2014/15 performance review that the HCPC was undertaking research to inform a decision as to whether changes were needed to its existing continuing professional development (CPD) scheme by which registrants demonstrate they remain fit to practise. The scheme comprises of a set of standards requiring registrants to keep a record of CPD activities which are relevant, benefit service users and contribute to the quality of registrants' practice. The HCPC audits a sample of CPD records for each profession at registration renewal. A registrant subject to audit is required to provide a written profile setting out how the CPD they have carried out meets the HCPC's standards.
- 5.23 The outcome of the HCPC's research (reported to its Council in May 2016) was that no significant changes to the existing scheme were required but that

amendments to the CPD guidance should be considered and consulted upon. We understand that the HCPC will be consulting on its guidance in October 2016.

- 5.24 A second piece of research carried out by the Department of Health into the costs and impact of the HCPC's CPD system has been carried out but the research report has not yet been published.
- 5.25 The HCPC has satisfied itself that its CPD scheme remains fit for purpose and that there is no present need to move to an enhanced CPD scheme or a system of revalidation. We therefore conclude that the Standard is met.

6. Fitness to Practise

- 6.1 The HCPC has met eight of the ten *Standards of Good Regulation* for Fitness to Practise in 2015/16. Examples of how it has demonstrated that it met these eight Standards are indicated below each individual Standard.
- 6.2 We were satisfied at our initial review that Standards 1, 2, 3, 7 and 10 were met. We carried out a targeted review of five Standards – 4, 5, 6, 8 and 9. The reasons for this, the further information we obtained, and our conclusions are set out below each individual Standard. We decided that Standards 5, 8 and 9 were met but Standards 4 and 6 were not met.

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

- 6.3 The HCPC revised its 'standard of acceptance' for complaints in May 2015. This is the threshold that the HCPC has set in order for a complaint to be investigated by the HCPC. This requires a complaint to be made in writing, to identify the registrant about whom the complaint is made, to be clear as to the allegation being made, and to provide credible evidence. Where appropriate, the HCPC will make further enquiries to satisfy itself that the complaint does not raise fitness to practise concerns. Complaints which do not meet the standard of acceptance are closed without further investigation.
- 6.4 We carefully considered the changes to the standard of acceptance as it is important that thresholds are not raised so as to prevent valid complaints being made or accepted for investigation. We were satisfied that the changes should not deter complaints being made. When we next carry out an audit of the HCPC's fitness to practise process we will look carefully at how the standard of acceptance is being applied.
- 6.5 The HCPC published a factsheet explaining the standard of acceptance to assist members of the public to understand the process. The leaflet has been awarded a Plain English Crystal Mark and we strongly support the HCPC's efforts to ensure that their information is accessible to members of the public.

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

- 6.6 The HCPC made two referrals to the Care Quality Commission in 2015/16 under the information sharing agreement entered into in 2014. The HCPC continues to expand its information sharing arrangements with relevant organisations, entering into an agreement with NHS Protect which was finalised in October 2015 and into one with Regulation and Quality Improvement Authority in Northern Ireland in February 2016.

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

- 6.7 This Standard was met at our last review. Since then, there have been no significant changes to the HCPC's fitness to practise process which alter the tests being applied at the case to answer or impairment stages; nor do we have evidence that these tests are not being applied appropriately or that the HCPC is failing to direct complainants to other, more relevant organisations. Therefore the Standard continues to be met.

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

- 6.8 This Standard is not met.
- 6.9 In the 2014/15 performance review we reported concerns about the HCPC's performance due to:
- A continuing concern (arising from our 2013 audit¹³ and the 2013/14 and 2014/15 performance reviews) around the timeliness and quality of risk assessments
 - An increase in the median time taken from receipt of a complaint to an interim order decision
 - An increased rate of adjournments of interim order hearings.
- 6.10 We therefore carried out a targeted review this year to assess whether and how these concerns had been addressed by the HCPC.

