
Strategic review of the Nursing and Midwifery Council

Final report

3 July 2012

About CHRE

The Council for Healthcare Regulatory Excellence promotes the health and well-being of patients and the public in the regulation of health professionals. We scrutinise and oversee the work of the nine regulatory bodies¹ that set standards for training and conduct of health professionals.

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

Our aim

The Council for Healthcare Regulatory Excellence works to raise standards and encourage improvements in the registration and regulation of people who work in health and social care. We do this in order to promote the health, safety and well-being of patients, service users and other members of the public.

Our values

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

- focussed on the public interest
- independent
- fair
- transparent
- proportionate

Our values will be explicit in the way that we work; how we approach our oversight of the registration and regulation of those who work in health and social care, how we develop policy advice and how we engage with all our partners. We will be consistent in the application of our values in what we do.

We will become the Professional Standards Authority for Health and Social Care during 2012.

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

1. Executive summary

- 1.1 The Nursing and Midwifery Council (NMC) has had a troubled history in which a succession of Chief Executives, Chairs and Council members have failed to create the modern, effective and efficient regulator that the public, nurses and midwives need and deserve.
- 1.2 In January 2012, the Parliamentary Under Secretary of State at the Department of Health commissioned CHRE to carry out a strategic review of the NMC. This is our final report. We published an interim report in April, which is included here at Annex 2.
- 1.3 A regulator is charged with two key responsibilities: to protect the public and to uphold public confidence. In the NMC's case, this means to uphold confidence in the practice of nurses and midwives. The NMC has continued to carry out its public protection duties, although not as well as it should but, as its stakeholders make clear, it is not inspiring confidence in the professions or in professional regulation.
- 1.4 As we said in our interim report, at the heart of the NMC's failure to succeed lies confusion over its regulatory purpose, lack of clear, consistent strategic direction, unbalanced working relationships and inadequate business systems.
- 1.5 Our interim report highlighted weaknesses in governance, leadership, decision making and operational management. In our final report, additionally we identify poor financial stewardship, a passive, hierarchical culture of 'resigned resilience' and provide further detail on the problems with the NMC's management and business systems.
- 1.6 Much of what went wrong here was the direct responsibility of the NMC's leaders and a reflection of their skill mix and capacity. However, no organisation operates in isolation and the context in which it conducts its business can affect its success or failure. The NMC has not performed efficiently, it has not had its sights set correctly on its core regulatory functions but it has also reacted to external demands and expectations that are themselves based on a misunderstanding of its proper role and responsibilities.
- 1.7 The NMC's response to our review is encouraging. It has cooperated fully, and there has been considerable activity since January 2012 under the direction of the interim Chair and Chief Executive. But there is no room for complacency. As we explain in our two reports, the problems here are at every level, in every system. Amongst its staff however, there is a strong passion for public protection, a potential to get it right and some fertile ground for a clear sighted Council, Chair and a Chief Executive skilled in turning an organisation around and establishing competent management systems. We view these new appointments as critical to restoring public confidence in the NMC and so have recommended that due diligence is exercised in the appointment of the these roles to ensure that the individuals appointed as Chair and Chief Executive have the personal credibility, leadership behaviours, competencies and communication skills necessary to implement the changes set out in this strategic review.

Regulatory purpose

- 1.8 Clarity of purpose is essential for any successful organisation. The NMC has recognised that and it is beginning to refocus its work and is restructuring the organisation to support delivery. The NMC has not understood its regulatory purpose well and as a result it has not communicated it clearly to its stakeholders. This in turn has reinforced their misunderstanding. As we explain in our final report, the role of the regulator is to set the 'baseline', the standard below which professional practice must not fall. It is the role of professional bodies to seek to raise the bar and to encourage nurses and midwives to achieve excellence in practice. It is the responsibility of employers to manage their performance at work and to provide support, training and effective workplace systems.

Regulatory functions

- 1.9 The main problem rests with the NMC's performance in fitness to practise. CHRE consistently highlighted problems with its performance of this regulatory function but only recently has the organisation shown any real determination to address its shortfalls. It has underinvested in fitness to practise compared to other regulators, it needs to have a clearer strategy for turnaround, better focus on planning and a more streamlined approach to delivery.
- 1.10 It is scaling back its work in standards and policy to concentrate on its core functions and it is beginning to think about developing a more right-touch approach to its role in education, although continuing for the short term with a variation on its current approach. The registration function is performing reasonably well but is vulnerable to its weak IT system.

People and culture

- 1.11 The NMC has underlying cultural problems built up over a number of years that prevent it from achieving success. Its culture is hierarchical. Its staff have endured years of criticism and frustration. They have either left rapidly or adopted a resigned acceptance of poor standards and developed a belief that they cannot influence improvement. The culture of an organisation is defined by the values, behaviours and beliefs of all staff, but it is heavily influenced by its leaders. We commented in our interim report on the dysfunctional relationships amongst its former Chair, Council, and Chief Executive. Its new leaders will need to develop a constructive, empowering culture and rebuild the confidence of the NMC's staff as well as its stakeholders.

Operational management

- 1.12 Our interim and final reports highlight serious deficiencies in a number of key areas. Chief among its deficiencies are poor planning, an absence of clear decision making processes, unreliable management information, and a collective failure to link activity with cost.
- 1.13 The Council has both not demanded and has not been provided with a true reflection of the organisation's performance.

