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Title: NMC Performance Review Report and update from the Independent Oversight Group

Author: Akua Dwomoh-Bonsu

Responsible Director: Graham Mockler

Paper for Information

Open paper

How does this work contribute to Strategic Objective 1: To protect the public by delivering highly effective oversight of regulation and registration: By considering how we can ensure that we deliver effective oversight of regulation in this area



1. Issue

1.1 This paper provides an update regarding the plans to publish the NMC's 2023/24 periodic review performance review report. This paper also provides an update from the Independent Oversight Group.

2. Recommendation

1.2 The Board is asked to note this paper.

3. Background

3.1 A whistleblower raised concerns about the NMC's culture and working practices to the PSA and the NMC in September 2023. As a result, the NMC commissioned independent reviews into the whistleblower's concerns.

3.2 At that time, we considered whether we should conduct our own investigation into the whistleblower's concerns. We undertook a risk assessment to consider the issues raised and the appropriate response to these. We determined that the most appropriate course of action was to take the matters forward as part of our performance review process. A key factor in deciding this, and in particular not initiating our own investigation, was that the NMC had committed to commissioning its own independent investigations into the issues raised, and that we would use the evidence from these to inform our

assessment. We decided that it would risk duplicating work for us to launch an investigation into the same matters as the NMC.

- 3.3 In July 2024, the findings of the first of the three reviews were published: the [independent culture review](#) (ICR). The review found that there had been safeguarding failures on the basis of the accounts of those it spoke to and that people working in the organisation have experienced racism as well as other forms of discrimination and bullying.
- 3.4 The NMC also commissioned two further independent investigations into the whistleblowing concerns. Led by Ijeoma Omambala KC, the first of these is looking into the organisation's handling of the fitness to practise cases raised through whistleblowing concerns and other routes. The second is looking into the organisation's handling of whistleblowing disclosures, including whether the whistleblower was treated fairly. The findings of these reviews will also be considered, and the NMC's response monitored, by the Independent Oversight Group once published, which is now expected to be in early 2025 (delayed from summer 2024).

4. Publication of NMC's performance review report

- 4.1 The NMC initially advised us that the Omambala KC reviews would be published in summer 2024. We were then advised that they had been delayed and would be published in November 2024. We have recently been advised that the publication is likely to be early 2025.
- 4.2 We expect that we will need to undertake further work following receipt of the reports, before we are ready to publish our performance review report. We had made the decision to await the finding of these reviews before concluding our performance review as they are likely to provide important and relevant evidence that would need to be reflected in our assessment. Whilst our performance reviews are our independent assessment of regulators' performance, we use the information we have received from relevant stakeholders to inform our evidence base.
- 4.3 We previously considered whether we should publish our performance review without the Omambala KC findings. We decided not to, as we considered that it could be confusing and unhelpful for stakeholders should we publish our findings when there were concurrent investigations pending relating to similar matters covering the same timeframe.
- 4.4 We are liaising with the NMC to obtain further information about publication dates and are undertaking as much preliminary work as possible to allow us to effectively and efficiently analyse the Omambala KC reviews once received. However, we do not consider it to be possible to analyse the reports, undertake any additional work and make decisions against the relevant Standards in time to be able to publish a report on all Standards by the end of March 2025. We therefore considered our options for publication, a summary of which is provided below. Of these, we have determined that the best available option is to publish a report on the Standards that are not affected by

the Omambala KC reviews by the end of March 2025, with a follow up report on the remaining Standards as soon as possible, with a view to publication by the end of June 2025.

Publish a partial assessment report based on Standards not affected by the Omambala KC reviews

- 4.5 This is the approach that we are working to. The initial review period ran from July 2023 to June 2024. However, we are extending the current review period so that it runs from July 2023 to the end of December 2024.¹ We plan to publish a report addressing the Standards in the functional areas are unaffected by the outstanding Omambala KC reviews (Standards 6-13).
- 4.6 This report will include an explanation of its limited scope. A supplementary report covering the rest of the Standards will be published in due course once we have been able to review the relevant evidence and make final decisions on those Standards. We intend to publish this no later than the end of June 2025.
- 4.7 This would represent a departure from our usual approach to reporting, as we would be releasing the report in two stages. However, taking this approach would allow us to report on some the Standards by the end of March 2025. It would require careful communication to explain our approach. We would also need to be entirely clear in our communications as to which Standards were affected by the Omambala KC reviews and so which we were reporting on. Depending on timings, there is also the risk that it appears to stakeholders that we have ignored relevant contextual information, emphasising the need for clear communications.

Publish our full assessment report based on the information we have received thus far

- 4.8 This option would have the benefit of publishing a full report by the end of March 2025. However, it will require careful communication to make it clear that we have not taken into account the Omambala KC findings. It may be confusing to stakeholders if we publish a report that did not take account of findings of a key report that had been published before, or at a similar time as, our report. There is a risk that it appears to stakeholders that we have ignored relevant contextual information. We consider it would be difficult to justify publishing a full report that does not take account of the evidence from the Omambala KC reviews, which is likely to be highly relevant.

Defer the publication of the assessment report until we have received all outstanding reviews

- 4.9 This was how we initially planned to proceed when we were expecting the reports in summer and then November 2024. However, as there have already

¹ As a result, we will change the NMC's review period from the current period of July-June each year to January-December

been delays to the publication schedule, there is a risk that any further delays would mean that our report when eventually published would be outdated and potentially less helpful. We do not consider it feasible to not publish any form of report on the NMC's whole performance by the end of March 2025. As noted above, given expected timings, we do not consider it is likely to be possible to publish a full report that takes account of all relevant evidence by the end of March 2025.

