

Council, 6 February 2013

## General Dental Council and General Medical Council initial stages audit review

### Executive summary and recommendations

#### **Introduction**

The HCPC Fitness to Practise Department undertakes to review audits undertaken by the Professional Standards Authority (PSA) to assess what learning can be taken from them and applied to HCPC processes. In December 2013 the PSA published their findings following the audit of the initial stages of the fitness to practise process at the General Dental Council (GDC) and General Medical Council (GMC).

Attached at Appendix 1 is a summary of the key points made by the PSA in relation to the GDC and GMC and a comment about what measures the HCPC has in place or areas of development planned for the future in response to the issues raised by the audits.

The review of both regulators is included in one document as both audits follow the same general headings which are set out in the PSA's Fitness to practise casework framework. The casework framework is used as an aid in reviewing the quality of regulators' casework and related processes.

#### **Decision**

The Council is asked to discuss the findings of the PSA audit review.

The Council is also invited to consider whether future reviews of the PSA's audits of other health and care regulators should be presented to Council.

#### **Background information**

The last PSA audit of the initial stages of HCPC fitness to practise process was published in September 2013. This report and a paper outlining a work plan which had been further developed in response to the audit was considered by the Fitness to Practise Committee at its meeting on 10 October 2013.

#### **Resource implications**

None.

#### **Financial implications**

None.

## **Appendices**

Appendix 1 - Review of the Professional Standards Authority audit of the General Dental Council and General Medical Council audits

Appendix 2 - Audit of the General Dental Council's initial stages fitness to practise process

Appendix 3 Audit of the General Medical Council's initial stages fitness to practise process

## **Date of paper**

20 January 2014

## **Review of the Professional Standards Authority audit of the General Dental Council and General Medical Council**

### **1. Introduction**

A review has been undertaken of the Professional Standards Authority (PSA) General Dental Council and General Medical Council's initial stages fitness to practise process audit reports which were both published in December 2013. The key points made by PSA in relation to each regulator are set out below with comment about what measures the HCPC has in place or areas of development planned for the future. The PSA's audit of the HCPC's initial stages of fitness to practise process was published in September 2013 and is referred to in this paper.

The detailed findings of the PSA are set out in section 2 of each report. The full PSA reports are attached to this paper.

### **2. Receipt of initial information**

The PSA casework framework provides a standard framework as an aid in reviewing the quality of regulators' casework and related processes.

With regards the receipt of information the key aspects of the FTP process includes: providing clear information to complainants, responding promptly to correspondence; and ensuring there are no barriers to complaints being made.

#### **2.1. GDC paragraph 2.2 – 2.2.7**

The PSA comments on delays in the GDC's triage process, with 20% of the cases audited not being acknowledged within their service standards. A significant delay was also noted in one case where it had taken the GDC three months to open the case and a further three months to acknowledge.

#### **2.2. GMC report paragraph 2.4**

The PSA found no concerns regarding the GMC's process for handling new FTP referrals.

#### **2.3. HCPC response**

The PSA Audit of the HCPC's initial fitness to practise process found no concerns regarding its processes for the receipt of initial information. The PSA commented that the HCPC continues to operate effective systems and processes in all areas of its initial stages FTP process.

### **3. Risk Assessment**

Conducting a robust risk assessment on receipt of a new complaint and updating that risk assessment in light of new information is an important part of public protection within a risk-based regulatory approach.

### **3.1. GDC report paragraph 2.8 – 2.11**

The PSA identified three main areas of concern:

- completion of risk assessments. The PSA found that although the GDC categorised cases as having 'high', 'medium' or 'low' risk their processes do not require reasons for risk assessments to be recorded.
- review of risk assessments. In particular, the PSA found that risk assessments were not always reviewed at the assessment stage.
- interim order decisions. The PSA found that there was not always a record of consideration being given about whether an Interim Order may be required at the initial case assessment stage. A failure to record reasons for not applying for an Interim Order at the assessment stage was also identified.

Furthermore, the PSA found that there were delays in assessing whether an Interim Order should be sought.

### **3.2. GMC report paragraph 2.5 – 2.6**

The PSA did not find any significant concerns in relation to the GMC's compliance with its risk assessment process.

### **3.3. HCPC response**

The HCPC approach to risk assessment requires the Case Manager to complete a risk assessment document at three key stages in the process. They are as follows:

- on allocation of the case;
- on receipt of significant further information; and
- at the time of drafting the allegation.

The form requires the Case Manager to rate the risk of the case as either A, B or C and explain why an interim order may or may not be required. An operational guidance document, Risk Profiling and Interim Orders, is provided to the team to explain what is required and how to assess and classify risk. To assist Case Managers, when a case is created in the case management system (CMS) a risk assessment action is automatically added to the case.

The presence of risk assessments on case files has been audited as part of case file audits for a number of years. Where a lack of risk assessment is identified, this is addressed. In early 2013 a number of files were identified as not having timely risk assessments at all the required stages as set out above. As a result all live cases were reviewed to ensure that an up to date risk assessment was present. The number of new employees within department and the increase in case load as a result of the transfer of social workers may have contributed to this. However, this has demonstrated that the file audit process is performing its required function in identifying issues enabling them to be addressed. Risk assessment is a very important area of work and this will continue to be monitored closely.

A report of risk assessments which have not been completed by their due date is run each week. This supports Case Team Managers in monitoring that their Case Managers are completing risk assessments in a timely manner.

The file audit process monitors the presence of risk assessments and in addition to this, the content of risk assessment is also been reviewed to ensure that quality is maintained. The Investigations Managers review a small sample of risk assessments on a monthly basis to monitor the content and reasoning provided by Case Managers. Learning from this review is fed back to individual Case Managers and captured as part of on-going training.

The PSA found that in some cases risk assessments had not been completed at all the required stages of the process. However, they were satisfied that a further risk assessment would not have resulted in a referral for an interim order.

Further training for Case Managers on the risk assessment process, with a particular focus on assessing whether an interim order is required, will take place in 2014.

#### **4. Gathering information and evidence**

Gathering the right information and evidence is essential to enable regulators ensure that appropriate decisions are made and that any necessary action is taken promptly.

##### **4.1. GDC report paragraph 2.12 – 2.16**

The PSA identified 11 cases where the GDC had not gathered sufficient information resulting in decision makers reaching decisions in the absence of potentially helpful information/evidence. The particular concerns related to:

- failing to make enquiries of employers to establish if they had any fitness to practise concerns
- failing to follow up specific issues identified by the Investigating Committee
- inviting complainants to respond to the registrant's observations about the complaint before the case was considered by the Investigating Committee
- failure to obtain satisfactory evidence of indemnity insurance from registrants.

#### **4.2. GMC report paragraph 2.7- 2.12**

Overall the PSA found that GMC has effective processes in place to ensure that relevant information is gathered at the right time.

The PSA highlighted one case which had been closed but a further investigation was not initiated on receipt of new information. The new information might have demonstrated a pattern of behaviour by the registrant.

Strengths in the GMC's electronic cases management system were also identified. This related to the functionality which alerts caseworkers to verify the identity and the address details of the doctor who is the subject of the complaint.

#### **4.3. HCPC Response**

The HCPC has a number of measures and safeguards in place to ensure that the right information and evidence is gathered to ensure appropriate case decisions can be made.

Case review meetings are held at least once per month at which Case Managers can discuss cases with their Case Team Manager and questions can be asked of the Case Manager about the investigation and the approach taken. In addition, the Case Advancement team (the Case Advancement team has responsibility for progressing the more complex cases) holds regular case investigation strategy meetings

At the time the allegation is drafted to send to the Registrant, the Case Team Manager approves the allegation and in doing so reviews the case. This occurs in advance of the case being considered by an Investigating Committee Panel (ICP) and provides an opportunity for any missing information to be identified. When the case is being considered by the ICP it has the option of requesting further information if it considers that this would assist in making a case to answer decision. It is important to note that at this stage in the process the panel is not making any finding of fact and is generally only provided with sufficient information to allow a case to answer or no case to answer decision to be reached.

Where the HCPC is aware of on-going employer action in relation to a registrant who has been the subject of a capability or disciplinary the HCPC will keep the case open until conformation is received that the Registrant has successfully completed any recommendations and there are no fitness to practise concerns.

Where a decision is made to close a case prior to consideration by an ICP as the case is deemed not to meet the standard of acceptance, approval must be sought from a Case Team Manager. The CMS has an automatic approval process attached to these closure actions which requires a manager to review the action before it can be completed. This prevents cases from being closed without the appropriate review being undertaken. The Investigations Managers undertake a review of a sample of closure forms on a monthly basis to assess the quality of the content and reasons given for the closure.

Revised operational guidance on the assessment of new information which may be received after a case has been closed was issued to staff in May 2013.

An audit of cases closed prior to consideration by an ICP is also undertaken by a Quality Compliance Officer to ensure that all necessary actions have been undertaken and the case complies with the required process.

Training for Case Managers on requesting further information was held in June 2013. Further training on the critical analysis of evidence is planned for 2014. This will include identifying case studies where further information could have been gathered during the course of the investigation.

## **5. Evaluation and giving reasons for decisions**

Ensuring that detailed reasons are given for decisions which clearly demonstrate that all relevant allegations/issues have been addressed, and that decisions are communicated to the parties effectively, is essential to maintaining public confidence in the regulatory process.

### **5.1. GDC report paragraph 2.17 – 2.43**

The PSA identified the following concerns:

- the extent of reasons provided for decisions
- recording of decisions
- communication of decisions

The PSA noted particular concerns regarding the lack of reasoning provided in relation to decisions about applications for removal from the register.

### **5.2. GMC report paragraph 2.13-2.34**

The PSA comment on two areas where recommendations for improvement could be made:

- insufficiently detailed reasons for decisions being recorded/documentated
- inadequate reasons being communicated to relevant parties

### **5.3. HCPC response**

The HCPC Case to Answer Determinations Practice Note and the decision template that is provided for panels provide guidance on the drafting of decisions, giving reasons and the importance of doing so. The importance of providing reasons is emphasised during panel training and refresher training. An ICP co-ordinator is present at the panel meetings to ensure consistency and remind panels of the requirement to include sufficient reasons in their decisions.

All ICP decisions are reviewed by a Quality Compliance Officer following the panel meetings and a report providing analysis on the review of the decisions has been provided periodically to the Fitness to Practise Committee. The most recent report was presented in May 2013.

Where improvements are identified during the review, this is fed into panel training and future developments to practice notes and templates.

Where decisions are made by Case Managers and Case Team Managers to close a case without consideration by an ICP as the case does not meet the standard of acceptance, the case closure form should record the reasons for this. As part of the quality review undertaken by the Investigations Managers of the content of risk assessment forms referred to in paragraph 4.3 above, the content of case closure forms is also reviewed. Further information about the process for closing a case is provided at paragraph 3 above.

The HCPC process is to provide the registrant and complainant with a copy of the ICP decision following the meeting. The Case Manager is not able to add additional reasons or detail to the decision provided by the panel and it is therefore important that, as referred to above, the panel provide adequate reasons in their decision.

Where a case is closed without consideration by an ICP, the reasons for that decision should be set out clearly in the letter sent to the registrant and complainant. Last year a new process was put in place whereby closure letters are required to be approved by a Case Team Manager to ensure that the reasons provided are adequate. The audit of cases closed without an ICP now checks that this approval has been sought. The audits also look at the quality of the content of letters.

A new training package for ICP Panel members was introduced last year. The training now includes more practical elements which focus on the importance of Panels producing clear and well-reasoned decisions. The training also focuses on the application of the 'realistic prospect test' and reinforcing the ICP's responsibility as 'gate keeper' of the quality of allegations.

As part of the file audits which are undertaken, the quality of the content of letters is reviewed and feedback provided. As mentioned above some formatting issues have been identified and where any improvements to the content are highlighted, this is addressed with the Case Manager concerned.

Cases which have been identified for possible disposal by way of a voluntary removal agreement require approval from the Director of Fitness to Practise, having obtained legal advice. Furthermore, under the HCPC's procedures the final decision to consent to voluntary removal rests with a Panel of the Conduct and Competence Committee or Health Committee.

We are continuously looking at ways in which we can improve our decision making. We are currently undertaking work on changes that may improve ICP decision making, for example revised guidance, documents and process. This includes the review of not well founded decisions, PSA feedback, ICP decision review, review of complaints received about decisions and the level of discontinuance applications.

## **6. Protecting the public**

Each stage of the regulatory process should be focussed on protecting the public and maintaining confidence in the profession and the regulatory system.

### **6.1. GDC report paragraph 2.53-2.55**



The PSA raised particular concerns regarding a decision to grant a voluntary removal application. The following concerns affecting the maintenance of public confidence in the regulatory system were also identified:

- Data protection and confidentiality breaches
- Lack of active case progression
- Erroneous removal of registrants from the register
- Failures to obtain details of registrants' indemnity insurance
- Delay or failure to obtain an interim order

## **6.2. GMC report paragraph 2.17-2.18**

The PSA conclude that the GMC's initial stages fitness to practise process protects the public and maintains public confidence.

## **6.3. HCPC response**

The PSA identified a small number of cases where there were concerns about the implications of the HCPC's decisions for public protection and maintaining public confidence. Particular concerns were raised in relation to the gathering of information and the recording of reasons in relation to decisions for closing cases. The actions we are taking in relation to these issues are outline in paragraph 5.3.

We have undertaken a range of activities which are designed to minimise the risk of information security issues that can have an impact on public confidence. The Fitness to Practise department has recently completed a comprehensive review of data security and information management arrangements. The purpose of this review was to scrutinise the FTP processes and procedures to identify possible risk areas which could contribute to a data breach occurring, and to identify possible changes to systems, processes and training that would mitigate the risk.

The review identified a number of different areas where further work could be done to mitigate the possibility of data breaches occurring. The activities that have been completed as a result of the review include:

- Information management and data security training for all FTP staff.
- Guidance and online information security training for Panel members.
- Guidance on redaction for our instructed solicitors.
- Enhancement to case logging processes to verify the identity of registrants who are the subject of FTP complaints.

Information security is also a standing item on the agenda of weekly FTP management meetings. This ensures there is a continued focus on assessing and mitigating the risks associated with information security whilst balancing this against the need to maintain operational effectiveness. A log of issues and actions is maintained by the Quality Compliance Manager and is used to identify trends that may affect induction or training of team members, enhancements to core business systems, or areas to target in compliance audits. This assessment recognizes that in a complex system, human errors do occur, and what elements need to be considered as part of a proportionate response.

To ensure that cases are progressed as quickly as possible we hold case progression conferences on a monthly basis. The Case Progression Conference considers cases which have been under investigation for four months or more. The purpose of these meetings is to examine the management of the case to date and explore way in which the case can be progressed. It also allows for shared learning among the team and discussion about alternative case management techniques.

Furthermore, we have a Case Advancement Team (CAT) which provides a dedicated resource for the investigation and progression of the more complex cases. The CAT uses a number of methods to support the progression of cases including a monthly case handling strategy meeting at which the CAT collectively considers cases where there are barriers to progression, to discuss, explore and evaluate different case management techniques, including the early identification of cases suitable for Registrant Assessor advice.

We complete a monthly status audit to provide assurance that those individuals under investigation or subject to a sanction have the correct registration status and a mechanism by which a registrant must have an 'Under investigation' status against their register entry in order for the case to be logged on the CMS. This prevents a case from being logged and the status change being forgotten.

## **7. Customer care**

Good customer service is essential to maintaining confidence in the regulator.

### **7.1. GDC report paragraph 2.25-2.26**

The PSA identified a significant number of examples of poor customer care which included: failure to comply with customer service targets and deficiencies on the content and tone of communications. Specific examples related to:

- poor adaptation of (or errors in) standard letters
- inaccurate information contained in letters
- failures to apologise for poor service
- failure to provide updates in accordance with service targets
- a customer service feedback form being sent to a complaint whilst the investigation was still on-going
- short deadlines imposed when requesting information from parties
- failure to promptly acknowledge correspondence
- sending information to an incorrect address despite being previously advised of the correct address to use and this being held on the case file.
- consent forms for dental records being sent to complainants where the complainant was not the relevant patient.

### **7.2. GMC report paragraph 2.19 – 2.23**

The PSA identified concerns regarding the provision of regular updates to interested parties, the adequacy of the wording of standard letters and the appropriateness of the letters sent to complainants when closing investigations.