Conclusion

- 1.14 By the time this review had concluded there were some encouraging signs that foundations for change are beginning to be put in place. The recruitment process for the new Chair and Chief Executive are underway, the NMC is consulting staff on its restructure, and it has a change programme in place. The NMC must finally leave its past behind and transform itself into a modern, effective regulator that protects the public well and so inspires public and professional confidence.

2. Introduction

- 2.1 CHRE was commissioned by the Parliamentary Under Secretary of State at the Department of Health in January 2012 to carry out a strategic review of the NMC and to report back. An interim report was published in April, setting out some of the challenges faced by the organisation; this report, while drawing on that, expands and concludes our review. The full terms of reference to the review appear in Annex 1.
- 2.2 The NMC invited and has welcomed the review and has cooperated fully with us, providing us with all the information and records we asked for and with access to Council members and staff as required. We also commend the effort that is being put in by the Council, the interim Chair, Chief Executive and staff across the NMC along with their willingness to learn from recent events and to build the NMC's future as an effective regulator.
- 2.3 We are grateful to staff at all levels in the organisation who have met with us in focus groups or as individuals and shared their perspectives. We recognise that for some this was not easy. We have found their testimony helpful and illuminating. We are also grateful to all of the external stakeholders who have contributed towards this review, and whose comments have been taken into consideration in writing our report.

Background

- 2.4 The NMC is responsible for the regulation of nurses and midwives in the UK. It exists to protect the public and to maintain public confidence in the professions. It sets standards of education, training, conduct and performance and seeks assurance that education courses are equipping nurses and midwives with the skills and knowledge required. It admits nurses and midwives to its register so that employers and the public can check that someone is authorised to practise and where problems arise, it will investigate and, if necessary, act by removing them from the register permanently, or for a set period of time.
- 2.5 The NMC holds the largest register of any UK regulator, some 670,000 nurses and midwives and currently has an annual income in excess of £52 million. It employs over 400 staff.

Our approach

- 2.6 We have reviewed a wide range of management information including Council papers and minutes, management accounts, business plans and performance reports. We have also carried out individual interviews with all of the Council's members, all of the Directors and most of the Assistant Directors, and have held 19 focus groups with staff from different functions and levels across the organisation. We have attended and observed each of the key meetings within the NMC including Council, Audit Committee, Finance Review Group and Fitness to Practise Action Group meetings and management meetings.

- 2.7 We have invited patients, the public and registrants to meet with us or write to us with their comments and we have met with a wide range of external stakeholders, details are provided in Appendix 2.
- 2.8 We have taken account of the components of right touch regulation:
- Identify the problem before the solution
 - Quantify the risks
 - Get as close to the problem as possible
 - Focus on the outcome
 - Use regulation only when necessary
 - Keep it simple
 - Check for unintended consequences
 - Review and respond to change.
- 2.9 We have focussed the second part of our review on examining the organisation's operational systems, the breadth of issues facing the organisation and whether current activities to address the NMC's deficiencies are likely to lead to sustainable and long term improvements. We comment in this final report on the main issues that we believe will be of importance to its future Council, Chair and Chief Executive. We have provided historical context where we think it aids understanding but for the most part have considered what the NMC requires for the future. We have analysed its current performance to act as a baseline, enabling us to identify significant gaps or areas for development. We have also set out, where appropriate, more detail for the reasons for the overall conclusions and recommendations made in the interim report. Our key findings are highlighted throughout the report. To help the NMC cut through the complexity of the challenge, we have set out 15 high level recommendations; these are detailed at the end of the section to which they relate.
- 2.10 At the Department of Health's request we are continuing to work with the NMC to monitor progress in the delivery of the fitness to practise function. Our Performance Review for 2011-12 was published on 28 June². CHRE's effectiveness and efficiency review of the regulators will be published in July 2012, and will provide comparative data on costs across the health professional regulators.
- 2.11 Our approach to CHRE reviews and investigations is covered by our Performance Review and Investigations policies and by our Code of Conduct for Staff. A copy of these may be found on our website.³

² *Performance Review of the Health Professional Regulators 2011/12* CHRE June 2012

³ http://www.chre.org.uk/_img/pics/library/110830_Code_of_conduct_for_Staff.pdf
https://www.chre.org.uk/_img/pics/library/Investigations_process.pdf
https://www.chre.org.uk/_img/pics/library/100601_The_Performance_Review_Process_2.pdf

3. NMC progress since our interim report

- 3.1 **There has been considerable activity at the NMC since January 2012 to the date of this report. It has been led by the interim Chair and Chief Executive, with the aim of identifying the range of the NMC's problems and initiating improvement. This is encouraging.**
- 3.2 The NMC is taking action on all of our interim recommendations, and those of external consultants brought in to provide advice on specific areas of its operations. We have provided feedback throughout our review and discussed with them areas we considered needed improvement. We have found the NMC open, responsive, and they have, in a number of instances, commenced work immediately. The appointment processes for the new Chair and Chief Executive have begun.
- 3.3 The NMC has:
- established a change team and brought in additional expertise
 - adjusted the balance of Council business at private and public sessions and now invites members of the public to ask questions
 - received an external appraisal of its management information within fitness to practise and established an action group to re-develop its key performance indicators and management information
 - received an external appraisal of its information technology strategy
 - held a change workshop and enlisted 25 staff volunteers to help shape the future NMC.
- 3.4 It is currently:
- consulting staff about restructuring its directorates
 - developing its human resources strategy
 - developing an engagement strategy
 - refreshing its key performance indicators for 2012-13
 - beginning work on its corporate plan for 2013-2016
 - establishing work streams as part of its change programme, including a business as usual work stream to maintain current delivery and manage the impact of the restructure
 - planning to integrate its existing fitness to practise change projects within the NMC's change programme
 - working to improve the quality of its papers and reports
 - seeking changes to its legislative provisions for fitness to practise to help it to improve its ability to protect the public and reduce its operating costs
 - carrying out a 'lean' exercise of fitness to practise processes to try to remove inefficiencies

- developing a new approach to quality assuring education programmes in line with 'right-touch' regulatory principles.