Risk assessments

- 6.11 When a fitness to practise complaint is received, an assessment should be carried out of the seriousness of the issues and the potential risk the registrant might pose to the public and the reputation of the profession. This assessment enables the regulator to prioritise the more serious and higher risk cases and, where necessary, apply for an order to be imposed restricting

¹³ 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 HCPC in 2013. A copy of our audit report is available on request.

the registrant's practice on an interim basis whilst an investigation is carried out. This assessment should be reviewed at regular intervals and on the receipt of new information.

- 6.12 We looked at the results of the HCPC's internal audits for fitness to practise cases covering the period May to September 2015. These demonstrated that there continued to be failures and delays in carrying out risk assessments and concerns about the quality of the assessments. The HCPC's internal audit in September 2015 found issues in 48 per cent of the cases audited and that this was despite training being delivered to fitness to practise caseworkers in June 2015.
- 6.13 The HCPC told us that its internal audit reports were of limited value for our purposes because the sample size is small, the audit covers the complete lifetime of the complaint so some issues recorded are historic, and no details are given of individual issues. The HCPC told us that it was considering ways to improve its internal audit process. Whilst we accept these limitations, the HCPC has not provided us with evidence that rebuts the concerns identified in its internal audit reports. In particular, we note that there appears to be a pattern of an absence of risk assessments at one stage or another in around 50 per cent of the cases reviewed.
- 6.14 The HCPC recently provided us with further information from audit reports for the quarter from January to March 2016. The overall information shows a similar picture, though there is a suggestion that there may have been an improvement in risk assessments carried out more recently.
- 6.15 The position appears to be that there has been a consistent picture of concerns relating to risk assessment raised by the HCPC's internal audit since our 2014/15 report and that any improvement appears to have arisen over the last three months of the period at which we are looking but we are unable to conclude there is a clear trend of improvement. We are therefore unable to be fully confident that the HCPC is in all cases identifying risks and taking appropriate action in response.
- 6.16 The HCPC set out to us a number of steps it will be taking in 2015/16 designed to improve the risk assessment process, including changes to its case management system, further training for caseworkers, and restructuring the fitness to practise team to introduce specialist teams which, in turn, should allow a clearer focus on risk assessments. We will follow up on the impact of these measures in our next performance review, and we expect the HCPC to be able to demonstrate improvements in the timeliness and quality of its risk assessments.

Interim orders

- 6.17 We ask the regulators to provide us with (1) the median time from receipt of a complaint to the interim order hearing and (2) the median time from receipt of information indicating the need for an interim order and the hearing. The latter indicates whether the regulator is acting expeditiously once the need for an interim order application is identified; the former is an indicator of how well the regulator's initial risk assessment process is working – is it risk assessing

cases quickly on receipt, identifying potential risks and prioritising higher risk cases so that further information can be obtained quickly.