The PSA identified a number of strengths in the GMC's customer care which included:

- the explanation provided and tone used to explain a case closure decision to a complainant who was unhappy with the decision.
- signposting complainants to Victim Support in the case closure letter.
- advising the registrant where they can obtain legal advice at the point they are informed of the investigation.

### **7.3. HCPC response**

Those involved in a case should be kept informed of the progress of the case at regular intervals and the CMS provides Case Managers with actions to prompt them to review cases at least once a month. When a case reaches a certain stage, specific actions are added to the case automatically to prompt particular actions. For example, when an ICP date is set the ICP follow up action is applied to the case which is linked to a checklist of all the required steps to be undertaken. Contact is maintained following an ICP and the Case Support Team ensure that parties are contacted every two months to update them on progress.

Other areas of work related to this are set out above, for example the audit of cases which includes a review of a sample of documentation sent and the CMS template issues encountered which are being addressed. We aim to keep cases loads at a level that allows Case Managers time to properly manage their case load and ensure accuracy. Where caseloads increase temporarily due for any reason we look to manage resources and put in place temporary measures such as overtime and additional support from the Case Support Team.

Stakeholder communication training was undertaken by the department in February and April 2013. This covered interactions between the department and a range of stakeholders, how to manage those interactions and improve the experience of those that come into contact with the team. This resulted in a number of areas of follow up work which are being taken forward:

- Looking at the role and scope of the Administration Team's interactions with stakeholders in the context of the critical "gatekeeper" role that the team performs, and to identify the training and support that may be required.
- Development of an initial contact checklist
- Considering the arrangements available to support the team when they've had to deal with a difficult call or case issue.

We have also reviewed and updated our operational guidance in relation to the signposting advice we are able to provide to individuals whose enquiries do not fall within the HCPC's remit.

We are currently undertaking a programme of work which is looking at the experience of those who come into contact with the FTP Department and how this might be improved. Activities include seeking feedback from complainants and registrants at the conclusion of a case and reviewing feedback from complaints.

Other work planned includes reviewing the 'tone of voice' of the standard letters that we use.

## **8. Guidance**

It is good practice to have staff guidance, documents and tools setting out the regulator's established policies and procedures, in order to ensure consistency and efficiency in case management.

### **8.1. GDC report paragraph 2.27 – 2.31**

The PSA identified a number of concerns which included:

- failure to follow guidance
- casework guidance which was not up to date
- no guidance on the removal of interim orders
- no guidance in relation to decision making about applications for voluntary removal
- insufficient detail/guidance within forms
- inaccurate terminology used in some standard letters

### **8.2. GMC report paragraph 2.24 – 2.28**

The PSA identified a small number of cases where they felt the GMC had not followed its own internal guidance.

### **8.3. HCPC response**

The PSA did not identify any concerns in relation to the HCPC's guidance and supporting documentation.

The HCPC has a number of policies and procedures in place and all team members are trained on these as part of their induction and as part of on-going training. Monitoring compliance forms part of the file audits that are undertaken and as part of on-going

Due to the complex nature of case work there are instances where policies are not correctly followed or errors are made. HCPC has a number of mechanisms in place to assist Case Managers in ensuring that procedures are followed and to identify issues when they occur. For example, some action on the CMS have due dates set to coincide with the timeframes in which the action should be performed and checklists are provided for key parts of the process to remind individuals of tasks that need to be undertaken. Where an issue is identified, measures are put in place to provide training to individuals or the team as a whole and to rectify the errors that have occurred.

Operating guidance and practice notes are regularly reviewed and updated when new issues come to light as areas of improvement are identified. Any updates are communicated to the team through team meetings, update emails and workshops.

## **9. Record keeping**

Good record keeping is essential for effective case handling and good quality decision making.

### **9.1. GDC report paragraph 2.32 – 2.39**

The PSA noted deficiencies in record-keeping in over half of the cases that were audited. Particular errors highlighted included: unrelated documents being filed on a case; draft documents which had not been removed from case files; incomplete forms; absence of documentation of telephone conversations; incorrect information about closure reasons; missing documentation and delays in uploading incoming correspondence onto the Case Management System.

### **9.2. GMC report paragraph 2.29 – 2.34**

The PSA noted that in some cases that relevant information was kept in different areas of the case management system without appropriate cross-referencing. They also commented on a lack of consistency of in record keeping in some cases.

### **9.3. HCPC response**

The PSA were satisfied with the HCPC's standard of record keeping in the majority of cases. They also cited as good practice the HCPC's use of checklists as tools to assist case managers in ensuring that all necessary actions on the case have been completed.

Concerns were identified by the PSA in a small number of cases in relation to relevant documents not being saved on all "linked" cases and the recording of telephone conversations.

In terms of ensuring accurate record keeping, the HCPC uses an electronic paperless Case Management System. All correspondence is scanned on receipt and allocated to the case by the Administration Team. Processes are in place to minimise the risk of correspondence being allocated to an incorrect case.

The monthly file audits completed by the Quality and Compliance team provides additional assurance that case records are maintained correctly. Refresher training was held for Case Managers in August 2013 on how to ensure all relevant documents is copied into "linked" cases.

All outgoing letters and emails are produced in the CMS and printed and sent from that system at which point it is saved directly into the CMS case record. Therefore the risk of documents being incorrectly filed.

We had previously identified a potential issue regarding the logging of telephone calls on the CMS. A new process has been implemented to address this.

## **10. Timeliness and monitoring of progress**

The timely progression of cases is one of the essential elements of a good FTP process.

### **10.1. GDC report paragraph 2.44 – 2.50**

The PSA found 39 delays across 30 of the cases audited across the various stages of the GDC's initial stages FTP process.

### **10.2. GMC report paragraph 2.35-2.38**

The PSA found 11 cases where there had been delays in case handling.

### **10.3. HCPC response**

The PSA concluded that the HCPC has effective systems in place for monitoring case progression, including regular review meetings between staff which are intended to ensure active case progression. The PSA also noted that there was evidence of clear and active case progression, and commented particularly on the timeliness and pro-active chasing of third parties for further information where necessary. They also noted that the initial assessment of the GSCC legacy cases had been carried out promptly at the point of transfer.

The PSA identified three cases where there had been periods of inactivity where no reasons for the delay were recorded.

The measures in place at the HCPC to review cases on a regular basis and monitor progress have been set out in the paragraphs above in relation to previous points.

In relation to ICPs the HCPC has a process in place for cases to be presented by other Case Managers in the department to reduce delays. For smaller professions where there are fewer panel members available, the HCPC has introduced the use of telephone conferencing to ensure that the attendance of registrant panel members can be assured, even where there are very few cases for that profession due for consideration. This also ensures best use of resources.

The standard of acceptance policy was reviewed in 2012 to provide further guidance on the types of cases that should and should not be considered as an allegation. Refresher training was provided to Case Team Managers on its application to ensure understanding and consistency in its application. The correct application of the standard of acceptance ensures prompt closure of cases that do not meet the standard of acceptance. The age of open cases is monitored on a monthly basis to ensure that this does not exceed the internal measure of 73% of cases being 5 months old or less.

Reports on the number of outstanding actions, chases and upcoming chases are produced and monitored on a weekly basis to ensure the timely progression of cases.

## **11. HCPC Recommendations**

We further developed our work plan in response to the PSA's audit of the HCPC's early stages fitness to practise in 2013. This was presented to the FTP Committee at its meeting on 10 October 2013. Although the review of the GDC and GMC audits have not identified the need for any significant additional development activities that

the HCPC needs to undertake, the reports provide additional helpful evidence in support of the activities we are currently undertaking in relation to:

- Improving the FTP experience and how we communicate and interact with the different parties to a case, and ensure that the FTP process is accessible.
- The guidance and training we provide to staff in relation to the assessment of risk, in particular when deciding whether to apply for an interim order.
- Reviewing the approach taken to assessing the quality of the content of risk assessments;
- Reviewing the Investigating Committee Panel guidance, documents and process to improve decision making.
- Additional training for Case Managers on gathering and analysing information/evidence
- Enhanced audits undertaken by the Quality Compliance team, including reviewing quality of case closure decisions.
- The review of the 'tone of voice' which is used in our standard correspondence.

January 2014

# Audit of the General Dental Council's initial stages fitness to practise process

December 2013



## 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).

---

<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> CHRE. 2010. Right-touch regulation. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

# Contents

1. Overall assessment	1
2. Detailed findings	6
3. Conclusions and recommendations	29
4. Annex 1: Fitness to practise casework framework	30

# 1. Overall assessment

## Introduction

- 1.1 At the initial stages of the fitness to practise (FTP) process, the health and care professional regulators decide whether complaints should be referred for a hearing in front of an FTP panel, whether some other action should be taken, or whether complaints should be closed.
- 1.2 In August 2013 we audited the General Dental Council's (GDC) handling of 100 cases closed at the initial stages of its FTP investigation process during the period 1 December 2012 to 31 May 2013.
- 1.3 Our overriding aim in conducting audits is to seek assurance that the health and care professional regulators we oversee are protecting patients, service users and the public and maintaining confidence in the reputation of the professions and the system of regulation. During our audit we assessed whether the GDC had achieved these aims in the particular cases we reviewed. We also considered whether weaknesses in the handling of any of these cases might suggest that the public might not be protected, or confidence not maintained in the system of regulation, if this approach were adopted in future cases.
- 1.4 We operate a risk-based approach to carrying out audits and we audit each regulator at least once every three years. We audited the GDC in 2011 and 2012 and our audit reports are available from our website<sup>3</sup>.
- 1.5 In 2011-2012 the GDC introduced the following measures aimed at improving its handling of FTP cases closed at the initial stages:
  - The introduction of a triage<sup>4</sup> system and standard operating procedures
  - The implementation of a computerised case management system (CMS)
  - The provision of revised decision-making guidance for the Investigating Committee (IC)
  - The provision of guidance for caseworkers/decision-makers
  - A review of standard letters
  - The creation and deployment of a quality assurance team.
- 1.6 Following our audit in 2012<sup>5</sup>, we remained concerned about continuing problems with case progression and delay which have been a persistent feature in all of our audits of the GDC. In this audit we looked for sound evidence that there were minimal delays across the GDC's handling of cases

<sup>3</sup> PSA. Available at: <http://www.professionalstandards.org.uk/regulators/overseeing-regulators/early-fitness-to-practise-decisions>

<sup>4</sup> 'Triage' is the process by which new complaints or referrals are assessed on receipt against a set of criteria. This results in either closure or allocation to a caseworker for investigation

<sup>5</sup> CHRE. 2012. Audit of the General Dental Council's initial stages fitness to practise process August 2012. Available at: <http://www.professionalstandards.org.uk/docs/audit-reports/gdc-ftp-audit-report-2012.pdf?sfvrsn=0>

throughout the initial stages of the FTP process following the introduction of the new CMS and the improvement measures referred to in paragraph 1.5 above. We were pleased to note that we saw evidence of the positive impact of these changes in some of the cases that we audited, although we were disappointed to find a lack of consistent improvement even in those cases that had been opened after these improvement measures were put in place. We acknowledge that it takes time for new systems and processes to be embedded and we hope that the impact of the recent changes will have become much more apparent by the time we carry out our next audit in 2014.

- 1.7 In our special investigation report published in February 2013<sup>6</sup> we concluded that whilst there were deficiencies in the support and operation of the Investigating Committee which impacted on its efficiency and effectiveness and that these deficiencies should not have remained unaddressed, these did not amount to a failure on the GDC's part to carry out its statutory function.
- 1.8 We set out a summary of our findings and conclusions in relation to the audit we conducted in 2013 below.

### Summary of findings

- 1.9 We identified some examples of good practice in the GDC's handling of cases, with some proactive, thoughtful and insightful management of various cases by caseworkers and case managers. We consider that the casework guidance that was introduced in March 2012 is an improvement on the previous guidance in terms of clarity, and that it should therefore facilitate good quality casework. We found that the GDC is generally carrying out appropriate investigation to ensure that there is sufficient evidence to support decisions to close individual cases.
- 1.10 Similarly, we found that in the majority of cases the closure decisions made by the GDC were appropriate. However, we found weaknesses or areas for improvement in 91 of the cases that we audited, including 21 cases where we had significant concerns. In only one of these cases did we consider that a decision to close may have risked patient safety. These cases are referred to at paragraphs 2.55 and 2.56 of this report.
- 1.11 The weaknesses or areas for improvement we identified include:
- Delays in acknowledging in 21 cases (see paragraphs 2.4 and 2.5 for details)
  - In over half of the cases (61) we audited (see paragraph 2.9) we identified either a failure to record the reasons for decisions made during risk assessments, or a failure to carry out/record risk assessments. In three of these cases we identified a failure to make a timely interim order application<sup>7</sup> (see paragraph 2.11, first, second and fifth bullets)

<sup>6</sup> PSA. 2013. An investigation into concerns raised by the former Chair of the General Dental Council. Available at: <http://www.professionalstandards.org.uk/docs/special-reviews-and-investigations/130204-gdc-investigation-report-final.pdf?sfvrsn=0>

<sup>7</sup> Interim orders restrict the practice of a registrant and therefore protect patients while there is an on-going FTP investigation into serious concerns that have been raised about the registrant's practice

- We considered that further information or evidence should have been sought in 11 cases (see paragraph 2.13). In five of these cases we considered that the GDC did not obtain sufficient assurances from registrants that they were practising with indemnity insurance in place
- In 36 cases (see paragraph 2.19) we queried an element of the evaluation/decision: the majority of our concerns related to insufficient reasoning being recorded and/or communicated, rather than inappropriate closures. There was only one case where we had significant concerns about the final decision, which was an application for voluntary removal<sup>8</sup> approved on behalf of the Chief Executive and Registrar (the Registrar)<sup>9</sup>
- Inadequate customer service in 54 cases (see paragraph 2.26), in particular failures to keep parties updated
- Record-keeping concerns in 54 cases (see paragraph 2.33)
- Delays in progressing 30 cases (see paragraph 2.45) at various stages of the investigation process.
- We identified 12 data protection/confidentiality breaches or errors (see paragraph 2.52) – which we consider to be an unacceptably high proportion in a sample of 100 cases. These risked maintenance of confidence in the GDC’s system of regulation.

1.12 We recommend that the GDC reviews our findings in these cases and takes account of them in carrying out its ongoing programme of improvements to its processes and procedures, in order to minimise the risk of any of the issues highlighted recurring in the future. We consider that many of the weaknesses identified in this report could be addressed by improved record keeping, particularly the recorded reasons for the decisions made at the initial stages of the GDC’s fitness to practise (FTP) process.

1.13 We have set out our full assessment of the GDC’s handling of the initial stages of its FTP process in our detailed findings below.

### **Method of auditing**

1.14 In March 2010 we led a meeting with representatives from all the nine health and care professional regulators to agree a ‘casework framework’ describing the key elements common to the initial stages of an effective fitness to practise process that is focused on protecting the public. A copy of the final casework framework agreed can be found at Annex 1 of this report.

1.15 When auditing a regulator, we assess its handling of cases against this casework framework. Our detailed findings are set out below using the headings referred to in the casework framework. We also take into account information gathered during previous audits, information we are provided with in our annual performance review of the regulators, concerns we receive about the performance of the regulator, and any other relevant information that is brought to our attention.

<sup>8</sup> See paragraph 1.21 for an explanation of voluntary removal

<sup>9</sup> The GDC Director of Regulation exercises this power under delegated authority from the Chief Executive and Registrar

- 1.16 In this audit, we reviewed a sample of 100 cases which had been closed without proceeding to a final hearing before an FTP panel of the GDC. We drew our sample from the 1118 cases that the GDC closed at the initial stages of its FTP process in the six month period from 1 December 2012 to 31 May 2013.
- 1.17 We selected 50 cases at random, representing cases closed at each of the closure points within the GDC's initial FTP process. We also selected a further 50 cases at random from categories of cases that we considered were more likely to be 'higher risk' (that is to say that, in our view, there was a higher risk to public protection if proper procedures were not followed in these cases).

### **Overview of the GDC's FTP framework**

- 1.18 GDC registrants are required to comply with the principles contained in Standards for Dental Professionals<sup>10</sup> and a breach of these standards may result in an allegation that a registrant's fitness to practise is impaired. The Dentists Act 1984 (as amended) and The General Dental Council (Fitness to Practise) Rules Order of Council 2006 set out the legislative framework governing how the GDC handles allegations that a registrant's fitness to practise is impaired.
- 1.19 The structure of the GDC's FTP process means that there are two stages at which cases may be closed without referral to a hearing in front of an FTP panel. This is either (1) by GDC FTP staff or (2) by an Investigating Committee panel.