3.5 Despite these actions, which we acknowledge, no one should be complacent about the difficulties ahead for the NMC nor the challenge facing the new Chair and Chief Executive.

4. Regulatory purpose

Regulatory purpose

- 4.1 Clarity of purpose is essential for any successful organisation. The NMC has recognised this and is beginning to re-focus its thinking and its work solely on regulation.**
- 4.2 We recommended in our interim report that the NMC needed to have a clear and consistent focus on its regulatory purpose⁴. We commented that it had extended its scope beyond that of its primary regulatory objective of protecting the public and consequently had been distracted from its core functions and in particular, from remedying the long-standing problems with fitness to practise. We set out below some further commentary on regulatory purpose to assist the NMC in determining what this means. We also suggest some criteria that it might use to help it decide whether an activity is in line with its purpose.
- 4.3 Our discussions with current and former council members and staff revealed that, although they understood that the NMC's primary function was the protection of the public, amongst them and external stakeholders, there were varied views on what that means and what activity it legitimately includes. As one external stakeholder commented, 'almost anything can be argued to be necessary for public protection'.
- 4.4 Changing the focus of the NMC will inevitably affect its external partners and may require them to change. For example, the NMC, under its previous leadership, increasingly saw its role as supporting the development of nurses and midwives beyond 'fitness to practise' and so had strayed into trying to provide a broader professional leadership role. There still are frequent calls from its registrants, reported in the media, for it to take the lead on particular professional matters or to produce specialist areas of guidance. In our view, this blurs the boundaries between regulation and professional development, confuses responsibilities and risks a duplication of effort and resource which is neither helpful to the professions of nursing and midwifery nor ultimately the public.
- 4.5 The role of a regulatory body is to protect the health, safety and well-being of patients and the public by ensuring that professionals are fit to practise and to uphold public confidence in the profession. This role should be defined by the regulatory body, be understood by its staff and communicated clearly to the public, employers and other stakeholders. A regulator needs to establish and maintain a register of those fit to practise. Fitness to practise is a baseline, a set of fundamental standards that must be met by all registered professionals in order to practise safely and effectively. The same basic rules of conduct, ethics and competence apply to all nurses and midwives.
- 4.6 A core part of a regulator's role is to define the standards which its registrants must adhere to and to help them understand how those standards apply in their

⁴ CHRE 10 April 2012 *Strategic Review of the Nursing and Midwifery Council: Interim report* paragraph 2.7, 2.8

daily practice. The regulator must also take action where it is alleged that a registered professional does not meet those standards. The role of a professional body on the other hand should be focussed on leadership and representation, promoting the profession and supporting continuous improvement in standards of professional practice towards excellence. These are necessary features of a mature profession and those in positions of influence should be working to ensure that members of the profession understand and respect this. Continued support for and commitment to these structures with clear boundaries and appropriate governance arrangements is one of the characteristics that sets a profession apart from an occupation or other group.

- 4.7 The Royal College of Nursing (RCN) and Royal College of Midwives (RCM) both have an important role in leading, supporting, developing and encouraging professional practice. Our understanding is that the NMC, RCN and RCM concur with this analysis and we welcome their willingness to review, discuss and clarify their respective roles, especially in leading professional practice and policy.
- 4.8 Educators and employers too will no doubt wish to engage in dialogue with the NMC as it adjusts its focus and approach in other areas of its work. The NMC is revising its approach to education, clarifying the objective of this function and re-examining its role in the context of other parts of the education and quality assurance system. Changes to the way in which the NMC interprets and delivers fitness to practise are also likely to require adjustments to be made by others. We look to the UK Council of Deans for Health (and representatives of the Deans for each of the four countries) to play their part in this.
- 4.9 We suggest that the following criteria might be applied to determine whether a new activity is compatible with regulatory purpose:

The problem:

- falls within the regulator's jurisdiction (ie it is a matter of public protection and / or public confidence)
- is directly relevant to one or more of its regulatory functions.

The proposed solution:

- is proportionate to the quantified risk posed to the public
- is efficient and delivers value for money
- a regulatory solution has been established as the only viable option.

- 4.10 These criteria are in line with right-touch regulation.

Recommendation 1

- 4.11 The NMC will best win back the confidence of the public and the professions by being an effective and efficient regulator. We recommend it concentrates its strategy, business planning and resources on improving effectiveness, efficiency and customer service.