- 6.18 We found that the HCPC's timescale for obtaining interim orders had improved in that the median time from receipt of a complaint to the imposition of an interim order was shorter than it was in 2014/15, although there were variances during the year. In 2014/15 the median for the year was 20.4 weeks; in the 2015/16 quarters it was 23.8, 13.8, 6.4 and 12 weeks. Given the relatively small number of interim orders applied for, we accept that the median can be adversely affected in a quarter by a single case that took a long time to reach a hearing for reasons outside of the regulator's control. We also accept the HCPC's point that risk assessment is a dynamic process and that the need for an interim order may not be immediately apparent on receipt of the complaint. This is one of the reasons why we are concerned at what appears to be a high number of absent risk assessments. We conclude, nevertheless, that the HCPC has improved its performance in 2015/16 in the time taken to obtain an interim order from receipt of a complaint.
- 6.19 The HCPC's performance has declined in relation to adjournments of interim order hearings. The rate of adjournments increased from nine per cent of all applications in 2014/15 to 21 per cent for the first three quarters of 2015/16. An increase in adjournments may be a concern because the nature of cases where an interim order may be required is such that there is an identified potential risk to patients, the public – or the registrant themselves – that needs controlling. A delay in making that decision could mean continued exposure to the uncontrolled risk. For this reason, hearings should not be adjourned other than in exceptional circumstances.
- 6.20 The HCPC's guidance for panellists and caseworkers sets out that, due to the nature of interim order applications, adjournments should not be granted other than in the most compelling of circumstances, and that adjournments are not envisaged to allow registrants to make arrangements to attend or to engage representation. We agree with this approach: the interests of the registrant in attending or being represented do not require balancing with the interests of the regulator or the public (as they would in a final fitness to practise hearing) because the purpose of the interim order hearing is to determine the level of risk and whether this is so significant that it needs formal control whilst the case is being further investigated.
- 6.21 The HCPC told us that 12 hearings were adjourned in the period 1 April to 31 December 2015, which was 21 per cent of all interim order applications made. Of these 12, eight were adjourned due to the registrant and/or their representative being unavailable for the hearing. The HCPC went on to say that given that its interim order panel's apparent view of the 'punitive' nature of an interim order decision, in circumstances where the registrant indicates they would like to attend and/or be represented but this is not possible on the day arranged for the hearing, panels have tended to adjourn. Clearly, this is at odds with the HCPC's own guidance and, in our view, is not an appropriate approach. This does not provide us with confidence that the right decisions are being made and contributes to our judgement that the Standard is not met.

- 6.22 The HCPC has pointed out to us that its panels are independent and that it cannot control their decisions. We agree that this is the case. However, the HCPC remains responsible for the appointment and training of its panels and, indeed, its case presenters. We believe that it should have significant concerns if panels are consistently not following its guidance. We hope that the HCPC takes on board our concerns and provides further training for its panellists who sit on interim order hearings and its case presenters. We understand that the HCPC is taking steps to do so.
- 6.23 The final issue that contributes to our judgement that the Standard is not met is that the HCPC told us that a positive indicator of its performance in this area was that 88 per cent of the applications it made for interim orders were granted. We disagree that this is necessarily a positive indicator. The threshold for imposing an interim order is, rightly, very high; however, applications should be made on the basis of the nature and level of risk and not an assessment of whether an order needs to be made – that is the role of the interim order panel. Our view is that a robust risk assessment process which results in risks being quickly and appropriately identified may result in a higher number of requests to the interim order panel to make the assessment, with the net result that interim orders may be made in a lower proportion of cases.
- 6.24 The HCPC told us that they do not apply for an interim order where they do not think the threshold for an order is met or where they do not believe there is a realistic prospect of the panel making an order. We agree that it is clearly right for them to assess whether the threshold is reached before applying for such an order. However, there is a danger that, by taking into account prospects of success, they may be taking an over-cautious approach and second-guessing their panels. As a result, cases which ought to be subject of an interim order may not be being put before panels.
- 6.25 These concerns – continuing problems with the risk assessment process, the fact that panels appear on occasion to disregard the HCPC's own guidance and that some cases may not be being referred where this might be necessary – contribute to our assessment that we cannot have complete confidence in the risk assessment process being operated by the HCPC and therefore we are unable to have confidence that cases are being appropriately referred for an interim order hearing.

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

- 6.26 The HCPC has taken a number of steps to improve the transparency of its process. We have referred already to improved information for members of the public. It has also worked with local authorities to provide improved guidance and referral forms for employers considering referring social work cases. We support this and consider that it is a sign of good practice and engagement.
- 6.27 The HCPC met this Standard at its last review and overall we have no reason to believe that it does not continue to meet it. However, we carried out a targeted review of this Standard because of concerns that arose from a final