#### ***(1) Closures by GDC FTP staff without referral to an Investigating Committee (IC)***

- 1.20 Cases will be closed at the initial stages of the FTP process if they do not amount to an allegation that a GDC registrant's fitness to practise is impaired<sup>11</sup>. This may be at the triage (receipt) stage or following assessment of the complaint/information. The decision to close at triage stage is made by a casework manager. Where not closed, the case is allocated to a caseworker for investigation, after which it is assessed as to whether it should be closed or referred to an IC panel. The decision to close at assessment stage is made by a casework manager on the recommendation of a caseworker.

#### ***Voluntary removal***

- 1.21 A GDC registrant who is subject to an FTP investigation may make an application to be removed from the register. The application will be considered by the Registrar. If granted, the registrant is removed from the register (ie they are no longer authorised to practise) and the FTP investigation is closed. This process is known as voluntary removal.

---

<sup>10</sup> GDC. 2005. Standards for Dental Professionals. Available at: <http://www.gdc-uk.org/Dentalprofessionals/Standards/Pages/default.aspx>. These were replaced on 30 September 2013 by Standards for the Dental Team

<sup>11</sup> The General Dental Council (Fitness to Practise) Rules Order of Council 2006. Paragraphs 2 and 3

## *(2) Closures by an Investigating Committee panel (IC)*

- 1.22 The GDC's IC membership is made up of both dental professionals and lay people. The IC's role is set out in legislation. The Dentists Act 1984 (27A)(1) explains that the Committee's role is to "...investigate the allegation and determine whether the allegation ought to be considered by a Practice Committee [that is, the Professional Conduct Committee, Professional Performance Committee or the Health Committee]".
- 1.23 In order to carry out its role, the IC must "... determine whether the allegation ought to be considered by a Practice Committee... In considering a case the IC determines whether there is a 'real prospect' of the facts, as alleged, being found proved and if so whether or not there is a "real prospect" of a finding of current impairment being made..."<sup>12</sup> if the case were to be considered at a hearing before an FTP panel (ie the Professional Conduct Committee, the Professional Performance Committee or the Health Committee). The test is similar to the test used by decision makers at other health and social care professional regulators and is commonly referred to as the 'realistic prospect' test. It means that a case will not be referred for a hearing by an FTP panel unless there is a 'realistic prospect' that the panel, at such a hearing, would make a finding that the practitioner's fitness to practise is impaired.
- 1.24 In the event that the IC decides not to refer a case for a hearing by an FTP panel, it can decide to close the case with no further action.
- 1.25 Where the IC decides that there is a 'real prospect' of the facts alleged against the registrant being found proved, but decides that there is no 'real prospect' of a finding being made that the registrant's fitness to practise is currently impaired, it may:
- Close the case with unpublished advice to the registrant
  - Close the case with a warning to the registrant (which may be published against their name on the GDC's register which is available on its website).

### *Closures by the IC under Rule 10 of the General Dental Council (Fitness to Practise) Rules Order of Council 2006*

- 1.26 Following a referral by the IC for a hearing in front of an FTP panel, an application may be made to the IC to reconsider the referral and close the case. The application may be made by the registrant, by the GDC or by an FTP panel, under what is known as the 'Rule 10' procedure. The IC will only close a case as the result of a 'Rule 10' application in circumstances where the IC concludes that it is no longer the case that the 'real prospect' test is met (for example because new evidence indicates that the registrant's fitness to practise is no longer impaired).

---

<sup>12</sup> GDC. 2011. Investigating Committee Guidance Manual. Paragraphs 5 and 6

## 2. Detailed findings

2.1 Details of our findings from the audit are provided below under the headings identified in the casework framework (Annex 1).

### Receipt of initial information

2.2 The casework framework sets out key aspects of this part of the FTP process, including: providing clear information to complainants<sup>13</sup>; responding promptly to correspondence; and ensuring there are no unnecessary barriers to complaints being made.

2.3 The GDC processes require that on receipt of a new complaint/referral, a case should be opened within one day and triage completed within 14 calendar days. The GDC aims to notify the complainant of the triage decision within two days of it being made.

2.4 Of the 100 cases we audited, we identified 20 cases in which the time taken to acknowledge the complaints ranged between 18 days and three months. In one of these cases the delay was two months and was due to an administrative error and in another case the delay was three months and was due to the GDC changing its computer systems.

2.5 We noted a particularly significant delay in one further case which it took the GDC three months to open, and a further two months to acknowledge the complaint. The GDC has informed us that it has introduced changes to its process to ensure that all cases are opened within one day.

2.6 We note that the GDC's own internal audit programme has also identified delays in its triage process. The GDC has informed us that it has adapted its CMS to minimise delays and that it will be carrying out projects during the remainder of 2013 to improve timeliness at the triage stage. We will look for evidence of an improvement to the time taken to triage complaints in our next audit in 2014.

2.7 We had concerns about the handling at the receipt of information stage of one further case. Correspondence addressed to the GDC's in-house legal team was erroneously entered into the triage system as a complaint. The correspondence was from solicitors acting for a patient and enclosed a court order requiring the GDC to disclose records relating to an investigation into the patient's complaint against a registrant that had been made some years earlier. The caseworker treated this correspondence as a new complaint and wrote to the patient directly seeking further information. We considered that this failure to correctly categorise the correspondence on receipt was a serious administrative error, particularly given that the GDC would have been in contempt of court had it failed to disclose the documentation requested. Fortunately the error was identified by the GDC, which took the appropriate action while the case was open.

---

<sup>13</sup> 'Complainant' means any individual or body which has made a complaint or provided information to the GDC which resulted in an FTP case being opened. The GDC uses the term 'informant'



## Risk assessment

- 2.8 Conducting a robust risk assessment on receipt of a new complaint and updating that risk assessment in light of new information is an important part of public protection within a risk-based regulatory approach. Unless the regulator has conducted a proper initial evaluation of risk, it is difficult to make sound judgements about whether any regulatory action is necessary, and in particular to decide whether an application should be made for an interim order restricting the registrant's ability to practise while the complaint is being investigated. Robust and early risk assessment can also prompt the regulator to make a disclosure to an interested third party (for example another regulator) in order to safeguard the public. Risk should be assessed during the lifetime of the case, particularly on the receipt of new adverse information. The casework framework (see Annex 1) requires that decisions are recorded and reasons given for actions or no actions being taken.
- 2.9 Of the 100 cases that we audited, we identified 61 that raised concerns about the GDC's risk assessment, either because risk assessments had not been completed or recorded at the stage required by the GDC guidance, or because they had not been reviewed, or because insufficient reasons were recorded for the decisions taken.
- 2.10 More specifically, our findings relate to three areas.

### *(1) Completion of risk assessments*

- We noted one case, which was received prior to November 2011, where there was no record of a risk assessment being carried out. The GDC have said that the absence of a record does not mean that a risk assessment was not undertaken. For the avoidance of doubt we consider that in the absence of a record there is no evidence that the activity took place. We also noted 15 cases, also opened before November 2011, where risk assessment was not carried out at the point of allocation and was delayed until the assessment stage.
- The GDC introduced a new internal process in November 2011 requiring risk assessments to be carried out at the point of allocation to a caseworker. We checked for compliance with this new process and noted that:
  - i. The GDC has acknowledged that there is no evidence that a risk assessment was carried out in two cases
  - ii. In 14 cases the GDC said that risk assessments were conducted evidenced by caseworkers categorising the case as having 'high', 'medium' or 'low' risk on its CMS. The GDC said that its processes do not require recorded reasons for risk assessments unless there are exceptional circumstances. In our view, failing to document reasons for key decisions means that the regulator may not be able to justify those decisions if challenged, nor will it be able to learn from any errors in its decision-making process. We also note that, while the GDC was able to provide us with evidence of the risk categorisation, it was not able to provide us with evidence that this activity was carried

out at the point of allocation. We do not consider the GDC's approach good practice and it is not in line with the casework framework

- In response to our audit findings the GDC has informed us that it has introduced changes to its CMS to make the recording of a risk assessment mandatory, before any further action can be taken on a case. The GDC anticipates that this change will ensure that a documented risk assessment is recorded on every case in future.

### **(2) Review of risk assessments**

- We audited four cases in which there was no clear record of the risk assessments being reviewed at the assessment stage. In response to our audit findings the GDC has informed us that risk assessments are reviewed at the assessment stage, but that there is no requirement to document that such a review has occurred, unless the circumstances have changed with the effect that the risk has changed since the allocation stage. We consider that, in the absence of records, the GDC is not able to assure itself that individual risk assessment reviews actually took place.

### **(3) Interim order decisions**

- We audited 24 cases in which there was no record of consideration being given at the triage stage about whether an interim order might be required. We note that we did not consider that an interim order application should have been made in any of these cases – nevertheless the procedure to consider whether or not such an application was required should have been followed
- We audited a further 24 cases in which there was no record of the reasons for the decision not to apply for an interim order at the triage stage; as well as a further seven cases in which there was no record of the reasons for not applying for an interim order at the assessment stage. In response to our audit findings the GDC has stated that its processes do not require the routine recording of the reasons for a decision that no interim order application is required. In our view, the absence of a recorded evaluation of the risk is undesirable as it means there is no audit trail of the GDC's reasoning at the time the decision not to apply for an interim order was taken. The casework framework sets out that the reasons for decisions should be recorded
- In 33 of the cases that we audited we noted that there were no reasons recorded at the assessment stage for either the risk categorisation or the decision not to make an interim order application. The GDC has stated that risk assessments are reviewed at the assessment stage, but there is no requirement to document such reviews unless the risks are assessed as having changed as it considers this to be a disproportionate use of its resources. As stated above, we consider that it is undesirable for there to be no recorded reasoning for such decisions.

2.11 In addition to the above concerns about IO decisions, we identified specific concerns about risk assessment in the following five cases. We consider that

these concerns had implications for maintaining confidence in the GDC as a regulator (see para 2.56):

- In the first case we considered that an interim order could have been sought at an earlier stage. The registrant was eventually made subject to an interim suspension order – but not until five months after the initial adverse information had been received by the GDC. We acknowledge that the registrant was not working at the time and therefore there was no risk to public protection during the period before the interim order was imposed. Nevertheless we consider that a five month delay in putting such an order in place has the potential to undermine public confidence in the regulatory system
- In the second case the GDC received information that a registrant was acting beyond their scope of practice. We consider that the allegation was sufficiently serious and that there was sufficient information provided to the GDC to justify an application for an interim order: however, the GDC did not make such an application. In response to our findings about this case the GDC has accepted that it failed to consider the risk that the absence of an interim order meant that the registrant could work unrestricted at a different practice (the registrant had stopped working at the practice where the concerns about them had occurred)
- In another case that also concerned a registrant potentially acting outside their scope of practice, the need to consider applying for an interim order was noted in the case plan prepared by the GDC's external lawyers but it was not acted upon by the GDC. In response to our findings about this case the GDC has told us that there was insufficient information indicating the need to apply for an interim order, and that it did not agree with the external lawyers' view. However, in the absence of any record that the need for an interim order was considered at the relevant time or any record of the reasons why an interim order was considered unnecessary, we note that there is no documentary evidence demonstrating the reasoning of the GDC staff at the time. The GDC said that as this case concerned the practice of tooth whitening there were no risks to public protection caused by the delay with imposing an interim order in its view
- In another case that we audited the future need to consider applying for an interim order (once further information was received) was highlighted at the outset of the investigation. However there is no record that the need to apply for an interim order was given such further consideration once that further information was actually received by the GDC. We accept that, on the facts of the case, consideration of the further information should not have resulted in an interim order application being made. Nevertheless the process of reassessing the risk at the time that information was received should have been followed
- In a fifth case we considered that there was sufficient information available at the outset to warrant applying immediately for an interim order. In order to apply for an interim order the GDC needed to request further information. This information was requested but the GDC did not chase up this request for four weeks and there was therefore a delay. We

consider that the GDC should have taken appropriate steps to ensure that a referral to the IC and an interim order application occurred more promptly in this case.

### Gathering information and evidence

- 2.12 Gathering the right information and evidence is essential to enable the regulator to ensure that appropriate decisions are made and that any necessary action is taken promptly. Inadequate investigation potentially leaves issues unexplored, which may risk patient safety and undermine confidence in the system of regulation.
- 2.13 Generally we found that the GDC carried out appropriate and sufficient investigation in the cases that we audited. However we identified 11 cases where we considered that the GDC had not gathered sufficient information, resulting in decision makers reaching decisions in the absence of potentially helpful information/evidence.
- 2.14 The concerns we had in this category were as follows:
- In one case that we audited the registrant did not provide details of their employer as requested, and accordingly no follow-up enquiry was made of the employer as to whether they had any FTP concerns about the registrant. This was contrary to the GDC's process which requires such an enquiry to be made in every case. We were concerned that insufficient attempts were made by the GDC to obtain this information
  - We noted a similar failure to ask employers if they had FTP concerns in three other cases. In the first case, the employer was notified of the investigation but not asked if they had concerns; in the second case the employer was asked if they had concerns but they did not respond and this was not followed-up; in the third case the registrant's current employer was not contacted to ask whether they had any concerns. We were further concerned that the GDC made insufficient enquiries to resolve conflicting information about whether the registrant had or had not been employed at the practice that was the subject of the complaint. We consider that corroboration could appropriately have been sought from the registrant's current employer as to their employment history
  - In one case the IC (on closing the case following a 'Rule 10'<sup>14</sup> application) directed the Registrar to carry out further investigation into the registrant's claim on their website that they were providing "specialist" dental care. No further investigation into this specific issue was carried out
  - In one case the complainant was invited to respond to the registrant's observations about the complaint before the case was considered by the IC (we consider this process of inviting complainants' comments on the registrant's representations to be good practice<sup>15</sup>). The complainant stated that they disputed the registrant's version of events, but did not,

<sup>14</sup> See paragraph 1.26 for an explanation of 'Rule 10' cases

<sup>15</sup> CHRE. 2009. Handling complaints: sharing the registrant's response with the complainant. Available at: <http://www.professionalstandards.org.uk/library/document-detail?id=d5fb76f2-aaa7-4465-9e63-8fb9c773028a>

initially, provide further details. We consider that the caseworker should have sought clarification at this point, in order to ensure further information about the nature of the dispute on the facts was available to the IC; the complainant later provided further details, but the IC refused to consider that information as it was received late. In response to our finding on this case the GDC has commented that there was no new information in the complainant's letter which warranted further investigation. We were also concerned about the IC's handling of this matter, as set out at paragraph 2.23 (fifth bullet point)

- We found that there was a failure by the GDC to obtain satisfactory evidence of indemnity insurance from registrants in five cases as follows:
  - i. In the first case the IC specifically directed the Registrar to investigate the registrant's indemnity insurance position as an additional allegation when it decided to refer the case for a hearing in front of an FTP panel. However the GDC failed to ensure that its external solicitors followed that instruction from the IC. The case was closed without any hearing taking place (following a 'Rule 10' application) and without this issue ever having been investigated
  - ii. In the second case the registrant failed to provide details of indemnity insurance, despite four requests to do so. A voluntary removal application made by the registrant was then granted, and the case was closed. No assurance was therefore ever obtained that the registrant had indemnity insurance in place. The GDC told us that this issue, together with the registrant's failure to provide the information, would be taken into account were the registrant to apply for restoration
  - iii. The third case concerned a registrant who was alleged to have acted outside of their scope of practice. The registrant provided details of their employer's liability insurance. It did not appear that the GDC had identified that this was not equivalent to indemnity insurance
  - iv. In the fourth case, the registrant delayed in providing the GDC with details of their indemnity insurance, and an application for an interim order was made on that basis. After a delay of three months, the registrant provided an insurance certificate: however, this certificate did not cover the period during which the registrant had treated the patient, nor was it in place at the time the registrant was notified of the complaint. The GDC took the approach that the information about the registrant's current indemnity cover meant there was no need for an interim order in the interests of public protection. In our view the delay in providing the insurance certificate and the fact that cover had only recently been obtained should also have been investigated as it raised concerns that the registrant had only obtained cover due to the GDC investigation
  - v. We were particularly concerned about a fifth case. This concerned a registrant who had not had indemnity cover at the time of treating the patient, but who obtained retroactive cover once the GDC investigation commenced. It was therefore established that the registrant did not have indemnity cover at the relevant time but this

was not an allegation put forward to or identified by the IC – which closed the case.