5. Overview of external stakeholders' perspectives of the NMC

- 5.1 External stakeholders want the NMC to succeed but warn that it must improve quickly to retain their support as confidence is being damaged.**
- 5.2 CHRE issued an open invitation to external stakeholders, patients and members of the public to provide information to the review team. A list of those organisations that contributed is included in Appendix 2. We also received submissions from individual patients, members of the public and registrants.
- 5.3 Stakeholders want to see the Nursing and Midwifery Council carry out its regulatory functions effectively and efficiently. There is general, widespread support for the NMC continuing as a UK wide regulator for the nursing and midwifery professions. However, stakeholders told us that the NMC must improve its performance, operate transparently in line with its published policies and communicate its plans for improvement effectively in order to retain this goodwill and support.
- 5.4 Patients want the NMC to focus on protecting the public from poor nursing and midwifery by improving standards of nursing and midwifery practice. They also want it to make more use of their feedback. Some perceive that the NMC works for the benefit of the profession rather than holding individual nurses and midwives to account when needed.
- 5.5 Stakeholders also expressed their concern that the NMC seems to lack insight into the impact of its poor performance on the public's perception of the professions and in the role it plays in promoting confidence in the professionalism of registrants. Many registrants told us that they felt saddened by the performance of the NMC over the years and embarrassed that 'their' regulator was not seen as credible.
- 5.6 Stakeholders are clear that the NMC must set standards for the professions that set out specific requirements for registrants. These standards are the basis for development of leadership in the profession.
- 5.7 The NMC needs to acknowledge the difference between the way it regulates the two professions of nursing and midwifery and address any perceived bias towards nursing.
- 5.8 Stakeholders acknowledged that an effective, mature regulator with strong leadership might have the capacity to accommodate the development of a variety of different projects that could have an impact on the protection of the public. Although not a totally unanimous view, there is strong support for the NMC's decision to halt or not to progress projects that fall outside of its core functions at this present time. For example, the NMC has recently stopped its work on developing a student index. Stakeholders said they felt the NMC is confused over the role and function of the section of the register for specialist community public health nurses (often referred to as the 'third part of the register'). Many questioned

the value this added to protecting the public and feel the NMC should give serious consideration to its future.

- 5.9 The professional community (including national and local nursing and midwifery leaders and respective organisations) expressed its willingness to support the NMC by providing professional advice and support to a variety of functions as appropriate but said that they felt the NMC is reluctant to make use of this expertise. External stakeholders told us that the NMC seems reluctant to share information and is unable to present timely information which they could use to better support the NMC in exercising its regulatory functions, for example by promoting learning about appropriate referral practices. Stakeholders also feel this could help to clarify how the NMC is addressing its fitness to practise backlog.
- 5.10 The NMC is seen as ineffective in its communications and not focussed on providing a good standard of customer service. Members of the general public who have found themselves involved in a number of ways with NMC processes, those engaged in specific roles, such as witnesses, and registrants subject to fitness to practise procedures and some of its own panel members all told of real difficulties in communicating with the NMC. They described an organisation that is reluctant to listen, that does not follow its own published policies or adhere to its own set timescales, that frequently misplaces documentation, that fails to respond to communications in a timely manner or present accurate responses and information that is written in plain English and presented clearly and logically.
- 5.11 The NMC is described as anglo-centric by stakeholders in Scotland, Wales and Northern Ireland. They are supportive of retaining a national regulator, but call for the NMC to ensure that it recognises and understands the differences between the four countries. Whilst the Nursing and Midwifery Order 2001 places no legal responsibility for the registration of nurses and midwives that work on the islands of the British Isles (e.g. Channel Islands, the Isle of Man, Gibraltar) stakeholders from these islands feel it is important to build positive relationships because of the flow of nurses and midwives between the UK and the islands.
- 5.12 External stakeholders generally describe the leadership of the NMC as having been poor and lacking in any real strategic foresight. The appointment of a Chair and Chief Executive with the right skills, experience and values is seen as crucial to the future success of the organisation. Stakeholders generally do not feel that either the Chair or Chief Executive need be a registrant.
- 5.13 Issues raised relating to specific functions have been incorporated into the other sections of this report.

Recommendation 2

- 5.14 We recommend that the NMC explains its plans for improvement clearly to all stakeholders and then concentrates on delivering the changes that are needed.

Recommendation 3

- 5.15 We recommend that the NMC develops a constructive dialogue with external stakeholders and concentrates its communications to those that relate directly to

its core functions. It should also ensure that it follows best practice in all public consultations.

Recommendation 4

- 5.16 We recommend that external stakeholders, especially the nursing and midwifery organisations, take responsibility for their roles in improving quality and in the development of policy in their respective fields. They should allow the NMC to concentrate on its regulatory tasks and give it time and space to address its problems and to improve.

6. People and culture

6.1 The NMC has internal cultural problems that have prevented the establishment of a stable, efficient and effective organisation. To succeed, it will need to shift its culture from resigned resilience to an open culture which engages and empowers staff to perform to their best.

6.2 By 'resigned resilience' we describe a temperament we have found in longstanding members of staff: 'resilience' because they have endured years of criticism and frustration yet keep going; 'resigned' because they have come to accept and tolerate poor standards and to believe that nothing can change and that they cannot influence improvement. The culture of an organisation is established over time and takes time to change. The culture we identify here has therefore been built up over many years. The NMC will swiftly need to demonstrate its values and its determination to be different, to inspire confidence and begin the process of cultural change. Addressing these issues and establishing and reinforcing a shared set of values and behaviours will be one of the key challenges for the new chief executive.

6.3 Many of the issues facing the NMC are not new and have been identified to a greater or lesser degree throughout its life, both as the NMC and the UKCC before that. During the course of our strategic review we found frequent references to a lack of openness and transparency and to a hierarchical structure in which individuals feel powerless. To some extent it reflects the traditional hierarchy of the nursing and midwifery professions. We have been told of an organisation in which the responsibility for failure has been placed on the individual rather than being recognised as a collective failing of people, management, organisational systems and processes.