fitness to practise decision that we reviewed under the Section 29 process. The registrant was a social worker and the allegations included that the registrant's fitness to practise was impaired due to lack of competence arising from issues which first arose in 2009. At this time the registrant was registered with the GSCC which was the regulator of social workers in England at that time, and which did not have the power to allege lack of competence. It was argued by the registrant's representative that, therefore, the HCPC did not have jurisdiction to consider lack of competence arising from a time when the registrant was regulated by the GSCC. This argument was accepted by the HCPC representative, as was clear from the transcript of the case, and the fitness to practise panel found the registrant's fitness to practise was not impaired. We wanted to establish whether this position was correct so that (1) we could consider the implications for public protection of the HCPC not being able to pursue such allegations, and (2) we could assess whether there had been unfairness to registrants, as we knew of earlier cases where the facts and allegations were similar and social workers had had their practice restricted as a result.

- 6.28 The HCPC told us that the argument made by the registrant's representative in this case is not, in fact, legally correct. The HCPC does have jurisdiction to allege – and find – that a social worker's fitness to practise is impaired on grounds of lack of competence even if the events took place at a time when the registrant was registered with the GSCC. We agree with the HCPC's view.
- 6.29 In the published decision in this case the HCPC is quoted as accepting the argument put forward by the registrant's representative and the transcript bears this out. The HCPC therefore made a public declaration (erroneously) that it did not have jurisdiction. In our view this has the potential to expose the HCPC to challenges both in respect of previous decisions made in similar circumstances and in ongoing or future investigations. We note that, at this time, there have been no such challenges.
- 6.30 The HCPC does not agree with our interpretation of the impact of the decision and therefore has not carried out any assessment of the potential impact on other cases. Whilst the HCPC has assured us of the legal position, we remain concerned at the potential impact of the published decision and will continue to monitor this. However, we have concluded that at this time this issue does not result in the Standard not being met.
- 6.31 We also explored with the HCPC under this Standard an issue it had identified whereby suspension orders in place on two registrants had lapsed without a review taking place. The HCPC's legislation requires that such orders are reviewed before they expire. This allows an assessment to be carried out of whether the registrant is fit to return to unrestricted practice; if not, a further order will be made. The HCPC told us that human error was the cause of this issue and it had been identified during a routine check. The HCPC took action in response. It was established that neither registrant had returned to practice and both were subsequently removed from the register.
- 6.32 Whilst we note that no actual risk to public protection arose, the consequences could have been serious and therefore we consider the error

to have been serious. The HCPC has told us that it delivered further training to the relevant staff and introduced more formalised checks to prevent a reoccurrence, and therefore we do not expect it to be repeated. As a result we still consider that the Standard is met.

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

6.33 This Standard is not met.

6.34 In the 2013/14 performance review we noted an increase in the time taken to progress complaints through the fitness to practise process. At that point we considered that the timescales remained reasonable. In 2014/15 we reported a further decline in timeliness and concluded that the HCPC was at risk of not meeting the Standard in future if it did not demonstrate improvement. At the assessment stage of this year's performance review it was clear from the data provided by the HCPC that there had been a further decline in its performance against this Standard. Our decision-making panel therefore decided the Standard was not met but that a targeted review should take place to understand the reasons for the further decline, what improvement measures were being undertaken, and to allow the HCPC to provide evidence of the effectiveness of such measures.

6.35 This table sets out the decline in performance against a number of timeliness measures.

	2013/14 ¹⁴	2013/14 ¹⁵	2014/15	2015/16			
				Q1	Q2	Q3	Q4
Median time from initial receipt of complaint to the final Investigating Committee decision (weeks)	27	52	33	41	37	37	39
Median time from final Investigating Committee decision to the final Fitness to Practise Committee decision or other final disposal of the case (weeks)	37	34	39	44			
Median time from receipt of complaint to the final Fitness to Practise Committee determination or other final disposal of the case (weeks)	68	64	73	88			

¹⁴ This column does not include cases the HCPC inherited from the GSCC.

¹⁵ This column is the cases inherited from the GSCC.