- 2.15 In response to our feedback on these cases, the GDC has told us that it was accepted practice for registrants to obtain retroactive cover, in order to enable patients to receive appropriate compensation. The GDC has acknowledged that it is never acceptable for registrants to practise without appropriate indemnity insurance in place but stated it does not oppose the provision of retroactive cover as the net effect is that patients can be properly compensated.
- 2.16 We noted that in two further cases there were inadequacies with the clinical reports commissioned from the National Clinical Assessment Service (NCAS)<sup>16</sup> by the GDC, but these inadequacies were not identified by GDC staff. In the first of these cases the NCAS reporter failed to identify that the registrant under investigation had not in fact treated the relevant patient, even though this should have been obvious to them from the dental records. This caused the GDC to continue its investigation in circumstances where doing so was not warranted. In the second case the NCAS reporter did not consider all the available dental records. The case was referred to the IC – which considered all the records and disagreed with the NCAS reporter’s conclusion. Had the NCAS reporter reviewed all the relevant records, it is possible that the case could have been closed at an earlier stage of the GDC’s process. In response to our findings on these cases the GDC confirmed that it had identified this issue and a formal process of feedback to NCAS has now been put in place.

### **Evaluation and giving reasons for decisions**

- 2.17 Ensuring that detailed reasons are given for decisions which clearly demonstrate that all the relevant allegations/issues have been addressed, and that decisions are communicated to the parties effectively, is essential to maintaining public confidence in the regulatory process. The provision of well-reasoned decisions also acts as a check to ensure that the decisions themselves are robust.
- 2.18 We reviewed the quality of decision making in all the cases that we audited, which included: considering the GDC’s processes and available guidance for evaluation and decision making; considering whether we agreed that the decisions made were appropriate; and considering whether there were sufficient reasons for the decisions made.
- 2.19 We identified issues around evaluation and giving reasons for decisions in 36 of the cases that we audited, as set out below. Our concerns related to reasoning, recording and communication of the decision rather than concerns about the actual decisions made.

---

<sup>16</sup> Where a complaint is made about the clinical care provided by a registrant, an NCAS report may be commissioned by the GDC. The NCAS reporter reviews the dental records of the complainant to assess the clinical care provided by the registrant and provides an opinion as to whether the registrant’s clinical work met the standard expected

### *Triage and assessment*

- 2.20 We found that the GDC was generally making appropriate closure decisions, but we identified the following issues:
- One case was closed at the triage stage on the basis that the registrant had already been struck off the GDC's register. In fact the registrant had appealed the striking off decision and it had not yet taken effect at the point when the casework manager closed this case. We note that the complainant had withdrawn the complaint. We note that the GDC is currently taking action to ensure that its CMS alerts staff to cases where a striking off decision has not taken effect, as a result of an appeal, which should reduce the risk of a similar error being made in future. We will look for evidence of this in this in our next audit in 2014
  - We had concerns about the communication of the reasons for closure in four cases where we considered that more detail about the reasons could usefully have been given, and/or that some issues raised in the complaints had not been adequately addressed in the closing letters. We did not however have any concerns about the decisions to close these cases. For example, in one of these four cases we considered that the closing letter sent to the complainant would have benefited from including an explanation that, since the registrant had been struck off the GDC's register, there was no ongoing patient protection risk despite the GDC not being able to pursue the complaint. In another of these cases the closing letter stated that a complaint about advertising did not raise a fitness to practise concern, but did not explain why the GDC did not consider the advertising to be unethical
  - In seven cases we considered that the reasons for closure recorded on the GDC's CMS were not sufficiently explicit to provide assurance that all the relevant issues had been considered. For example, in three of these cases it was not recorded that the decision-maker had considered the registrant's previous FTP history. In response to our findings on these cases the GDC has stated that the need to record that previous FTP history has been considered will be reiterated in the guidance for decision-makers that is to be introduced
  - In another case, the complainant's consent<sup>17</sup> was only received after the case had been closed by the GDC (having been closed due to the complainant's non-provision of consent). There was no record of the reasons why the GDC had not re-opened the case once the complainant's consent had been received
  - In two cases we considered that the GDC's decision (and the reasons for the decision) not to continue with an investigation as a result of the complainants' non-provision of consent should have been explicitly recorded, because it was not clear whether or not the public interest in

---

<sup>17</sup> Consent is sought by the GDC from each complainant at the outset of an investigation. The GDC seeks their consent (i) to disclose the complaint to the registrant, (ii) to obtain their dental records and (iii) to share the information with third parties (eg NCAS, FTP panels). If consent is not received, the complaint is not pursued unless there is a public interest in doing so

continuing the investigation had been given appropriate consideration. In response to our finding on these cases the GDC has stated that consideration of the public interest test is implicit in decisions to close cases where there is no consent, but it has also agreed that this should be explicitly recorded

- We identified one case where there had been a failure to notify the complainant of closure.

### *Voluntary removal*

- 2.21 We audited nine cases where the Registrar granted an application for voluntary removal from the register. Although we found that the Registrar's decisions were appropriate (with the exception of one case, the details of which are set out at paragraph 2.55), we did identify some concerns with the decision-making process in six of the nine cases:
- We noted in two cases that the Registrar's decision lacked reasoning (although we acknowledge that the recommendations of the GDC staff on which the Registrar's decision was based contained more than adequate reasoning). We did not disagree with the decisions to grant these applications, but would have preferred there to be clarity in the documentation of the Registrar's reasoning
  - We identified a lack of reasoning in closure letters in five of these cases the Registrar's reasons for granting the voluntary removal application were not fully communicated to the registrant and/or to the complainant.
- 2.22 We consider that decisions to grant an application for voluntary removal from the register during an ongoing FTP investigation require a careful balancing of the various purposes of fitness to practise: public protection, declaring and upholding standards, and maintaining public confidence in the profession and its regulation. We would therefore expect to see any regulator that operates a voluntary removal mechanism producing thoroughly reasoned decisions which specifically take the public interest into account in decisions on voluntary removal applications. The GDC has indicated that it is in the process of producing guidance for the Registrar in relation to the consideration of voluntary removal applications, and that it will introduce a procedure to ensure that fuller reasons are given in closure letters wherever possible and appropriate. We hope that this new guidance will assist the GDC to ensure that the reasons for its decisions on voluntary removal applications are clearly communicated to all the relevant parties. We will follow up on this in our next audit in 2014 and in our performance review of the GDC.

### *Cases closed by the IC*

- 2.23 We audited 25 cases closed by the IC (not including those cases closed as a result of a 'Rule 10' application – see paragraph 2.24 below). Generally we found that IC decisions were well-reasoned and demonstrated appropriate application of the relevant tests. We identified the following concerns:



- In four cases we considered that the IC's decisions could have been strengthened by the inclusion of additional and/or less ambiguous reasoning
- In one case the IC's decision failed to record that the IC had revoked an interim order (or alternatively the IC had simply failed to revoke the interim order when the complaint was closed). In a further case the IC's finding in respect of one allegation was not recorded
- In one case the IC misapplied the 'real prospect' test in making a referral for an FTP panel hearing – which meant that a 'Rule 10' application was then made
- In three cases we were concerned that the IC had issued warnings that were not to be published on the GDC's register in circumstances where that did not appear to us to be appropriate, and without explaining the reasons for ordering non-publication. In response to our comments on these cases, the GDC has highlighted that at the relevant time there was no requirement for the IC to provide reasons for its decisions about ordering publication or non-publication of warnings. In two of these three cases we considered that the decision not to publish the warning was at odds with the IC's decision that a warning was required in the interests of declaring and upholding professional standards; on the facts of the third case, we considered that publication of the warning was warranted in order to declare and uphold standards (even though the IC had not highlighted that in its decision). In a further case we did not agree with the IC's decision that the warning should not be published, as we concluded that publication was warranted in the public interest as the registrant had practised whilst not registered. As one of the purposes of the register is to protect patients against unregistered practitioners, we consider that there was a public interest in warning patients that this registrant had practised whilst not registered. The GDC has responded that publication should not take place where the only effect of it would be to 'name and shame' the registrant; we recognise this distinction but remain of the view that in these cases there was a public interest in publication
- We had a concern in one case that there had been a procedural error on the part of the IC. The IC refused to consider comments made by the complainant at a late stage of the process. Whilst we do not necessarily consider that referral for an FTP hearing was warranted on the facts of the case, we are of the view that the IC erred in not adjourning so that it could consider the complainant's late comments before making its decision, being aware that the complainant disputed the registrant's version of events. This compounded our concern about the caseworker's handling of this issue (as set out at paragraph 2.14 fourth bullet). We recognise that the decision about whether or not to adjourn a case in such circumstances requires a balancing of consideration of the potential importance of the late comments against the delay to progression of the case (and the potential impact on the regulator's caseload) that will inevitably be caused by an adjournment

- In two cases we considered that the allegations were poorly drafted, which resulted in potentially inappropriate closure decisions by the IC. We had concerns about the drafting of allegations in a further case in which the allegations appeared to overlook a finding by NCAS. In another case, incorrect drafting of the allegations resulted in consideration by IC being adjourned, leading to a delay in progression of the case
- Finally, we noted a discrepancy within the casework guidance as to the timescale within which IC decisions should be notified to the parties. The guidance instructs the caseworkers to send notification of the decision one working day after the IC meeting, but also states that the full decision will not be issued until two working days after the meeting. The GDC has confirmed that notification should be sent by the caseworker within two days of the IC decision being available (which should be within two days of the meeting taking place). Generally we found that decisions were sent to the parties within that timescale (ie within four days of the IC meeting) but in one case there was a delay of three weeks in notifying the complainant, and three months in notifying the registrant's employer. In a second case the employer was not notified for two months. In a third case there was a delay of two weeks in notifying the parties of the IC decision, due to a query with the decision requiring resolution – the registrant was informed of the delay, but not the complainant. Finally, in a fourth case where an IC referral was withdrawn, the registrant's employer had been notified of the investigation but was never informed of its closure.

### **'Rule 10' cases**

- 2.24 As noted under the heading "Record keeping" (see paragraphs 2.38 and 2.39), there are limited records held on the GDC's CMS once a case is referred for a hearing in front of an FTP panel and external lawyers are instructed. In nine of the 10 cases of this type that we audited, we found no record of the GDC authorising the making of the 'Rule 10' application, or any record of the reasons why the application had been authorised. We consider it is essential that a reasoned decision made by a GDC employee with appropriate authority is recorded on the CMS. Our view is that external lawyers should not be making such decisions without the authority of the GDC and, in the absence of a record of authorisation, it appears that they are so doing. In only one case did we find evidence that this had occurred – authorisation was sought from the GDC for the 'Rule 10' application, chased and obtained by the external lawyers. The GDC has acknowledged that the process for agreeing 'Rule 10' applications needs to be formalised and documented and informed us that such a process is being put in place. We will follow up on this in our next audit in 2014.

### **Customer care**

- 2.25 Good customer service is essential to maintaining confidence in the regulator.
- 2.26 During our audit, we identified 75 instances of poor customer service across 54 cases, including failures to comply with GDC customer service targets, as set out below:

- Poor adaptation of (or errors in) standard letters in 13 cases. In particular, in one of these cases details of the allegations were not included in the notification letter sent to the registrant, with the result that the registrant had to request these details. In another case the notification to the registrant that the GDC was applying for an interim order failed to include the reasons for the application. In several cases where a referral had been received from the Dental Complaints Service (DCS), we found that the initial letter from the GDC to the patient concerned did not make it clear that the GDC was writing as a result of a referral made by the DCS. For example, in one case the initial letter opened, “thank you for contacting us...” which was inaccurate, as the patient had never contacted the GDC directly. In response to our findings on these cases the GDC has told us that because complainants are informed by the DCS that their complaint has been referred to the GDC, the GDC does not need to explicitly set that out in its initial letter to the complainant. We consider it would be better customer care for this to be made explicit
- Inaccurate information contained in letters in ten cases: for example, in one of these cases a letter to the complainant stated that the case had been closed following investigation, when in fact the case had not been investigated and had been closed because the GDC had never received the complainant’s signed consent<sup>18</sup>. In three of these cases the letters notifying the registrants of the IC meeting at which their case would be considered contained two different dates for the meetings, and in two of these three cases no attempt was made to clarify the date. In another of these cases we noted that the complainant was not advised that their complaint would be closed if they did not provide the required consents (contrary to the GDC casework guidance)
- Failures to apologise for poor service once brought to the attention of the caseworker in two cases. In the first case there had been a failure to acknowledge or respond to emails from the complainant, and in the second case the consent form was received from the complainant but not acknowledged, and after a lapse of five months the complainant was erroneously chased for it
- Failures in 25 cases to provide updates in accordance with the GDC’s target. The GDC’s casework guidance requires an update to be provided every six weeks if there has been no other contact during that period: this target was introduced in March 2012. Seven of these cases were opened prior to the introduction of the target. In three of these cases we found a failure both to provide regular updates prior to the introduction of the target and to comply with the target once it was introduced; and in two cases regular updates were provided prior to the introduction of the target, but not at six weekly intervals after it was introduced. Examples of the failures to provide updates set out above are as follows:

---

<sup>18</sup> Consent is sought by the GDC from each complainant at the outset of an investigation. The GDC seeks their consent (i) to disclose the complaint to the registrant, (ii) to obtain their dental records and (iii) to share the information with third parties (eg NCAS, FTP panels). If consent is not received, the complaint is not pursued unless there is a public interest in doing so

- i. In one of these cases the complainant was told that an NCAS report would be available in 10 days. The report was not commissioned for four months and was not received by the GDC for a further three months; neither the complainant nor the registrant was updated in the interim
  - ii. In two of these cases, the complainant was a consumer organisation which had carried out 'mystery patient' exercises and which subsequently referred concerns to the GDC. The consumer organisation was treated as the sole complainant, with the result that the patients concerned were not provided with updates by the GDC. The GDC said that it took a conscious decision to update the consumer organisation and not the patients directly, at least until such time as the patients might be required to provide evidence, given the background to the referral ie that the patients had not raised concerns with the GDC directly and might not have welcomed the consumer organisation's decision to refer some concerns on to the GDC. In our view the patients had a legitimate interest in the outcome of the case and should have been kept updated, and this also demonstrated a failure to liaise with potential witnesses appropriately
  - iii. In another of these cases the complainant was mistakenly sent a customer service feedback form whilst the investigation was ongoing, which of itself was a customer service failure. This prompted the complainant to express disappointment that they had not been kept updated. We note that an apology was then provided
- In eight cases we noted that short deadlines of between three and seven calendar days were imposed by caseworkers when requesting information from parties. We considered that this demonstrated poor customer care in these cases, in particular because there had been delays in progressing the case by the GDC which we consider would have made the request appear particularly unreasonable to those parties. In one of these cases the caseworker contacted the complainant apologising for not updating them for nine months and at the same time requested further information to be provided by the next working day. The complainant expressed dissatisfaction at this request. In another case the complainant's consent was received but not acknowledged, and this was erroneously chased four months later. A second chaser was sent a month later, asking for a response within four days. The complainant responded to say they had sent the consent form several months earlier: no acknowledgment or apology was ever given. On a separate occasion this complainant was asked to provide information within three days. In a third case the complainant (the registrant's employing PCT) was asked to comment on an interim order application within four days, and we considered that their comments could have been requested at an earlier stage. We note that it is not standard practice for a complainant to be asked to comment on an interim order application and that this was a specific instruction to the caseworker from the lawyer handling the interim order aspect of the case

- We noted one further case where the complainant was given a 10-day period to comment on the registrant's response to a complaint, prior to its consideration by the IC, but the period included the Christmas and New Year holiday period. The IC meeting was not due to take place until 24 January, therefore more time could have been allowed to the complainant. In another case an NCAS report had taken 10 months to be obtained by the GDC, which was then sent to the registrant with new allegations and they were asked to respond within 15 days. We considered this to be unreasonable in the context of the time taken to obtain the report and the amount of new information provided to the registrant at this point. We note the registrant's representatives asked for an extension of time and that this was allowed
- Failures in nine cases to promptly acknowledge correspondence where an acknowledgement was required or requested. For example, in one of these cases on two occasions information received from an employer was not acknowledged for over two weeks, and employer details received from the registrant were not acknowledged despite the notification letter stating that an acknowledgement would be sent. In two of these cases the complainants stated that they could not understand or were dissatisfied with the IC's decision and, whilst those queries were acknowledged by the caseworker and referred to the hearings team, there is no record on the CMS that the complainants were ever given a substantive response (such correspondence would have been sent by the GDC's hearings team – and correspondence from that team is not saved onto the CMS). The GDC has confirmed that in one case no response was ever sent, and that in the other case it is not clear whether a response was ever sent by the hearings team. In a similar case the complainant expressed dissatisfaction with the outcome of a 'Rule 10' application: again, the caseworker acknowledged this and passed the concern on to the external lawyers, but no further response was given to the complainant
- In one case there was a failure to investigate an alternative address for a registrant, which meant that the caseworker wrote to a European address held on the register when the registrant was known to be working within the UK. This resulted in an avoidable delay on the case
- In one case the registrant was sent a notification at their employer's practice address (which was the preferred contact address held on the register, although the registrant's home address was also recorded). The registrant responded from their home address and informed the caseworker that the practice had closed. Nevertheless the caseworker continued to correspond with the registrant at the practice address for a period of a year, including sending notification of the IC outcome (to refer the case to an FTP panel) to that address. We noted at least eight examples of correspondence being sent to the practice address after the registrant had informed the caseworker that the practice had closed. The registrant did not respond to this correspondence. It was not until a 'Rule 10' application was made that the GDC attempted to serve documents on the registrant at their home address rather than the outdated practice address. The GDC has informed us that it will ensure that the casework

guidance is made more explicit as to service on all known addresses, but we remain concerned that the introduction of guidance alone may not be sufficient to ensure there is no recurrence of the errors that occurred in this case

- One case was closed because a complaint reporting the same events was already being investigated. We concluded that the GDC should have considered keeping the second complainant updated
- In one case there was a substantial delay of 18 months between a referral being made by the IC for a hearing in front of an FTP panel and the making of a 'Rule 10' application to close the case. In the intervening period the patient whose treatment was the subject of the complaint died. This did not appear to be known to the external lawyers dealing with the case for the GDC, and the letter from the complainant's representatives informing the GDC about the patient's death was not replied to by the GDC's lawyers for over two weeks. We were disappointed to see that the response did not acknowledge the patient's death, and neither did it address the complainant's representatives' query as to why no action had been taken on the case in such a long time
- In two cases a consent form for patients was sent to complainants to obtain their dental records in cases where the complainant was not the relevant patient. The GDC has informed us that a new consent form was introduced in May 2012 for use in such instances.