6.4 Our Interim report highlighted the imbalances and dysfunctional relationships between the former Chair and Chief Executive and between them and the Council. The culture of an organisation is defined by the values, behaviours and beliefs of all staff, but it is shaped by the leadership style and behaviour of its senior people. The absence of a constructive NMC culture has had a number of negative consequences:

- directorates do not work in a collaborative manner, knowledge is not shared or used organisation wide. Our interviews established that there is a clear divide between the fitness to practise directorate and the rest of the organisation
- staff feel unable to express their views and therefore suggestions to improve working practices are not forthcoming. This is further affected by the strong organisational hierarchy, which is seen to block to information sharing. A recurring theme from our interviews with staff was a lack of consistent feedback from their directors with respect to their projects and work
- a lack of sharing of detailed performance information means that staff do not understand the overall performance of the NMC or where they fit in. Staff are often given high level comments that imply performance in a particular area is poor but they are not provided with enough detail to understand the severity

or significance or to relate that to their own work or responsibilities. Not all staff are therefore able to appreciate the current needs of the organisation

- staff feel a lack of appreciation of their skills, and think they are not valued as a result of the employment of consultants to validate or oversee the work of the in-house resource
- a resistance to change, with staff commenting that ‘they have been here before’, that the NMC is often criticised but nothing happens and they are still here
- staff lack confidence in the management team’s ability to change the organisation because they perceive them to make short term decisions as a ‘knee jerk’ reaction to comments or direction from external parties
- a 31% turnover of staff during 2011-12. The human resources directorate has spent a large part of its effort and resources on recruiting new staff and has consequently been unable to focus on other strategic human resource activities.

6.5 The absence of an empowering, enabling culture has eroded organisational confidence and lead to poor decision making.

6.6 The NMC has been subject to considerable scrutiny over recent times both internally and externally. This has resulted in managers feeling overwhelmed by instructions to make changes or produce additional information and in their desire to maintain the confidence of those they report to, to implement short term changes often made without understanding their impact on the wider organisation. Staff within Finance and ICT reported that they were not consulted or consulted late about changes to processes. Staff within fitness to practise described instances of changes being made to relieve workload in one area which resulted in increased workloads elsewhere.

6.7 The quality of decision making is a product of management capability. We have identified some key gaps in management skills and knowledge across the NMC generally, which it will need to address for the future. These include programme and project management, budgetary control, monitoring and measuring performance, analysing and using data, and drafting strategic level papers and reports. This limits the NMC’s ability to manage its operational activity effectively and achieve its objectives.

Recommendation 5

6.8 The leadership of the NMC must behave and act in the way they expect others to. We recommend that they define clear behavioural values and demonstrate them in practice and in their relationships with others.

Recommendation 6

6.9 We recommend that the NMC challenges the internal culture of resigned resilience by reducing hierarchy, encouraging openness, listening to staff, enabling management to take responsibility and make decisions and by consistently valuing quality and customer service.

Recommendation 7

- 6.10 The appointments of the new Chair and Chief Executive are crucial to both public protection and public confidence in the NMC. We recommend that due diligence is exercised in the appointment of the Chair and the Chief Executive to ensure that the individuals appointed to these roles have the personal credibility, leadership behaviours, competencies and communication skills necessary to implement the changes set out in this strategic review.

7. Operational management

Structure and operational functions

- 7.1 **The NMC is restructuring the organisation better to support the delivery of its four regulatory functions. However, there are deficiencies in its operational management systems which will need to be addressed at the same time in order to improve performance of its regulatory objectives.**
- 7.2 Successful performance of the NMC's four regulatory functions depends upon the effectiveness of its operational systems.
- 7.3 We noted in our interim report that the operational structure of the NMC has undergone many changes over its recent history and that in our view those changes have left it in a confused position and as a result further change is needed. This had already been recognised by the NMC's senior management team and has resulted in the NMC consulting its staff on a proposed restructure.
- 7.4 We recognise the need and budgetary imperative for the NMC to proceed with making the changes it feels are necessary to the structure of the organisation and this is why we believe that it is reasonable to undertake a restructure at this time, despite the lack of a substantive Chair and Chief Executive.⁵
- 7.5 The changes being proposed by the NMC reflect the realignment of the organisation with its core regulatory functions and the consolidation of seven directorates into four appears to be sound. However, it is not the structure itself that will define the success of the proposed changes, rather it is the way in which the structure enables individuals to overcome the barriers that have prevented more cohesive working between directorates in the past.
- 7.6 The implementation of a new structure is an important change for the NMC, and its success will be influenced by staff confidence, improved leadership style and a culture where managers act in accordance with organisational values. Integration of staff and working towards shared goals will be vital in establishing and creating the culture we have described in the previous section.

Change management

- 7.7 **The change management programme does not yet incorporate the change initiatives within fitness to practise, reinforcing the separation of fitness to practise from the rest of the NMC and limiting the effectiveness of the new approach to project governance.**
- 7.8 The NMC has established a change management process to address previously identified weaknesses and to ensure that there is appropriate governance over the changes taking place across the organisation.