6.36 The HCPC has taken steps to reduce the time taken to close cases which it considers do not raise fitness to practise concerns. However, the time taken to progress cases has increased at all stages of the fitness to practise process and we are particularly concerned at the increase in a single year of 15 weeks in the end to end timescale.

6.37 Alongside this, the size of the HCPC's caseload of older cases increased significantly:

	2013/14 ¹⁴	2013/14 ¹⁵	2014/15	2015/16
Cases older than 52 weeks	298	28	472	533
Cases older than 104 weeks	42	0	94	189
Cases older than 156 weeks	2	0	14	43

6.38 We asked the HCPC about the reasons for the decline and how it was tackling them. We deal with each below.

The complexity of social worker cases

6.39 Social worker cases comprise around half of the HCPC's caseload and, according to its figures, social worker cases take longer to deal with than non-social worker cases. The HCPC told us that the issues with such cases were:

- The majority of complaints come from members of the public and these can take longer to investigate than those from employers and self-referral by registrants, as information is not provided in a form the HCPC can progress quickly and there can be confusion amongst members of the public about the HCPC's process and powers. As noted earlier, the HCPC has revised the complaints form used by members of the public, issued a factsheet setting out its standard of acceptance of complaints, and revised the information for members of the public on its website
- The HCPC also told us that there was a lack of understanding of its process amongst local authority employers which caused delay. It has similarly revised the complaints form and information available for employers, and has also directly engaged with some larger local authorities
- The nature of social work cases is generally complex and involves multiple issues and vulnerable service users. In March 2016 further training was provided to caseworkers in social work.

6.40 The HCPC told us it had not yet been able to evaluate the effectiveness of the steps it had taken as these needed time to 'bed in'.

6.41 We recognise that the diverse and complex nature of social work may well make the handling of complaints about social worker registrants more complex than complaints about other registrant groups. However, we have no evidence that these cases are inherently more difficult and time-

consuming than those involving the other health and care professions that are regulated by the regulators we oversee.

General case complexity

- 6.42 The HCPC told us that cases were becoming more complex across all professions in terms of the issues and number of people involved and this was impacting on the length of time taken to progress cases. It cited evidence to support this such as the number of witnesses involved in cases, and the number of days required for hearings, and a significant increase in the number of preliminary hearings. These preliminary hearings are intended to clarify matters so that final hearings run more smoothly. However, it appears that they may also lead to delays in scheduling final hearings and put a strain on the hearing days available to the HCPC.
- 6.43 The HCPC's response focused on delays in scheduling hearings rather than the impact of general case complexity on the end to end process. It was not clear to us whether the number of witnesses and hearing days had increased year on year. In last year's performance review we reported that the HCPC had planned to make greater use of preliminary hearings to ensure smoother progression of final hearings, yet it appears that the take up of preliminary hearings may be fettering case progression.

Increase in review hearings

- 6.44 The HCPC told us that it has seen an increase in the number of reviewable sanctions (that is, suspension and conditions of practice orders) imposed by fitness to practise panels with a resultant increase in the number of hearings required to review sanctions.
- 6.45 The HCPC's legislation requires that suspensions and conditions of practice orders imposed on registrants are reviewed before they expire. We note that the HCPC reported at its Council meeting in July 2016 that it intended to seek changes to its legislation to allow (amongst other things) fitness to practise panels a discretion, when making an order for suspension or conditions of practice, not to require a review to be carried out before the order expires. We consider that, generally, a review hearing is required to ensure public protection as this enables an assessment to be carried out of a registrant's fitness to practise before they are allowed to return to unrestricted practice. While there may be occasions when a review is unnecessary, we would have concerns if the outcome were to be that cases which needed to have a review did not receive them. It will be important for the HCPC to be satisfied that its panels will follow any guidance that it produces.