## Guidance

- 2.27 It is good practice to have staff guidance, documents and tools setting out the regulator's established policies and procedures, in order to ensure consistency and efficiency in case management.
- 2.28 The GDC has introduced new processes and procedures and has an ongoing programme to refine these and introduce further processes and guidance. Generally we found that the GDC's casework guidance, standard operating procedures and IC guidance were useful tools that should assist the GDC to deliver consistent and effective case management. However any tool is only effective if properly applied and consistently complied with. We have set out in this report under each relevant heading any failures to comply with processes and guidance which we identified during the audit.
- 2.29 We identified a specific concern in relation to a failure to follow guidance in one case where no consideration was given to joining cases where there were several complaints of the same nature against one registrant. The GDC has advised us that it is piloting a new process for joining cases, which it anticipates will resolve this issue.
- 2.30 During the audit we identified that the casework guidance was not up to date in two areas, namely the timescale within which IC decisions should be notified to the parties (as noted at paragraph 2.23 seventh bullet), and the provision of NCAS reports to the parties and the IC. We also noted the following:

- The IC guidance does not currently require the IC to give reasons for ordering the non-publication of individual warnings. The GDC has informed us that IC members have received training on this issue, IC secretaries now remind them of the need to provide reasons and that the IC guidance will be updated to reflect this
- The IC had closed some cases with ‘reminders’ to registrants, rather than with formal advice. The GDC has told us that where the IC finds that there is no ‘real prospect’ of the factual aspects of the allegations being found proved, it has no power to issue advice to the registrant. We did not find that the IC guidance manual made this distinction clear. We also consider that the IC guidance manual could be clearer about the circumstances in which it is appropriate to give ‘reminders’ to registrants
- A lack of guidance for decision-makers as to what is considered to be misleading or potentially misleading advertising in the context of complaints about ethical advertising
- There is no guidance for the Registrar in relation to the withdrawal of interim order applications. The GDC has informed us that the authority of the Registrar to make such decisions is debateable and accordingly legal advice is always sought
- There is currently no guidance for the Registrar in relation to decision making about applications for voluntary removal. The GDC has informed us that such guidance is in the process of being drafted. We recommend that the findings of this audit are considered in the drafting of that guidance
- We found the forms of consent used by the GDC were not sufficiently explicit (i) for the GDC to obtain dental records from the registrant who is the subject of the complaint and from other registrants involved in the complainant’s treatment, or (ii) as to the purpose for which the complainant was giving consent for the GDC to disclose details of the complaint and dental records to third parties (ie during the investigation and adjudication process). In response to our comments the GDC has said that it amended the standard form of consent as of March 2013. We consider that the amended format should address our concerns
- We noted use in some standard letters of the phrases “impairment to practise” and “unfitness to practise”, which do not accurately reflect the FTP legal framework. In response to our comments the GDC has responded that its standard letters have been reviewed by a communications specialist who did not have concerns about this phrasing. We are pleased to note that the GDC has also stated that it will review its standard letters to replace these terms in light of our feedback.

2.31 We identified other areas where we consider that the GDC’s guidance could be enhanced in relation to four specific cases that we audited:

- A complaint was made that a registrant was holding themselves out as a specialist when not registered with the GDC. It transpired that the registrant was appropriately registered with the GMC, but this was not

identified by the GDC at an early stage. We suggest that guidance for caseworkers on medical specialisms could be provided

- We identified two cases where there was involvement with the Care Quality Commission (CQC). We queried with the GDC what arrangements were in place in respect of cross-referrals between the two organisations. The GDC has informed us that a memorandum of understanding with the CQC is in place and an information-sharing agreement is being drawn up
- We identified a voluntary removal case where there was an apparent lack of understanding by the GDC's registration department about the effect of voluntary removal. The GDC has informed us that the relevant standard operating procedure has been reviewed and agreed by all GDC departments.

### Record keeping

- 2.32 We consider that good record keeping is essential for effective case handling and good quality decision making.
- 2.33 We noted record-keeping deficiencies in 54 of the cases that we audited, which resulted in the records being incomplete or unclear.
- 2.34 The nature of these errors included: unrelated documents being filed on a case; draft documents which had not been removed from the files; forms used by GDC staff which were not complete or which contained errors; an absence of documentation of telephone conversations; incorrect information about closure reasons; missing documentation; and delays in uploading incoming correspondence to the CMS, which impacted on case progression. We noted one or more instances of these examples in 45 of these 54 cases.
- 2.35 We note that the GDC has identified through its internal audit process that there are a number of erroneous documents held within the CMS, and that a solution is under development. The GDC has also altered its procedures to ensure that telephone conversations are documented and stored appropriately.
- 2.36 We also noted in relation to four cases that we audited that the GDC's CMS does not make information about linked cases easily apparent when viewing an individual case (two or more cases may be linked because the allegations are made by the same complainant or because they involve the same registrant). This creates a risk that potentially relevant information on another case may not be considered. We identified additional record-keeping concerns in a further two cases which we thought risked maintaining confidence in the regulatory process:
- In the first case a complaint was made about the contents of a registrant's website. No contemporaneous record (such as a screenshot) was kept of the website at the time. We consider that would have been required as evidence, had the case proceeded to a hearing. The GDC does not agree with our feedback about this case, on the basis that its view is that it is inconceivable that such a case would proceed to a hearing unless the



information remained on the website over a period of time (in which case the evidence would remain available)

- Two cases relating to the same complaint were opened in error, and each proceeded in a different manner, which was confusing and had to be explained to the complainant.

2.37 We noted that the GDC did not retain on the CMS records of IC decisions (including interim orders) on the investigation case files for any of the cases we audited. IC decisions are only held on separate files, under the management of the GDC's hearings team. The GDC has informed us that it will be altering its process to ensure that all IC decisions are recorded on the investigation files in the CMS in future as standard practice. Similarly we noted that FTP panel decisions are not held on the investigation file, even when they are directly relevant to the matter under investigation (such as in circumstances where a case is closed at the investigation stage because the registrant has been struck off in relation to another matter).

#### *'Rule 10' cases*

2.38 Once a referral is made by IC for a case to go to a hearing in front of an FTP panel, the GDC instructs external lawyers to prosecute the case. These cases do not fall within the scope of the initial stages audit, except where a 'Rule 10' application is subsequently made, asking the IC to revoke the referral and close the case. At the point of the initial referral for an FTP panel hearing, the investigation file is closed and a new file is opened on the CMS (although the file itself is held by the external lawyers). We audited 10 'Rule 10' cases and in seven of those cases we found there to be insufficient documentation on the investigation case file of activities undertaken between the date of the referral for an FTP panel hearing and the making of the 'Rule 10' application. We did not review the files held by the external lawyers and therefore did not assess whether the casework framework was followed during this period. The GDC has informed us that its staff are able to obtain access to the full and retrievable audit trail of documents, including external lawyers' files when required. We are also pleased to note that the GDC intends to develop the functionality of the CMS to enable such documents to be added to the CMS in future.

2.39 The GDC has informed us that it deliberately does not retain documentation relating to cases that have been referred for an FTP panel hearing on the investigation case records within the CMS, due to the lack of sufficient safeguards to prevent disclosure of legally privileged correspondence. However it has undertaken a review of the process and is developing a standard operating procedure for cases referred for an FTP panel hearing which will require case documentation to be uploaded to the CMS to enable monitoring of case progression and auditing, whilst taking account of the need for separation of functions between different teams within the FTP directorate as well as the need to prevent waiver of legal professional privilege.

### ***Links between the registration and FTP systems***

- 2.40 In two cases that we audited registrants were removed from the register by the registration department for non-payment of the annual retention fee during a period when they were under FTP investigation and their cases had been referred for consideration by the IC. Legal advice obtained by the GDC confirmed that neither registrant could be restored to the register in these circumstances.
- 2.41 Whilst these administrative errors arguably have not caused any public protection risks (as the registrants are no longer able to practise), the accidental removal from the register of a registrant who is subject to FTP proceedings is a serious procedural failing which may not maintain confidence in the GDC as a regulator. The GDC has informed us that a procedure has been put in place to avoid repetition of the errors that occurred in these cases, and that the shared CMS now has security measures in place to prevent a registrant being removed from the register where there is an ongoing FTP investigation.
- 2.42 We also noted a further example of a failure in the link between the registration and FTP systems in one case that was closed at the triage stage. The case was closed on the basis that the registrant had already been struck off the register, but in fact the striking-off was not yet in effect (this case is referred to at the first bullet of paragraph 2.20). We note that the GDC is currently taking action to ensure that its CMS alerts staff to cases where a striking off decision has not taken effect, as a result of an appeal, which should reduce the risk of a similar error being made in future.
- 2.43 We also noted a lack of understanding of the voluntary removal process by the registration department in one case.

### ***Timeliness and monitoring of progress***

- 2.44 The timely progression of cases is one of the essential elements of a good FTP process. It is essential to manage workflow evenly, because delays in one part of the process that cause backlogs can stress the system unless relieved quickly. We particularly looked for an improvement in these areas in this year's audit, delay having been a particular area of concern in our previous audits.
- 2.45 We found 39 instances of delay across 30 of the cases that we audited. These delays occurred across the various stages of the GDC's initial stages FTP process. We summarise these as follows:
- In one case we found a delay between the point at which information was available which allowed the complaint to be triaged and closed, and the closure letters being sent out of five and a half weeks.
  - We found delays at the initial stages in 11 cases allocated for investigation. Delays ranged from two weeks to six months, with a delay in one case of over two years. For example, in one of these cases no activity took place between October 2010 and January 2013: we considered that with adequate case progression, this case could have been closed in 2011. In a second case, due to a caseworker being on

long-term sick leave, no action was taken for nearly five months. During this period the complainant sent seven emails which were not responded to. In our view the GDC should be alert to the risks to case progression posed by individual staff being absent for long periods and should have allocated this case to another member of staff

- One case was open between November 2010 and February 2013 (at which point it was closed) with no action being taken. The casework manager had closed the case due to lack of consent in September 2010, but it had been reopened in November 2010. Whilst it was reopened in error, this case demonstrates a further issue with active monitoring of cases
- There were delays in chasing information from parties in six cases. Delays ranged from two weeks to five months
- In one case information from an employer was not chased and had not been received by the time the case was closed (due to lack of consent from the complainant). We note that a separate investigation was commenced and the information from the employer was subsequently obtained
- There were periods of inactivity during the lifetime of seven cases, ranging from six weeks to six months
- Parties were not notified of the outcome of two cases closed at the assessment stage for 11 working days in one case and 20 working days in another. While the GDC written processes do not provide a target, we consider that it would be better practice to have sent this correspondence sooner
- There were delays in notifying the registrants of the complaints about them in four cases – with delays of two to three months after consent to such notification had been received from the complainants
- In three cases there were delays of four to six weeks by casework managers in making assessment decisions.

#### ***'Rule 10' cases***

2.46

As noted at paragraph 2.38, the absence of records on the investigation case files from the point at which cases are referred to external lawyers means that we have been unable to audit case progression from that point onwards. However, we did note significant intervals of time between the referral to an FTP panel hearing and the 'Rule 10' application being considered by the IC in three of the 10 'Rule 10' cases we considered. These time periods ranged from nine to 20 months. While we appreciate that the 'Rule 10' procedure can be initiated at any point we could not assess whether the GDC had initiated the Rule 10 application as soon as it became apparent that one was necessary because the GDC stores files separately once a referral to the external lawyers is made. We are concerned that the length of this time period could have been reduced if the GDC had proactively monitored the progress of cases handled by external lawyers. We note the GDC is taking

steps to ensure its record keeping systems are brought together to enable it to demonstrate that its cases are actively monitored.

- 2.47 The GDC casework guidance contains a target to assess each case within two months of receipt and for the IC to consider cases within four months of the assessment stage. Of the 24 cases that we audited which were closed at the assessment stage, the time taken to close was between one month and 27 months. 21 cases were closed outside of the two month target, with three cases closed within the target. 15 of the cases were closed six months or more after receipt.
- 2.48 In the 32 cases we audited which were closed by the IC or where the IC meeting at which the case was due to be considered was cancelled (we have not included cases closed under the 'Rule 10' procedure), the time taken to close ranged from three months to 19 months. Only nine of these cases were closed within the six month target timeframe.
- 2.49 The GDC's target for triaging complaints is 14 calendar days. We consider that this timescale is overly long and that it has the potential to have a negative impact on the overall time taken to conclude a complaint.
- 2.50 We will look for evidence of improvements in timescales and case monitoring in our next audit in 2014.

#### **Information security**

- 2.51 The casework framework does not reference the need to ensure that information held about registrants and other parties involved in an FTP investigation is kept securely, as this is a legal requirement in any event under the Data Protection Act 1998. During this audit we were concerned at the number of breaches of confidentiality and/or data protection we identified, and accordingly have grouped these together under this additional heading.
- 2.52 We identified 12 issues across 11 of the cases that we audited, as set out below:
- An incorrect email address was used for a complainant, with the result that an unrelated party received information about the registrant – and the registrant was not notified of that breach for over two months
  - An incorrect email address was used for a registrant, with the result that an unrelated party received information about the complaint. No action was taken by the caseworker in respect of this data protection breach, and no internal investigation was therefore undertaken
  - A letter was sent to a complainant that contained information about a different matter concerning the same registrant. The letter included reference to a criminal conviction the registrant had, which was not the subject of the complainant's concern. In addition, the registrant was not notified of the error for over two months
  - An incorrect registrant was identified, with the result that the case was opened against, and notified to, an unconnected registrant. We note that an internal investigation into this has been undertaken

- An incorrect registrant was identified, with the result that notification was sent to the wrong registrant. The complainant and correct registrant were not notified of the breach until three weeks after it had been identified
- A registrant was sent a copy of an internal email which disclosed that there was a police investigation and a CQC investigation into the owner of the practice at which the registrant worked. Neither of these matters should have been disclosed to the registrant
- An email relating to a different case was included in a bundle sent to NCAS. Whilst we note that there is a confidentiality agreement in place with NCAS which would prevent further disclosure, this was nevertheless a data protection breach
- Dental records were returned to the wrong dentist. It was not clear to us whether this dentist had any connection with the case
- In two cases the GDC published on its website orders which should not have been made/remained public. In one case a warning given to the registrant was published online for a short period although it was not supposed to be published at all, and in the other case an interim order remained published for two days after it had been revoked, only being removed when the registrant brought it to the caseworker's attention
- In two cases caseworkers shared details of cases with third parties where there was no apparent consent for them to do so. In the first case a telephone note records that the registrant returned a call from the GDC stating that "someone has called his mobile on behalf of the GDC to enquire about a psychiatrist's appointment. They had spoken to his wife." This was very sensitive information. In the second case, on two occasions the caseworker discussed details of the case with the husband of the complainant, despite there being no record that the complainant had consented to this.