⁵ Following CHRE's 2008 Special Investigation Report on the NMC there was a year's gap before a substantive chief executive took up their post and long term changes implemented

- 7.9 The current change management plan reflects all of the recommendations made in the interim report and also incorporates any other change initiatives that are underway, including the restructure. However, it does not incorporate changes being made in fitness to practise. There are numerous changes being planned or implemented, as set out later in this report. We have not however, been able to identify an overarching plan which brings together the various initiatives and provides senior managers and the Council with a clear statement of when the changes are expected to take effect or to assess the extent and impact of the changes being made. Further details are provided in the section on fitness to practise later in this report.
- 7.10 Through not explicitly including the fitness to practise changes within the overall change management programme the impression of fitness to practise as a separate unit is reinforced. It also means that potentially different governance is being applied to this part of the organisation, something the change management team and approach was specifically set up to try to overcome. The NMC acknowledges this and is planning to integrate fitness to practise. It is also establishing a 'business as usual' work stream to ensure that it maintains its focus on delivering its core functions, manages any dip in performance as a result of the restructure and manages the transition as changes are implemented.

Recommendation 8

- 7.11 The NMC should consolidate all of the change activities taking place across the organisation to enable the Council to have a clear understanding of the totality of planned changes so that they can determine if the speed and extent of change is achievable and appropriate.

Governance

- 7.12 **At an operational level governance processes have not been consistently complied with and the NMC has not made the best use of the assurance mechanisms it has established**
- 7.13 The NMC has a documented approach to managing risk. Risks are captured on a register and are discussed at Council meetings. However this approach is not consistently and effectively applied and has not prevented poor performance or detected non-compliance with operating procedures.
- 7.14 The identification and evaluation of risks, as captured in the risk register, requires improvement. Risks are given a score to enable a clear understanding over which risks require greatest attention. Of the top sixteen risks, half have been given the maximum score. By having so many risks with the maximum rating, it becomes difficult to prioritise where management actions should be focused.
- 7.15 The NMC has an outsourced internal audit function, but it has failed to maximise the purpose or benefit of this. In particular, poor scoping of internal audit projects has resulted in reports which add little value or aid understanding.
- 7.16 The scheme of delegation has too many areas reserved for Council which should be operational functions, for instance establishing standards, or carrying out

consultations. Additionally there are other areas such as tender opening, contract signing, and engaging consultants, which are not mentioned in the scheme of delegation at all.

- 7.17 Project management processes have been inconsistently applied. An NMC methodology was previously in place; in recent times there has been no formal oversight body to ensure that it is appropriately applied. Individual directorates have adopted their own approaches and there has been little central monitoring. As a result we were informed of projects that overran (time and budget) and were not always aligned with core purpose. Council was not aware of the number and extent of projects being undertaken until a list was presented to the March 2012 Council meeting. This has now been recognised with the establishment of the Portfolio Steering Group, which has oversight over all projects, and defined programme groups and individual project boards.
- 7.18 The NMC needs to consider the roles and responsibilities of its committees and other groups to ensure that they are obtaining maximum value from each and that there is no undue repetition or cost while maintaining appropriate challenge and oversight.**
- 7.19 As we noted in the interim report, the Council reviewed its governance arrangements in 2010 and agreed to reduce the number of its committees to three: Midwifery Committee (a statutory committee), Audit Committee and a Remuneration Committee. This reduction was intended to allow all Council members to be fully involved in all of the Council's business and to share in decisions. The NMC subsequently decided that the Committee structure did not allow it to delve into sufficient detail and task and finish groups were established for fitness to practise (Fitness to Practise Action Group) and for finance (Finance Review Group).
- 7.20 At the time of our interim report we recommended that this needed to be kept under review. Clearly there is benefit from the Council devoting additional time and scrutiny to both of these areas and it is likely that these groups will be needed for the immediate future. However our subsequent attendance at these groups, the Audit Committee and the Council sessions have led us to conclude that the roles, performance and interactions of these groups need further attention.
- 7.21 The Fitness to Practise Action Group we attended focused on operational performance and in effect is mirroring the role of the management team instead of providing the strategic direction and challenge that we believe it should. While we understand this may be because the management information currently produced does not support strategic decision making, the more detailed operational focus is not allowing managers the time and space to address the issues and the Council is not receiving the assurance it needs about the extent of progress and improvement. The focus of that group should be on testing the overall programme of initiatives and how they will drive improvements in the future performance of fitness to practise.
- 7.22 At the April 2012 Audit Committee meeting that we attended, papers from both the Fitness to Practise Action Group and the Finance Review Group were included on the agenda and senior managers and Council members were asked questions which had been raised in the respective groups. Both groups also report directly

into Council. This additional scrutiny is not an effective use of managers', Council or Audit Committee time and only serves to add to the workload of the executive team as further papers are required for each of these groups. Clarity as to who is responsible for oversight of each area is needed to ensure that there is no duplication of roles or blurring of responsibilities.

- 7.23 Our attendance at the Audit Committee also identified a number of areas for improvement including ensuring that:
- minutes are reviewed for accuracy only and not used to reopen debate on matters previously discussed and agreed
 - covering papers are clear as to what the Committee were being asked to do, in particular, where the agenda item/papers have been discussed at other decision making bodies
 - senior managers are challenged when high quality responses to internal audit recommendations are not given.

Recommendation 9

- 7.24 Good governance will be central to the success of the NMC in addressing its problems. We recommend that the Chair and Council define the NMC's strategic aims, objectives and values, scrutinise the business plan and hold the executive to account for its implementation and take responsibility for the overall performance of the NMC.