5. Risk

- 5.1 The NMC's performance review report for the period of 2023-2024 was initially due to be published by the end of September 2024. However, we took the decision to await the outcome of the reports from the three investigations before publishing our report as we considered them to be key evidence sources to feed into our review. Completion of the Omambala KC reviews has been delayed from the date we originally expected to be able to review these, which has affected the timeframes for us completing our review.
- 5.2 If we do not report on the NMC's performance, we will not be fulfilling one of our statutory duties and in turn, there is a risk that we will not be undertaking our role to protect the public effectively. There is also a risk of reputational damage as we may be scrutinised as to why we have not reported covering a time of heightened activity at the regulator. This may be partly mitigated by reports on the work of the Independent Oversight Group.
- 5.3 To mitigate the potential risks, we plan to publish a report by the end of March 2025. We also plan to publish a statement in January 2025 to provide an update to stakeholders on when we plan to publish the report.
- 5.4 We note that the question has been posed as to whether the performance review process is effective if we deem it necessary to refer to other investigations prior to publishing our assessment reports. One of our key evidence sources for the performance review process is information provided by stakeholders, including any reports published into the performance of the regulators. We consider it important to take into account the intelligence we receive from stakeholders to inform our work. When each of the reviews into the NMC were commissioned, we made the decision to not duplicate the work of each of these by undertaking our own, concurrent investigation. As such, we committed to using the evidence provided from these in our assessments. Without the commissioning of these investigations, we may have concluded that it was necessary for us to launch our own investigation and/or audit into fitness to practise cases about which concerns had been raised. We will review the decisions we have taken, and the implications of reliance, or potential over-reliance, on external evidence sources once we have completed the NMC review. We may still launch our own investigation if necessary, once we have reviewed the upcoming reports.

6. Independent Oversight Group

- 6.1 The Department of Health and Social Care directed that the PSA set up an Independent Oversight Group to receive regular updates on the NMC's progress, scrutinise the impact of measures it introduces to improve its culture and performance, and provide insight and advice on any further actions required. The Group was established in September 2024.
- 6.2 The work of the Independent Oversight Group will provide further information about the actions the NMC is taking to address the failings identified in the ICR which the performance review team will use in our enhanced monitoring of the NMC going forward.

Current progress

- 6.3 The Independent Oversight Group has met four times: 9 September 2024, 2 October 2024, 18 October 2024 and 28 November 2024. We are publishing the summaries of these meetings on our website, with those for 9 September, 2 October and 18 October published to date.
- 6.4 The first meeting on 9 September 2024 focused on the Group's Terms of Reference for its work, its governance, and the available escalation measures should it collectively consider that the NMC is failing to appropriately respond to the concerns raised in the Reviews.
- 6.5 At the second meeting on 2 October 2024, the Group considered the NMC's high-level action plan. It heard from the NMC the immediate actions it had taken following the publication of the Independent Culture Review.
- 6.6 At the third meeting on 18 October 2024, the Group considered the NMC's Fitness to Practise improvement plan. The Group was provided an overall update on the culture transformation programme and a deep dive into the Fitness to Practise improvement plan interventions and outcome measures. The NMC also presented the Group with an update on safeguarding.
- 6.7 At the fourth meeting on 28 November 2024, the Group scrutinised the NMC's wider culture improvement plan and governance structure and assurance framework. The Group also discussed the NMC's performance and impact metrics, including how improved data will be utilised to enable NMC's Council to scrutinise the actions of the Executive in relation to Fitness to Practise.
- 6.8 The Group discussed interventions and actions to embed cultural change, including that the NMC has identified six recommendations from the Independent Culture Review that are critical for culture change, and which will be prioritised. The Group also discussed staff involvement in the culture change programme stressing that it is essential that the NMC engages with staff and their union representatives to shape the cultural transformation.
- 6.9 Summaries of each meeting can be found on this [webpage](#). The Group will next meet on 31 January 2025.

7. Conclusion

- 7.1 We remain committed to fulfilling our statutory function by reporting the NMC's 2023/24 performance to Parliament and we plan to do so by the end of March 2025. We have tried to identify the fairest and most effective approach in the circumstances.

8. EDI implications, including Welsh language

- 8.1 The Independent Culture Review highlighted issues that have significant EDI implications. We recognise the critical importance of ensuring a diverse membership of the IOG to reflect the NMC workforce and registrant base, wider society, and to ensure diversity of thought. We will be closely monitoring the NMC's progress in relation to its EDI work, through both the updated requirements for Standard 3 and the IOG.

9. Timescale

- 9.1 We plan to publish the first part of the performance review report by the end of March 2025 and the second part by the end of June 2025.

10. Communications

- 10.1 We will advise stakeholders of the timeline for publishing the NMC's 2023/24 performance review report. We will also communicate any changes we plan to implement following these reviews.
- 10.2 We will publish a statement setting out our position once we have received the Omambala KC reviews.
- 10.3 The work of the Independent Oversight Group is published in the form of summary notes of each meeting on our website to ensure the Group's work is visible and transparent.

11. Internal Stakeholders

- 11.1 The performance review, policy and communication teams have particular interest in this work.

12. External Stakeholders

- 12.1 Various external stakeholders will have an interest in this work, including the regulators, patient groups, trade unions/registrant groups and professional bodies. As such, we will continue to publish updates to ensure our work is visible.