### Protecting the public

- 2.53 Each stage of the regulatory process should be focused on protecting the public and maintaining public confidence in the profession and the regulatory system.
- 2.54 We are pleased to report that we found the majority of decisions made by the GDC protected the public and, in our view, maintained public confidence in the profession.
- 2.55 We had concerns about one decision made by the Registrar to grant a voluntary removal application. The registrant was a foreign national and intended to return to their country of origin. The registrant refused a request by the Registrar that the relevant authorities in that country should be notified of the voluntary removal. Whilst we acknowledge that the registrant was at retirement age and was recovering from a serious health condition and that their voluntary removal meant they could not continue to practise in the UK, we were concerned that their attitude indicated that they might intend to return to practice in their country of origin. We would therefore have preferred to see an insistence by the GDC as a pre-condition of granting voluntary

removal that the relevant overseas authorities should be notified. We felt that this was particularly important in the circumstances of this case, as the allegations were sufficiently serious for an interim order of suspension to have been imposed. The GDC stated that it assessed the risk of the registrant returning to practice in their country of origin and determined that the risk was such that there was no need to inform the regulatory authorities in that country. We consider it would be good practice for such a notification to take place in all cases as a matter of course, where it is known that a registrant is authorised to practise in another jurisdiction, but we acknowledge that the GDC gave this matter serious consideration and reached a different conclusion.

### ***Public confidence in the system of regulation***

- 2.56 We are of the opinion that 23 instances across 20 of the cases that we audited raised questions about the maintenance of public confidence in the regulatory system, namely:
- Data protection and confidentiality breaches/errors in the 11 cases identified at paragraph 2.52
  - No evidence of active case progression in four cases (reported at paragraph 2.45, second bullet and 2.46)
  - Erroneous removal of registrants from the register in two cases (see paragraph 2.40)
  - Failures to obtain sufficient details of registrants' indemnity insurance in five cases (see paragraph 2.14 fifth bullet)
  - Delay or failure to obtain an interim order in three cases (see paragraph 2.11, first, second and fifth bullets).
- 2.57 Further, we consider that the absence of records on the GDC's CMS and the delays in 'Rule 10' cases as referred to at paragraphs 2.24, 2.38 and 2.46 have the potential to undermine confidence in the system of regulation.
- 2.58 The customer care failings we identified also have the potential to undermine complainants' and registrants' confidence in the GDC.

## 3. Conclusions and recommendations

- 3.1 Overall, we found that the decisions made by the GDC at the initial stages of its FTP process protect the public and maintain confidence in the profession. However, the areas of concern highlighted in our last audit remain and this in itself has the potential to undermine confidence in the system of regulation operated by the GDC. We have also regrettably noted a number of cases where we felt that there were specific issues which risked the maintenance of confidence in the GDC's system of regulation.
- 3.2 We are of the view that our findings in relation to record keeping, risk assessment, information governance and public confidence in the system of regulation indicate inadequacies with the system of quality assurance and management oversight in place at the GDC, which may further undermine confidence in the regulator.
- 3.3 We consider that many of the issues identified in this report could be addressed by improved record-keeping, including the enhanced recording of reasons for decision-making. This would enable better understanding of the reasons for the decisions made at the initial stages of its fitness to practise process.
- 3.4 We hope that the GDC will continue to build upon the good practice we identified and seek to address the areas of concern highlighted in this audit. We recognise that the GDC has identified through its internal audits many of the issues we found during this year's audit, and we encourage and support the further programme of improvement work that the GDC has informed us is underway.
- 3.5 We recommend that the GDC considers the findings of this audit when drafting decision-making guidance for the voluntary removal process.
- 3.6 We were pleased to note that the GDC asks all registrants subject to an FTP investigation to provide details of their indemnity insurance, even where this is not relevant to the issues raised in the complaint/referral. However as noted above (see paragraph 2.14, fifth bullet), several of the cases that we audited raised concerns about the GDC's decision-making once information about insurance cover has been obtained (or not obtained).
- 3.7 We recommend that the GDC reviews the findings contained in this audit report and takes serious and appropriate action to assess the effectiveness of the improvement activities it has already implemented and determine how best to achieve further improvements. We hope that this audit report will be useful to the Council with making improvements in fitness to practise.

## 4. Annex 1: Fitness to practise casework framework

4.1 The purpose of this document is to provide the Authority with a standard framework as an aid in reviewing the quality of regulators' casework and related processes. The framework will be adapted and reviewed on an on-going basis.

### Stage specific principles

Stage	Essential elements
Receipt of information	<ul style="list-style-type: none"> <li>• There are no unnecessary tasks or hurdles for complainants/informants</li> <li>• Complaints/concerns are not screened out for unjustifiable procedural reasons</li> <li>• Provide clear information</li> <li>• Give a timely response, including acknowledgements</li> <li>• Seek clarification where necessary.</li> </ul>
Risk assessment	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>• Guidance for caseworkers/decision makers</li> <li>• Clear indication of the nature of decisions that can be made by caseworkers and managers, including clear guidance and criteria describing categories of cases that can be closed by caseworkers, if this applies</li> <li>• Tools available for identifying interim orders/risk.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Make appropriate and timely referral to Interim Orders Committee or equivalent</li> <li>• Make appropriate prioritisation</li> <li>• Consider any other previous information on registrant as far as powers permit</li> <li>• Record decisions and reasons for actions or for no action</li> <li>• Clear record of who decided to take action/no action.</li> </ul>



Stage	Essential elements
Gathering information/evidence	<p data-bbox="660 331 906 365"><u>Documents/tools</u></p> <ul data-bbox="660 371 1326 448" style="list-style-type: none"> <li data-bbox="660 371 1326 405">• Guidance for caseworkers/decision makers</li> <li data-bbox="660 412 1161 445">• Tools for investigation planning.</li> </ul> <p data-bbox="660 483 770 517"><u>Actions</u></p> <ul data-bbox="660 524 1406 824" style="list-style-type: none"> <li data-bbox="660 524 1273 557">• Plan investigation/prioritise time frames</li> <li data-bbox="660 564 1358 640">• Gather sufficient, proportionate information to judge public interest</li> <li data-bbox="660 647 1326 723">• Give staff and decision makers access to appropriate expert advice where necessary</li> <li data-bbox="660 730 1406 824">• Liaise with parties (registrant/complainant/key witnesses/employers/other stakeholders) to gather/share/validate information as appropriate.</li> </ul>
Evaluation/decision	<p data-bbox="660 873 906 907"><u>Documents/tools</u></p> <ul data-bbox="660 913 1342 990" style="list-style-type: none"> <li data-bbox="660 913 1342 990">• Guidance for decision makers, appropriately applied.</li> </ul> <p data-bbox="660 1028 770 1061"><u>Actions</u></p> <ul data-bbox="660 1068 1414 1440" style="list-style-type: none"> <li data-bbox="660 1068 1414 1144">• Apply appropriate test to information, including when evaluating third party decisions and reports</li> <li data-bbox="660 1151 1347 1184">• Consider need for further information/advice.</li> <li data-bbox="660 1191 1206 1225">• Record and give sufficient reasons</li> <li data-bbox="660 1232 1334 1265">• Address all allegations and identified issues</li> <li data-bbox="660 1272 1038 1305">• Use clear plain English</li> <li data-bbox="660 1312 1326 1388">• Communicate decision to parties and other stakeholders as appropriate</li> <li data-bbox="660 1395 1321 1440">• Take any appropriate follow-up action (eg warnings/advice/link to registration record).</li> </ul>

## Overarching principles

Stage	Essential elements
Protecting the public	<ul style="list-style-type: none"> <li>● Every stage should be focused on protecting the public and maintaining confidence in the profession and system of regulation.</li> </ul>
Customer care	<ul style="list-style-type: none"> <li>● Explain what the regulator can do and how, and what it means for each person</li> <li>● Create realistic expectations.</li> <li>● Treat all parties with courtesy and respect</li> <li>● Assist complainants who have language, literacy and health difficulties.</li> <li>● Inform parties of progress at appropriate stages.</li> </ul>
Risk assessment	<ul style="list-style-type: none"> <li>● Systems, timeframes and guidance exist to ensure ongoing risk assessment during life of case</li> <li>● Take appropriate action in response to risk.</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>● Comprehensive and appropriate guidance and tools exist for caseworkers and decision makers, to cover the whole process</li> <li>● Evidence of use by decision makers resulting in appropriate judgements.</li> </ul>
Record keeping	<ul style="list-style-type: none"> <li>● All information on a case is accessible in a single place.</li> <li>● There is a comprehensive, clear and coherent case record</li> <li>● There are links to the registration process to prevent inappropriate registration action</li> <li>● Previous history on registrant is easily accessible.</li> </ul>
Timeliness and monitoring of progress	<ul style="list-style-type: none"> <li>● Timely completion of casework at all stages</li> <li>● Systems for, and evidence of, active case management, including systems to track case progress and to address any delays or backlogs.</li> </ul>

**Professional Standards Authority for Health and Social Care**

157-197 Buckingham Palace Road  
London SW1W 9SP

Telephone: **020 7389 8030**

Fax: **020 7389 8040**

Email: [info@professionalstandards.org.uk](mailto:info@professionalstandards.org.uk)

Web: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

© Professional Standards Authority  
for Health and Social Care December 2013



# Audit of the General Medical Council's initial stages fitness to practise process

December 2013

## 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).

---

<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> CHRE. 2010. Right-touch regulation. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

# Contents

1. Overall assessment.....	1
2. Detailed findings.....	7
3. Conclusions and Recommendations .....	17
4. Annex 1: Fitness to practise casework framework .....	18

# 1. Overall assessment

## Introduction

- 1.1 In May 2013 we audited 100 cases that the General Medical Council (GMC) had closed at the initial stages of its fitness to practise (FTP) processes during the six month period 1 October 2012 to 31 March 2013.
- 1.2 In the initial stages of their FTP processes the health and care professional regulators decide whether complaints/concerns should be referred for a hearing in front of an FTP panel, or whether some other action should be taken, or whether the complaints/concerns should be closed.
- 1.3 Our overriding aim in conducting audits is to seek assurance that the health and care professional regulators we oversee are protecting patients and the public, and maintaining the reputation of the professions and the system of regulation. We assessed whether the GMC achieved these aims in the particular cases we reviewed. We considered whether weaknesses in the handling of any of these cases might also suggest that the public might not be protected, or confidence not maintained, in future cases.
- 1.4 We operate a risk based approach to carrying out audits and we audit each regulator at least once every three years. In our last audit report of the initial stages of the GMC's FTP processes (published in February 2010<sup>3</sup>) we found, '...a well-managed system of casework with no evidence of significant risks to patients or to the maintenance of public confidence'.
- 1.5 We did however recommend that the GMC:
  - Reviews how it could ensure that, in all cases, it achieves consistency in respect of keeping parties informed and responding to complaints within a reasonable time
  - Reviews the consistency and robustness of the application of its policies on voluntary erasure and undertakings.<sup>4</sup>
- 1.6 In this audit we looked for evidence that the GMC had maintained its standards of casework and that the recommendations from our last audit had been considered and addressed.
- 1.7 As part of this audit we reviewed three cases which concerned doctors employed at the Mid Staffordshire NHS Foundation Trust. We specifically included these cases within our audit sample in light of the concerns about the regulators' handling of such cases, and the resulting risk to public confidence in the regulatory process. We set out a summary of our findings and conclusions in relation to this audit below.

---

<sup>3</sup> CHRE 2010. Fitness to Practise Audit Report 2010. This can be found at: <https://www.professionalstandards.org.uk/regulators/overseeing-regulators/early-fitness-to-practise-decisions/early-fitness-to-practise-decisions-detail?id=9e378a04-7f2e-4132-ab68-d1a31c23f777>

<sup>4</sup> Please refer to the section on 'Guidance' at paragraph 2.24 for more details.

## Summary of findings

- 1.8 The 100 cases that we reviewed in our audit showed that the GMC has maintained its effective casework system. Our overall conclusion is that the GMC's initial stages fitness to practise process protects the public and maintains public confidence in regulation. We also identified a number of examples of good practice by the GMC in its handling of cases. However, we found weaknesses or areas for improvement in 22 of the cases that we audited, including five cases in which sufficient reasons for the GMC's decisions were not adequately communicated to third parties. We did not have any concerns about the GMC's actual decisions in the remaining 17 cases.
- 1.9 The weaknesses/areas for improvement that we identified include:
- An absence of clear or adequate reasons for the decisions to close nine cases<sup>5</sup>
  - Failure to gather further information and evidence which would have enhanced investigations and led to stronger and clearer decisions in four cases<sup>6</sup>
  - Delays in progressing casework in 11 cases<sup>7</sup>
  - The absence of fully documented risk assessments in five cases
  - Relevant information not being kept on the main electronic case file but being kept in separate case records (such as the paper investigation file, or in a linked case file) in four cases
  - Unclear wording in standard letters sent to complainants/referrers<sup>8</sup> to update them on the current status/progress of an individual enquiry/investigation in 10 cases<sup>9</sup>
  - Failure to update relevant parties in compliance with the GMC's internal service target (of six weeks) in two cases.
- 1.10 We set out further information about our assessment of the GMC's handling of the initial stages of its FTP process, including the good practice we have identified, in our detailed findings below.

## Method of auditing

- 1.11 In March 2010 we led a meeting with representatives from all the nine health and care professional regulators to agree a 'casework framework' describing the key elements common to the initial stages of an effective fitness to practise process that is focused on protecting the public. A copy of the resulting casework framework can be found at Annex 1 of this report.

---

<sup>5</sup> Please see paragraph 2.14 for details of these cases

<sup>6</sup> Please see paragraphs 2.11 and 2.12 for details of these cases

<sup>7</sup> Please see paragraph 2.36 for details of these cases

<sup>8</sup> People who raise concerns with the GMC about a doctor's fitness to practise are known as either complainants or referrers. The term 'complainants' is generally used by the GMC to mean individuals - such as patients or members of the public. The term 'referrers' is generally used to mean organisations such as employers or other regulators/enforcement agencies.

<sup>9</sup> Please see paragraphs 2.20 and 2.21 for details of these cases



- 1.12 When auditing a regulator, we assess their handling of a case against this casework framework. Our detailed findings are set out below using the headings referred to in the casework framework. We also base our assessment of risk associated with each case on the information we have gathered during previous audits, on the information we are provided with during our annual performance review of the regulators, on concerns that we receive about the performance of the regulators, and any other relevant information that comes to our attention.
- 1.13 In this audit we reviewed a sample of 100 cases that had been closed without being referred for a hearing in front of an FTP panel. We drew our sample from the 4,885 cases that the GMC closed at the initial stages of its FTP process in the six month period from 1 October 2012 to 31 March 2013. We selected 50 cases at random, representing cases closed at each of the closure points within the GMC's initial FTP process. We also selected a further 50 cases at random<sup>10</sup> from categories of cases that we considered were more likely to be 'higher risk' (that is to say that, in our view, there was a higher risk to public protection or to public confidence in the regulation of the medical profession if proper procedures were not followed in these cases).

### *The GMC's investigation of fitness to practise concerns*

- 1.14 GMC staff (Assistant Registrars) triage each FTP enquiry on receipt. They decide whether enquiries should be closed (for example, enquiries that do not relate to GMC registered doctors), referred to another organisation, or investigated by the GMC.
- 1.15 The most serious cases are allocated to the GMC's National Investigation Team (NIT) to investigate. Other cases are allocated for either Stream 1 or Stream 2 investigation by the Regional Investigation Teams.
- 1.16 Stream 1 investigations are reserved for cases where the allegations, if proved, would raise questions about a doctor's fitness to practise. One or more of the following criteria must apply:
  - a. Persistent clinical errors
  - b. Persistent failures to provide appropriate treatment/care
  - c. Any single serious clinical error or failure to provide appropriate care
  - d. Any conduct which would fall into the category of 'presumed impairment' (as described in the GMC's Guidance on Criteria and Thresholds<sup>11</sup>); or where there is a presumption<sup>12</sup> that the GMC will take some form of action, ie allegations of dishonesty
  - e. Serious or persistent breaches of GMC guidance on consent and/or confidentiality
  - f. Serious impairment by reason of ill health, to the extent that patient safety may be compromised.