Recommendation 10

- 7.25 The Council needs to review the roles and reporting lines of all committees and groups to reduce duplication while ensuring that oversight and levels of scrutiny and challenge are appropriate.

Finance

- 7.26 **The NMC has shown a collective lack of competence in failing to establish an appropriate link between the costs involved in delivering its planned activity, the key performance indicators it has committed to and the budget it has approved.**
- 7.27 Following its inception as the NMC the organisation sought to recover from the poor financial position it inherited from UKCC by building the reserves to six months of operating expenditure. Budgets were created to ensure that the NMC activities allowed for the generation of annual surplus in order to create the prescribed reserves. This was achieved at 31 March 2010 and the Council subsequently revised the reserves policy to reduce it to three month's budgeted operating expenditure plus an amount to cover the NMC's estimated share of the pension deficit based on the latest pension scheme valuation.
- 7.28 In building the reserves to six months operating expenditure, the NMC Council was following Charity Commission guidelines, but those guidelines are intended for charities with unreliable and fluctuating incomes, not statutory monopolies with

a guaranteed income stream. By pursuing a strategy which limited expenditure more than was necessary the NMC has under invested in its fitness to practise directorate, leading to the build-up of cases currently being experienced.

- 7.29 During 2011-12 the NMC recognised the need for significant additional investment in fitness to practise to manage the increased level and complexity of cases being referred and the Council approved additional expenditure from reserves of approximately £6 million with the redirection of savings in other directorates adding an additional £2 million to the budget for fitness to practise. While this increase in activity was included within the initial budget for 2012-13 the original assumption was that there would be no further increases in referral rates or that increases would be offset by efficiency savings. In our interim report we identified that the NMC lacks a clear long term financial strategy and that a challenging budget had been set for 2012-13. We also noted that it was imperative that the Council addressed the weakness of having no Council members who are financially qualified.
- 7.30 Since that report the NMC has identified that it requires a fee increase to meet its forecast activity levels for this and future years. The budgeted expenditure for 2012-13 approved by the Council in March (subject to a review of fitness to practise referral rates) was £56 million. Revisions to a number of the key assumptions included within that budget have resulted in the NMC now forecasting that they need expenditure of £73 million for the current year. The NMC are consulting on their proposals for a fee increase in the coming months.
- 7.31 The primary reasons for the increase are changes to two key assumptions related to fitness to practise activity and a failure to deliver efficiencies that were built into the budget to the timescales originally envisaged.
- 7.32 The failure to provide clarity over expenditure assumptions has been endemic within the NMC. The budget related papers produced for the Council in March 2012 do not contain a clear statement of all of the assumptions on which the budget is based nor appropriate comparatives (current activity levels, prior year etc.) to put those assumptions in context. Commentary is provided but it is inconsistent in the information given and in the detail provided. Papers also lack detailed sensitivity analysis which shows the impact on the overall budget of changes to the key assumptions and which would highlight to Council the impact of changes to allow them to form a view as to the appropriateness of the assumptions used.
- 7.33 For example, in the Council papers presented in March 2012 the four key fitness to practise assumptions are listed and it is noted that an increase in referral rates of 10 per cent would add £2.7 million to the budget, though the impact of this on reserves is not recognised. There is no analysis of the impact of a change in the assumed average 2.8 days per hearing or what the current average days per hearing are. In the latest version of the budget this has been revised to 3.5 days. It may seem a small change but it adds an additional £4.8 million to annual expenditure.
- 7.34 A lack of longer term forecasting to provide further context is also reflected in the NMCs failure to identify the severity of its financial position until recently. The impact of the current levels of fitness to practise activity on the reserves was

analysed to 2015-16 but this was based on the assumptions built into the original budget only and again had no sensitivity analysis to show what would happen should some of those assumptions vary. This analysis was only performed once the expected increase in referral rate had been revised to 8%. If this had been performed and presented at the time of the original budget setting process, the Council would have been better able to challenge the budget and make strategic decisions as to the way forward. In the event Council's lack of financial expertise meant they were ill-equipped to challenge the budget before them.

- 7.35 The monitoring of expected efficiency savings has also been weak. The 2012-13 budget prepared by the NMC recognised that the challenging conditions for the NMC in trying to clear the fitness to practise backlog and included a large number of expected efficiency savings, notably within fitness to practise. The March Council papers recognise this in stating that £5.6 million of efficiency savings are factored into the budget, but there is no detail as to what the savings relate to and how they will be realised. Failure to deliver those proposed savings to the timeframe expected in the budget has contributed a further £4.1 million to the additional expenditure now needed for 2012-13.
- 7.36 It should be noted that KPMG reviewed and commented on the calculation methodology and logic within the models used by the NMC to produce its budget. KPMG reviewed the assumptions in the NMC's fitness to practise budget. The assumption of an 8% increase in referral rates is however subjective and based on limited analysis of historic rates and expected future events such as the outcome of the Francis Inquiry.
- 7.37 Many of the papers produced by the NMC lack clarity of financial consequences and presentation of financial information. This has a critical impact on the ability of the Council and the management team to make effective decisions.**
- 7.38 The NMC fails to make a clear link between the key assumptions on which the budget is based and the actual activity levels. Linking actual to budgeted activity and clearly showing the current performance would allow managers and the Council to see the early warning signs that budgets may be exceeded and for corrective action to be taken. Similarly the monitoring of critical dependencies for cost savings allows the failure to hit key milestones to be identified, the impact assessed and for appropriate action to be taken. The NMC is not helped in this regard by its weak management information.
- 7.39 Many of the business cases produced by the NMC have failed to fully consider the financial consequences of a proposed action. Proposals have not been costed in full, with internal resource in particular failing to be considered as a project cost with the result that resources are over committed necessitating that contractors (and associated costs) are brought in to ensure the projects are completed. Papers refer to savings but it is not clear in what period these will be made, the basis for the estimates used is not clear and the phasing of costs is unclear. We have also been told of instances of business cases being generated by way of a justification for budget overspends. Other papers produced that include financial information are not clear as to where key numbers come from and do not clearly

set out the starting position, the analysis and how this then then achieves the final position.