Monitoring and corrective action

- 6.46 The HCPC set out a number of activities it undertakes to monitor the length of time of fitness to practise cases and to enable progression. These are 'business as usual' activities which should ensure the HCPC is aware of its level of performance in this area. They have been in place for some time. The HCPC had also undertaken pilots to test new ways of working, as follows:

- A hearings scheduling pilot aimed at reducing the time taken between a case being ready for a hearing and the hearing taking place. The HCPC reported that the pilot was successful and it intended to implement some of the learning from it
- A case specialisation pilot to assess if efficiency could be improved by moving from the current fitness to practise structure in which a single case manager has ownership of a case from receipt to conclusion, to a structure in which separate teams are responsible for different stages of the process. This three month pilot commenced in January 2016. We understand that the HCPC will be realigning its fitness to practise structure in accordance with the case specialisation pilot and to take account of other changes in the anticipation this would result in improvements in the overall time taken to conclude cases. The HCPC informed its Council in May 2016 that the restructure had commenced.

6.47 We will monitor closely over the course of the next year and beyond the impact of these changes, to see whether they have the impact on timeliness that the HCPC expects. The time taken to conclude cases has declined significantly and we do not consider that, at this time, the HCPC has taken sufficient action to address what it tells us are the causes of this. We are therefore clear that this Standard is not met.

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

6.48 This Standard has been met in previous years and there is nothing to suggest that anything has changed since our last review. We therefore conclude it is met. The HCPC opened a new, dedicated hearings centre in January 2016 and it has told us that the increased room capacity and enhanced facilities such as video conferencing have been helpful in supporting witnesses, particularly those who are vulnerable. We regard this as a positive step.

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

6.49 The Authority sees all final fitness to practise decisions and is able to refer to court cases which we consider to be insufficient to protect the public. In 2014/15, under the Section 29 process,⁴ we referred to Court five HCPC final fitness to practise decisions that we considered to be unduly lenient. We said at that time that the number was too small to draw any meaningful conclusions. In 2015/16 we referred four cases to Court and again this number is too small to draw conclusions from. In course of our examination of the cases, we see a number where we have concerns about the reasoning and consistency of some panel decisions and, when we do, we inform the HCPC about these through learning points. These represent a small minority of the decisions that we see. The HCPC engages constructively with these points.

6.50 We have set out under Standard 5 details of a final fitness to practise decision which raised concerns but this was not a case that we decided to refer to Court.

6.51 We have therefore concluded the Standard is met.

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

6.52 We carried out a targeted review of this Standard because:

- We identified two errors in the online register when carrying out our register check. In both cases the registrant had received a caution at a final fitness to practise hearing and the register was appropriately annotated but the weblink to the hearing decision document was incorrect
- There were three occasions on which the HCPC did not notify us of final fitness to practise decisions as required under the Section 29 process. This meant that the Authority was denied the opportunity to appeal these cases had we considered it necessary to do so (we reviewed the cases and were satisfied that the decisions were appropriate)

6.53 We raised these errors with the HCPC at the time we identified them and the HCPC responded that reminders had been given to the staff responsible, and that the HCPC was considering reviewing its checking process for the online register and carrying out its own audit of the register. We note also that the HCPC took immediate action to deal with two specific errors and documented them in its own internal near-miss reports. Its adjudication team has also reviewed the checking process.

6.54 We have concluded that the Standard is met as none of the errors resulted in a risk to public protection. There has been no repeat of the failure to notify us of decisions for the purposes of Section 29 review since July 2015 and so we consider this issue historic. However, taking into account the errors in allowing suspension orders to lapse (paragraph 6.31), we are concerned at the number of errors and the serious risk they may pose. We expect the HCPC to take action during 2016/17 to ensure its processes are robust and assure itself as to the integrity of the register. This Standard may not be met in future if such errors continue to occur.

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

6.55 The HCPC did not report any data protection breaches to the Information Commissioner's Office in 2015/16. In the summer of 2015 the HCPC achieved ISO 27001:2013 certification, which is the international standard for information security management. This provides assurance to us that the HCPC has robust systems for identifying, classifying, reporting and remediating data breaches and we welcome the HCPC's initiative in obtaining this certification.

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