---

<sup>10</sup> Cases from the Mid Staffordshire NHS Foundation Trust were identified by us as a risk based category. Three cases in this category were audited as this was the entire number of cases which fell within the sample period.

<sup>11</sup> This guidance explains the thresholds for referral to the GMC – it is available from [http://www.gmc-uk.org/Guidance\\_GMC\\_Thresholds.pdf\\_48163325.pdf](http://www.gmc-uk.org/Guidance_GMC_Thresholds.pdf_48163325.pdf)

<sup>12</sup> GMC (Fitness to Practise) Rules 2004 Rule 5. Please see also the GMC Guidance to Fitness to Practise Rules 2004 which can be found at [http://www.gmc-uk.org/about/legislation/ftp\\_legislation.asp](http://www.gmc-uk.org/about/legislation/ftp_legislation.asp).

- 1.17 Stream 2 investigations are for cases that do not appear to raise a question about the doctor's fitness to practise. In all Stream 2 cases the GMC asks for the doctor's employer's confirmation that there are no fitness to practise issues for the GMC to consider (so that the GMC can be assured that there is no wider pattern of fitness to practise concerns about the doctor) before closing the investigation.

### *Decision-making at the end of each investigation*

- 1.18 The essential decision to be made at the end of the initial stage of any FTP process is whether or not a case should be considered by an FTP panel.<sup>13</sup>
- 1.19 Under the GMC's FTP framework most decisions about whether or not a case should be considered by an FTP panel are made by two GMC staff known as case examiners (one medical, one non-medical). The case examiners can:
- Refer the case for a hearing by the Medical Practitioners Tribunal Service
  - Agree undertakings with the doctor (this process is known as 'consensual disposal')
  - Issue a warning
  - Conclude the case with no further action or with advice to the doctor.
- 1.20 The case examiners reach their decision about the appropriate outcome in each case by applying the 'realistic prospect' test. This test requires the case examiners to decide whether or not there is a 'realistic prospect' of establishing that the doctor's fitness to practise is impaired to a degree justifying action on registration.<sup>14</sup>
- 1.21 In reaching their decision, the case examiners are required to keep in mind the GMC's duty to act in the public interest, which includes the protection of patients and the declaring and upholding of professional standards and maintenance of public confidence in the medical profession and its regulation. They also need to consider:
- The nature and seriousness of the case
  - Whether or not the concerns about the doctor are ones that can easily be remedied, and whether they have in fact been remedied
  - The level of insight shown by the doctor
  - And the level of risk of repetition.
- 1.22 If the case examiners decide that there is a 'realistic prospect' of establishing that the doctor's fitness to practise is impaired to a degree justifying action on their registration, they **must** either refer the case for an FTP panel hearing, or invite the doctor to agree to undertakings about their future practice.

---

<sup>13</sup> Section 35C (4) of the Medical Act 1983.

<sup>14</sup> Section 14 of the GMC's Annex A 'Amendment to our guidance for the Investigation Committee and case examiners on making decisions on cases at the end of the investigation stage'.

- 1.23 If the two case examiners do not agree on the outcome, the decision will be made by the Investigation Committee, which has the same powers as the case examiners. Similarly if the doctor disputes the alleged facts, or refuses to accept a warning, the case will be referred to the Investigation Committee.

### *The use of undertakings*

- 1.24 Undertakings can restrict the doctor's practice or their behaviour, or can require them to practise only under supervision or to re-train. They will be disclosed to anyone making an inquiry about the doctor's registration (unless the undertakings concern the doctor's own health). Undertakings are regularly reviewed by case examiners, to check whether they need changing or whether they can be lifted because there are no longer any concerns about the doctor.
- 1.25 The case examiners can only decide to invite a doctor to agree to undertakings if:
- There is no 'realistic prospect' that at an FTP panel hearing the panel might order the doctor to be struck off (erased) and
  - The case examiners are satisfied that undertakings are sufficient to protect patients and the public and are an effective way of addressing the concerns about the doctor.
- 1.26 When considering inviting a doctor to accept undertakings, the case examiners should consider a number of factors including: their workability; the likelihood of the doctor complying with them; and whether retraining is likely to be more effective at addressing the doctor's performance issues than a suspension from practice.
- 1.27 If a doctor does not agree to undertakings, or if they breach the undertakings, or if other concerns arise about their fitness to practise, the case will be referred for an FTP panel hearing.

### *The use of warnings*

- 1.28 A case that does not meet the 'realistic prospect' test (ie it is not serious enough to result in a referral for a hearing or in agreement of undertakings) may still raise significant concerns about a doctor's conduct or performance. The GMC's guidance for its decision-makers states that if the case examiners decide not to refer a case for a hearing or invite the doctor to agree to undertakings, they **must** then consider whether or not to issue the doctor with a warning.
- 1.29 Warnings can only be issued by the case examiners if there is no dispute about the facts, and if the doctor does not ask to have an oral hearing. Warnings are published on the GMC's register and disclosed to any enquirers for five years (and they are disclosed to any employer who requests information about the doctor, even after that five year period is over).

1.30 In deciding whether to issue a warning the case examiners will take into account a range of aggravating or mitigating factors, including:

- The doctor's level of insight into their failings
- Any genuine expression of regret/apology
- Any previous 'good' history
- Whether the incident was isolated or whether it has been repeated
- Any indication of the likelihood of a repeat
- Any rehabilitation/corrective action taken
- Relevant references/testimonials.

## 2. Detailed findings

- 2.1 We found that the GMC has effective systems and processes in place in all essential areas of initial stages casework as set out in our casework framework (see Annex 1).
- 2.2 Our audit showed that well-reasoned decisions were taken in 95 cases out of the 100 cases that we audited.
- 2.3 We identified various examples of good practice in the GMC's case handling, including:
- All telephone notes set out information security questions to help staff verify the identity of the caller and ensure confidential information is not wrongly provided
  - Four cases demonstrating pro-active case management where caseworkers chased third parties for further information to ensure prompt case progression
  - Two cases demonstrating the GMC's commitment to taking forwards concerns in circumstances where there is no third party complainant/referrer. In one of these cases the GMC acted as the complainant when the original complainant withdrew from the process. In the other case the GMC took proactive steps to investigate concerns raised in a press report highlighted by a caseworker
  - The use of an 'expert report checklist', indicating the issues that had been considered by the expert and the experts' conclusions in two cases. We consider that this checklist is a helpful tool for caseworkers to use to progress cases following the receipt of an expert report
  - The use of medically qualified case examiners means that there is a continual source of clinical advice available to staff carrying out initial investigations. In six cases we observed examples of the GMC commissioning clinical expert advice as part of its initial investigation when a matter fell outside a case examiners' area of expertise. This access to appropriate specialist advice during the investigation stage ensures that the decision makers have sufficient and relevant information available to them when taking decisions about a doctor's fitness to practise.

### Receipt of initial information

- 2.4 During our audit we looked to see whether the GMC was adhering to guidance in the casework framework which includes:
- That there are no unnecessary tasks or hurdles for complainants/informants
  - Complaints/concerns are not screened out for unjustifiable procedural reasons
  - Providing clear information
  - Giving a timely response, including acknowledgements and seeking clarification where necessary.

We did not find any examples in this audit of any concerns within these areas.

### **Risk assessment**

- 2.5 Robust risk assessment on receipt of a new complaint and on receipt of further information is necessary to enable the regulator to assess what action should be taken and appropriate prioritisation. In some circumstances the regulator may need to take immediate action to protect the public, such as applying for an interim order to be imposed to prevent the doctor from practising unrestricted while the investigation is on-going. The casework framework identifies that records should be kept of the reasons for risk assessment decisions.
- 2.6 In our audit we saw evidence of general compliance with the GMC's risk assessment processes. We did however identify one case in which no record had been kept of the reasons for the decision to progress the case under the Stream 2 process. We also refer to this case in paragraph 2.32 below.

### **Gathering information and evidence**

- 2.7 Gathering the right information early enough in the FTP process is essential to enabling a regulator to assess the risks a doctor may pose to patient safety and to ensuring that appropriate action can be taken promptly including, where necessary, applying for an interim order. It also means that sufficient information is available to be considered by the decision makers at the appropriate point in the process.
- 2.8 We noted that the GMC's electronic case management system is designed to link together relevant information about all parties involved in a case.
- 2.9 We found the following strengths in the case management system:
- Two cases where the case management system alerted the caseworker to check the doctor's date of birth if it had been taken from NHS records rather than being directly provided. This is to help verify the identity of a doctor who is the subject of a complaint
  - One case in which the case management system generated an alert to verify the email address of the doctor, because there had been multiple failed deliveries of emails sent by the GMC. This alert acts as a warning to caseworkers that they may be sending correspondence to the wrong address and that this address should be verified.
- 2.10 Overall in our audit we found that the GMC has effective processes in place to ensure that the relevant information is gathered at the right time. Although we identified four cases (as noted in paragraphs 2.11 and 2.12 below) where we considered that the GMC's information-gathering could have been improved, we did not conclude that any of the GMC's decisions failed to protect the public.
- 2.11 Examples of the above cases are provided below:
- In the first case we audited the GMC had closed the investigation appropriately following confirmation from the doctor's employer that they had no concerns about the doctor's fitness to practise, as well as expert evidence to the effect that the doctor's standard of care in relation to the concerns/complaints was reasonable. However, following receipt of

information about concerns raised by other patients, the GMC did not initiate any further investigation. We were concerned that the new information might have demonstrated a pattern of behaviour by the doctor, and that the GMC had not taken the opportunity to investigate whether or not that was in fact the case. We note that the GMC accepts that it did not pursue this line of investigation and that it would have been prudent to attempt to identify and contact these patients

- In a second case we considered that the GMC should have sought further evidence in order to establish whether or not the doctor had actually renounced their directorship of the care home
- In a third case, a GMC investigation manager had recommended that new concerns about a doctor who had been involved in a serious untoward incident should result in the opening of a new investigation. That recommendation was not followed nor were the reasons for that decision recorded on the case management system. The GMC has highlighted to us that the new concerns were investigated and properly considered within the context of the original investigation, and that the case examiners took the view (having received legal advice from the GMC in-house legal team) that the new concerns should not be included within the allegations that the doctor was asked to respond to.

2.12 In a fourth case, we were concerned that the case had been progressed under the Stream 2 process rather than the Stream 1 process. The allegations were of a serious nature - a patient died. As the case was dealt with under the Stream 2 process, neither the post mortem report nor the patient's medical records were obtained by the GMC. We recognise that GMC staff followed the appropriate guidance in deciding that this case should be investigated under the Stream 2 rather than the Stream 1 process. We encourage the GMC to review whether the relevant guidance should be amended to include patient death as a factor that might trigger a Stream 1 investigation in some circumstances. The GMC has told us that one of the outcomes of the Lean Review<sup>15</sup> that has been recently undertaken was to identify the merits of an enhanced triage process that would enable the GMC to explore issues further before deciding whether a case should be investigated under the Stream 1 or the Stream 2 process and we welcome that development.<sup>16</sup> The GMC has told us that the introduction of the NIT in January 2011 should ensure that all relevant information has been gathered and that cases are now 'case ready' before being passed to a case examiner. In our next audit we will look for evidence that the improvements to the process that have been made by the GMC; including the introduction of the NIT, have resulted in better information-gathering during investigations.

---

<sup>15</sup> Please see paragraph 3.2 for further details of the Lean Review.

<sup>16</sup> There will be a small minority of cases where the GMC will follow the old two stage process (where for example the doctor refuses to accept undertakings).

## Evaluation and giving reasons for decisions

- 2.13 Ensuring that detailed reasons are provided for decisions taken and that those reasons clearly demonstrate that all the relevant issues have been addressed is essential to maintaining public confidence in the regulatory process. The requirement to provide detailed reasons also acts as a check to ensure that the decisions themselves are robust.
- 2.14 In this audit we found nine cases in which insufficiently detailed reasons for decisions were recorded, or inadequate reasons were communicated to relevant parties. In eight of the nine cases the GMC decision makers (both case examiners and other GMC staff) had not, in our view, provided adequate reasons for their decisions. While we do not consider that the decisions to close these cases failed to protect the public, we consider that the decisions would have been strengthened had clearer and more detailed reasons been documented. Examples are provided below:
- In one case involving a doctor working at the Mid Staffordshire NHS Foundation Trust, there was no record showing that the case examiners had considered issuing a warning to the doctor, following the doctor's earlier refusal to agree to undertakings. The end result was that the case was closed by the GMC, with advice being provided to the doctor. While we accept that the case examiners could validly have decided that a warning was not required in the circumstances of this case, we remain concerned that there is no record of the reasoning behind the case examiners' decision not to issue a warning – the decision letter only sets out the case examiners' reasoning for deciding not to refer the case for a hearing or to offer the doctor undertakings. We also consider that the reasoning provided for the case examiners' decision that the 'realistic prospect' test was not met in this case was insufficiently detailed
  - In another case a decision was made to refer the doctor for consideration for a performance assessment, but there was no clear record of the decision itself or the reasons for it. We did not have any concerns with the decision taken in this case but we would have expected to see sufficient reasons provided for this decision
  - In a further case, we were concerned that the case examiners had not provided sufficient reasoning for their decision to agree undertakings with the doctor. We agree with the decision, but in our view, insufficient reasons were set out as to why this outcome was in the public interest.
- 2.15 In two cases that we audited we noted that there was no formal documentation of the reasons for investigating under the Stream 1 process. The GMC has responded to our feedback on this by pointing out that the triage form that its staff complete is kept on file and that it records which (if any) criteria are present that mean that the case should be investigated under the Stream 1 process.



- 2.16 We are pleased to note that the GMC as of the start of 2013 introduced a new decision form which requires additional reasoning to be recorded in similar circumstances to those set out above. In response to our feedback from this audit the GMC has also agreed that it would be good practice for Assistant Registrars to be required to record the reasons for their decisions about performance assessments, and we hope to be able to report in future that the GMC has changed that part of their process.

### Protecting the public

- 2.17 Each stage of the regulatory process should be focused on protecting the public and maintaining confidence in the profession and the regulatory system. In our last audit of the GMC in 2010 we were pleased that we did not identify any public protection concerns or concerns about the maintenance of public confidence in the GMC.
- 2.18 Our overall conclusion is that the GMC's initial stages fitness to practise process protects the public and maintains public confidence in regulation.

### Customer care

- 2.19 Good customer care is essential to maintaining confidence in a regulator. In this audit we identified concerns about the provision of regular updates to interested parties, the adequacy of the wording of the standard letters (relating to the GMC's decisions to investigate cases under its Stream 1/Stream 2 processes), and about the appropriateness of the letters sent to complainants when closing Stream 2 investigations.
- 2.20 We found eight cases demonstrating weaknesses in the GMC's customer care and the clarity of communications with relevant parties and in particular that these cases raised issues about the adequacy of the GMC's correspondence with complainants. These cases are detailed below:
- In one case that we audited the GMC staff member did not write to the complainant to confirm the GMC's decision to close the case, following the complainant's decision to withdraw their complaint. This was despite the fact that the caseworker had informed the complainant in a telephone call that this would be done
  - In another case we found that a letter to the complainant did not clearly set out the reasons for either the progression of the case under the Stream 1 process or the closure decision
  - In another case the initial letter to the complainant did not adequately explain why their enquiry was being dealt with under the Stream 2 process. The letter also did not explain that no investigation would be carried out unless the doctor's employer raised concerns about their fitness to practise. As this case was dealt with under the Stream 2 process (which means routine updates to the complainant are not provided) it was over one year later (once the doctor's employer confirmed to the GMC that they had concerns about the doctor's fitness to practise) that the GMC informed the complainant of the further steps being taken. We also noted that the closure letter that was sent to the complainant was a standard GMC letter and had not been tailored to

the facts of the case, and it therefore failed to explain that although the doctor had agreed to undertakings, that outcome was not linked to the care that the doctor had provided to the complainant's relative. We note that the GMC has recently improved the tailoring of its standard letters by requiring the Assistant Registrar who triages an enquiry to formulate a 'complaint specific' paragraph for inclusion in the acknowledgment letter to be sent to the complainant. However this process change does not address our concern about the lack of tailoring of closure letters

- In another case the complainant (a member of the public) wrote to the GMC to express disappointment that the GMC had not been in contact for four months. The GMC responded promptly the next day, although we note that no apology was offered for the lack of previous contact. That response stated that the GMC would be in contact again in due course. We consider that the level of customer care in this case would have been improved by providing more detailed information to this complainant about the timescale for the investigation
- In another case, the letter sent to the complainant advising of the reasons for cancelling the FTP panel hearing contained a confusing paragraph about the likelihood of a finding of impairment being made. In our view the letter would have been clearer to the member of the public receiving it had it simply referred to the 'realistic prospect' test no longer being met (as referred to in a later paragraph)
- We identified concerns in two cases about the lack of detail/lack of clarity in standard letters sent to complainants at the closure of cases investigated under the Stream 2 process. In another case a letter sent to the doctor did not explain adequately the reasons why the case was being dealt with under the Stream 1 process, other than to say that it was necessary to investigate the matter in more detail. In our view, it would constitute better customer care if more detailed and user-friendly information was included as a matter of course in all these standard letters, and we are pleased to note that the GMC accepts that would be good practice. We are also pleased to note that GMC began a 'Tone of Voice' review in October 2012, and that revised letters that take the findings of that review into account were introduced in July 2013
- In a further case, update letters were not sent to the complainant every six weeks throughout the life time of the case in accordance with the GMC's internal service targets – this was because the complainant telephoned for updates (although no records of the telephone calls were documented).

2.21 We considered that in 10 of the cases that we audited the standard letters sent by the GMC in relation to Stream 2 cases were inadequate – they stated that there would be no further contact from the GMC unless the doctor's employer identified concerns. In one of these cases we considered that the use of the terms 'preliminary investigation' and 'full investigation,' without adequate explanation of the difference between the two, had the potential to confuse the recipient. We are pleased to note that the GMC has accepted our feedback in relation to these standard letters and has changed them with effect from July

2013. We are also pleased to note that the GMC has agreed to reconsider the provision of a formal letter at the end of the Stream 2 process to inform the complainant of the next steps in the case.

2.22 We found a number of strengths in the GMC's customer care:

- One case in which the GMC's initial letter to the doctor advising them of the investigation by the NIT included information about how the doctor could access legal advice
- Two cases in which the letters to complainants at case closure referred them to and provided contact details for Victim Support
- One case in which a letter sent to a complainant who was unhappy with the GMC's decision to close the case helpfully explained how the decision to close the case had been reached. We noted that the tone of the letter was appropriate and apologetic.

2.23 In response to our feedback from this audit, the GMC has advised us that it is currently reviewing all of the template letters used in the investigation process as part of the 'Tone of Voice' review referred to above.

### Guidance

2.24 In our last audit we recommended that the GMC should review the consistency and robustness of the application of its policies on the use of voluntary erasure and undertakings.

2.25 We did not review any voluntary erasure cases as part of this audit.<sup>17</sup>

2.26 In this audit we reviewed 21 cases which had been closed by means of consensual disposal ie by the GMC agreeing undertakings with the doctor. As a result of our review of these cases, we have written to the GMC expressing our views about some aspects of the GMC's use of undertakings at the end of the investigation stage of the FTP process. The views we have expressed also reflect the comments we made about the transparency of decision-making and the appropriateness of undertakings in relation to misconduct cases when the GMC consulted on its consensual disposal proposals in 2009.

2.27 In one case that we audited we noted that the GMC had failed to follow its own guidance, in that it had not offered the complainant the opportunity to comment on the proposal to conclude the case with undertakings. In response to our feedback on this case, the GMC has stated that it was not necessary or appropriate to consult the complainant on the suggested consensual disposal, as the decision to offer the doctor undertakings did not relate to the concerns that had been raised by the complainant. While we do not disagree with the GMC's position on this, we note that its own guidance does not provide for the situation where a proposed consensual disposal is not linked to the concerns raised. We are pleased to note that in response to our feedback the GMC has agreed to update the relevant guidance.

---

<sup>17</sup> There were no voluntary erasure cases which fell within the sample period.

- 2.28 In one case that we audited we noted that the doctor's employer had not been given an opportunity to comment on the option of agreeing undertakings with the doctor, as required by the GMC's internal process (set out in the 'Addendum to the Investigation Manual'). In response to our feedback about this case, the GMC has informed us that it has now updated the relevant guidance and that while it does not offer employers an opportunity comment on individual cases where undertakings are proposed, the use of undertakings is discussed more generally with employers within the Employers Liaison Service.

### Record keeping

- 2.29 Poor record keeping can lead to inappropriate decision making and poor customer service. Maintenance of a single comprehensive record of all actions and information on a case is essential for proper management of cases and for good quality decision making.
- 2.30 During this audit we identified concerns that relevant information (such as letters to doctors informing them that undertakings were in place) was often kept in different areas within the case management system, without appropriate cross referencing. In particular we noted that any correspondence sent by the Case Review Team is saved in a separate section of the case management system, without any cross-referencing or link to the main case record. We also audited two cases where no formal telephone attendance notes had been made by the relevant GMC staff - instead they had used a separate 'Activity Description' section to record details of these calls. Lack of consistency in record keeping can make it difficult for staff to be sure that they have located all the relevant records relating to a particular case.
- 2.31 In early 2012 the GMC introduced a requirement to record decisions made at the triage stage about whether or not to apply for an interim order to be imposed. In our audit we saw evidence of general compliance with that process, as well as with a related process that has been introduced more recently that requires staff to undertake further risk assessment in the event that adverse information is received later in the lifetime of the case.
- 2.32 We did however find two cases in which there was no record of particular decisions that had been taken, or of adequate reasons for those decisions:
- In the first case, a panel had refused the GMC's application for an interim order. The GMC later received further information, and further consideration was given to making an interim order panel referral, but the case examiner's advice was that a second referral was not necessary. We are concerned about whether this decision was appropriate, given that the GMC was in receipt of new evidence (an expert report) to support the allegations about the doctor's clinical practice. The GMC's response to our feedback in this case was that the expert report did not tell the GMC anything new, as it referred to issues from 2010, and so the GMC did not think that a further interim order referral was necessary. The GMC accepts that the rationale for the case examiners' decision was inadequate. We note that the GMC has recently provided case examiners with further training in decision making to reinforce the requirement to record adequate reasons for decisions

- In the second case, we found a record of the GMC investigation manager's decision that the matter should be dealt with under the Stream 2 process (ie that no investigation would be undertaken unless adverse information was received from the doctor's employer). However no reasons for that decision were recorded. We acknowledge that the GMC's procedures do not require the reasons for such decisions to be recorded. We would encourage the GMC to review that aspect of its procedures, to bring it in line with the casework framework (which requires the recording of reasons for decisions).
- 2.33 We set out below examples of other weaknesses that we identified in the GMC's record keeping during this audit:
- In one case that we audited, a query was received from the doctor's new employer regarding the doctor's interim order. The GMC told us that the caseworker had confirmed in a telephone call with the new employer that the doctor had informed them of the conditions placed on their registration. However there was no record of that telephone call on the case management system
  - In another case that we audited, we found that the dates recorded on the case management system differed from the actual dates of the relevant activities on the case. This means that the caseworker did not update the status of the activity from 'pending' to 'done' on the date the activity was completed, and so the data on the case management system is not accurate. This has the potential to be misleading. However we note that the GMC's systems identify activities that are not updated from 'pending' to 'done' on a Management Information Report which is circulated to FTP staff on a weekly basis.
- 2.34 Overall we found that the GMC's computerised case management system is a secure method of storing case-related information, including all correspondence and documentary evidence related to each investigation. It also has the capacity to provide a complete audit trail of all activities on each case, including all relevant decisions. We found general evidence of compliance with the recently introduced requirements to record risk assessments both initially and on receipt of adverse information.

### **Timeliness and monitoring of progress**

- 2.35 Overall we concluded that the GMC monitors case progression effectively. We noted three cases identified during our audit which demonstrated proactive case management by GMC staff.
- 2.36 In the audit we found 11 cases in which there had been delays in case handling, including the following examples:
- In one case we found considerable delay in deciding whether to ask the doctor to undergo a performance assessment or whether to obtain an expert report. The original decision to request a performance assessment (taken in 5 May 2011) was overturned in September 2011. This aspect of the case was not progressed until November 2011, when an expert report was requested (this was received in February 2012). We were concerned that these delays, alongside delays caused by other parties, contributed to the overall three year timeframe for conclusion of the case

- We identified two cases in which there had been periods of inactivity
  - We identified two cases where there was delay caused by the GMC's staff in responding to internal and external correspondence. We acknowledge that some of the delay was caused by the actions of other parties
  - We identified two cases in which there were delays of several weeks between the receipt of complaints by the GMC and the opening of investigations into them. We note that this was due to delays in receiving information from the Mid Staffordshire NHS Foundation Trust
  - In another case that we audited there was a period of inactivity due to the internal transfer of the case to a new caseworker, followed by further delays of 2-3 weeks for activities to be completed once the new caseworker was assigned
  - In a further case audited we were concerned that a six month delay occurred before a second application for an interim order was made. That delay occurred because the case had been closed, and before an application could be made the case had to be re-opened using the 'Rule 12'<sup>18</sup> procedure and at the time there was a high volume of 'Rule 12' requests. In our view, the 'Rule 12' decision in this case should have been prioritised.
- 2.37 We reviewed two cases in which we were concerned about the overall timeframe. It took 26 months to conclude one of the cases, partly due to a five month period in which a suitable expert was being sought. The second case took 18 months to conclude - three months longer than the GMC's service level agreement. We accept that a contributory factor in the timeframe was the doctor's lack of prompt co-operation.
- 2.38 We note that the GMC has been working to reduce delays in the FTP process since 2011 and that this has resulted in a decrease in the average length of time a case takes to progress through the investigation stage. The GMC acknowledges that a considerable increase in the volume of cases in the period since 2010 has meant that unfortunate delays have occurred in some cases, despite the overall improvement in case timeframes. The GMC is continuing to invest in measures to deliver further improvements in the timeliness of case progression across the entirety of its caseload.

---

<sup>18</sup> The 'Rule 12' procedure permits the GMC to review a decision taken at the end of an investigation in certain circumstances. The doctor or complainant concerned can request the GMC to carry out a review (as can anyone else who the GMC regard as having an interest in the decision). A review can only be carried out if new evidence has come to light which might have changed the original decision, or if the original decision was materially flawed. A review must also be necessary either for public protection, in the public interest, or to prevent injustice to the doctor. A review must take place within 2 years of the decision being made (unless there are exceptional circumstances).

## 3. Conclusions and recommendations

- 3.1 Our overall conclusion is that the GMC's initial stages fitness to practise process protects the public and maintains public confidence in regulation. We are also pleased to report that, since our last audit, the GMC has taken forward several of the planned improvements to its FTP processes, including:
- The launch of the Medical Practitioners Tribunal Service (MPTS), the development of meetings with doctors and with complainants and the on-going roll-out of the Employer Liaison Service (ELS). In particular we note that the launch of the MPTS is a clear operational separation between the GMC's role as an adjudicator from that of investigator and prosecutor
  - The introduction of pilot meetings with complainants and doctors at the end of an investigation. This was rolled out in September 2012.
- 3.2 We acknowledge the GMC's on-going programme of improvements to its FTP processes; including an on-going Lean Review which is being carried out in order to systematically review the end-to-end fitness to practise process with the aim of streamlining their processes. We also note that the GMC intends to provide FTP staff with a system which will provide prompts for updates to be sent to relevant parties in October 2013. We also note that the GMC has recently carried out a 'Tone of Voice' review along with a review of all its standard letters with the aim of improving the quality of its written communication. We hope that these changes will help to improve both the GMC's customer service and timely case progression.
- 3.3 We further note that the GMC states that at the time of many of the decisions (2010) noted above there was no requirement for Assistant Registrars to record their triage decision rationale. The GMC accepts that such records would have provided a further level of detail. We are pleased to note that an upgrade has been carried out on the case management system, which now requires a decision rationale to be recorded. We are also pleased to note that the GMC has identified that while Assistant Registrars are not currently obliged to record their decisions about the need for performance assessments in individual cases, it would be good practice to do so going forwards.
- 3.4 During the audit we identified a number of concerns relating to the GMC's policy about the consensual disposal of cases by means of undertakings. We have written separately to the GMC to set out our concerns. We will publish our conclusions in due course.
- 3.5 We would recommend that the GMC continues to build upon the good practice that we have identified in this audit and that it addresses areas of concern found in this audit with the successful implementation of the points above.

## 4. Annex 1: Fitness to practise casework framework

4.1 The purpose of this document is to provide the Authority with a standard framework as an aid in reviewing the quality of regulators' casework and related processes. The framework will be adapted and reviewed on an on-going basis.

### Stage specific principles

Stage	Essential elements
Receipt of information	<ul style="list-style-type: none"> <li>• There are no unnecessary tasks or hurdles for complainants/informants</li> <li>• Complaints/concerns are not screened out for unjustifiable procedural reasons</li> <li>• Provide clear information</li> <li>• Give a timely response, including acknowledgements</li> <li>• Seek clarification where necessary.</li> </ul>
Risk assessment	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>• Guidance for caseworkers/decision makers</li> <li>• Clear indication of the nature of decisions that can be made by caseworkers and managers, including clear guidance and criteria describing categories of cases that can be closed by caseworkers, if this applies</li> <li>• Tools available for identifying interim orders/risk.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Make appropriate and timely referral to interim orders Committee or equivalent</li> <li>• Make appropriate prioritisation</li> <li>• Consider any other previous information on registrant as far as powers permit</li> <li>• Record decisions and reasons for actions or for no action</li> <li>• Clear record of who decided to take action/no action.</li> </ul>



Stage	Essential elements
Gathering information/evidence	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>• Guidance for caseworkers/decision makers</li> <li>• Tools for investigation planning.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Plan investigation/prioritise time frames</li> <li>• Gather sufficient, proportionate information to judge public interest</li> <li>• Give staff and decision makers access to appropriate expert advice where necessary</li> <li>• Liaise with parties (registrant/complainant/key witnesses/employers/other stakeholders) to gather/share/validate information as appropriate.</li> </ul>
Evaluation/decision	<p><u>Documents/tools</u></p> <ul style="list-style-type: none"> <li>• Guidance for decision makers, appropriately applied.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Apply appropriate test to information, including when evaluating third party decisions and reports</li> <li>• Consider need for further information/advice.</li> <li>• Record and give sufficient reasons</li> <li>• Address all allegations and identified issues</li> <li>• Use clear plain English</li> <li>• Communicate decision to parties and other stakeholders as appropriate</li> <li>• Take any appropriate follow-up action (e.g. warnings/advice/link to registration record).</li> </ul>

## Overarching principles

Stage	Essential elements
Protecting the public	<ul style="list-style-type: none"> <li>• Every stage should be focused on protecting the public and maintaining confidence in the profession and system of regulation.</li> </ul>
Customer care	<ul style="list-style-type: none"> <li>• Explain what the regulator can do and how, and what it means for each person</li> <li>• Create realistic expectations.</li> <li>• Treat all parties with courtesy and respect</li> <li>• Assist complainants who have language, literacy and health difficulties.</li> <li>• Inform parties of progress at appropriate stages.</li> </ul>
Risk assessment	<ul style="list-style-type: none"> <li>• Systems, timeframes and guidance exist to ensure ongoing risk assessment during life of case</li> <li>• Take appropriate action in response to risk.</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Comprehensive and appropriate guidance and tools exist for caseworkers and decision makers, to cover the whole process</li> <li>• Evidence of use by decision makers resulting in appropriate judgements.</li> </ul>
Record keeping	<ul style="list-style-type: none"> <li>• All information on a case is accessible in a single place.</li> <li>• There is a comprehensive, clear and coherent case record</li> <li>• There are links to the registration process to prevent inappropriate registration action</li> <li>• Previous history on registrant is easily accessible.</li> </ul>
Timeliness and monitoring of progress	<ul style="list-style-type: none"> <li>• Timely completion of casework at all stages</li> <li>• Systems for, and evidence of, active case management, including systems to track case progress and to address any delays or backlogs.</li> </ul>

**Professional Standards Authority for Health and Social Care**

157-197 Buckingham Palace Road  
London SW1W 9SP

Telephone: **020 7389 8030**

Fax: **020 7389 8040**

Email: [info@professionalstandards.org.uk](mailto:info@professionalstandards.org.uk)

Web: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

© Professional Standards Authority  
for Health and Social Care December 2013