- 7.40 The basis for where within the NMC's cost centres certain costs are accounted for may also contribute to a lack of clarity of the true cost of activities and may inadvertently obscure financial performance. For example, in moving from rented venues to permanent offices for fitness to practise hearings the associated costs were moved from the fitness to practise cost centre to the facilities cost centre. While this is consistent with the NMC's recognition of costs for its office space, it may not help the NMC in understanding the true costs of its activities.
- 7.41 There is limited financial awareness and understanding across the NMC. We noted in our interim report that Council does not have a financially qualified member and had recognised themselves that they lacked financial expertise. During our review we have identified that this applies to the organisation as a whole and not just to the Council.
- 7.42 In general, directorate budgets are delegated to business managers within directorates and we did not get a clear sense of accountability or active management of finances beyond that. The finance team provide oversight and challenge through monthly review meetings and a series of meetings around the budget activity but, in our view, tended to see their role as more of a consolidator of financial information rather than guiding and challenging the delivery of activity.
- 7.43 The lack of financial expertise was seen in several areas during the course of our review:
- poor management of spend on temporary staff, consultants and contractors, with a total spend in 2011-12 exceeding £4.6 million
 - poor control over project spend including overspends, failing to define activity as a project and failing to monitor it effectively
 - instances of weak contract management with poor levels of service not being addressed on a timely basis
 - failure to make appropriate use of the NMC procurement team, who are often involved late in the process when their ability to drive cost savings or suggest alternatives is restricted
 - failure to recognise potential cost savings on a timely basis.

Recommendation 11

- 7.44 The NMC must establish a stronger link between its activity levels and the impact of those activities on costs. Key activity levels need to be clearly stated as part of any performance reporting. When presenting financial information for review and decision the NMC needs to provide much greater clarity over the assumptions that are being used so that the Council has a clear view of the impact of its decisions.

Recommendation 12

- 7.45 We recommend that financial management and reporting is given a greater profile within the NMC and the finance team should take greater responsibility for review and challenging of budgets and holding the respective directors to account.

Information, Communications and Technology (ICT)

- 7.46 The ICT systems currently in place at the NMC do not provide the basis for an efficient organisation.**
- 7.47 Many of the ICT systems currently in use at the NMC are out-dated or are considered by staff to be ineffective which has resulted in the creation of numerous manual 'work arounds'. This is a normal and rational staff response when the systems implemented by management do not allow them to do their jobs easily or effectively.
- 7.48 There are also limited interfaces between systems which, combined with the work arounds, leads to a significant amount of data being entered manually with a resultant increase in workloads and inaccuracies. The infrastructure on which the systems reside is also weak with numerous system outages which impacts on productivity.
- 7.49 The application which supports the register (WISER) is considered to be a high risk⁶ for the NMC both in terms of the underlying system and the risk of inaccuracies. The code base for the application is Visual Basic 6.0. This has not been supported by Microsoft since 2008 and it is difficult to get developers who still have experience in using this code. The workflow package which underpins WISER (CRMC) was never released as a 'live' product by its developers and consequently it is also unsupported. These two issues combine to make it very difficult to make changes to WISER and where changes are required they often need additional programming and consequently take a lot of time and effort to implement. There is also a significant risk that where changes are made it leads to unintended consequences elsewhere in the system or that errors are introduced. The instability of the application also results in significant periods of time when it is unavailable to staff with a resultant impact on the productivity of staff, some of whom are unable to work at all during the down time.
- 7.50 During the course of this review, two serious errors with WISER have been identified. The first related to a script which inadvertently changed the registration status of a small number of registrants and the second which identified discrepancies in the outcome of a case hearing as recorded in the Case Management System (CMS) and the reported status of a registrant in WISER. Both cases are being addressed. Underlying this second error is the failure of the two systems to interface which means that data, such as the outcome of a case hearing, has to be manually entered into both systems. This brings a significant

⁶ NMC risk register, May 2012

risk of error resulting in data inaccuracies. The lack of ease in generating exception reports of changes to WISER further compounds this problem.

- 7.51 The CMS is a source of frustration for all fitness to practise staff and many others within the NMC. It is seen as being unable to reflect current working practices within fitness to practise or is considered too cumbersome and time consuming by staff who already have sizeable caseloads. As a result it is not used as widely as was intended when it was implemented and a number of work arounds have been developed which sometimes bypass the workflow stages in CMS. This means that CMS does not accurately reflect the stage of all fitness to practise cases and cannot be considered to be a true reflection of all fitness to practise activity. This has a significant impact on the quality of and time taken to produce the management information. However, until the CMS is used consistently, and to the full extent of its capabilities, it is difficult to assess whether it is an appropriate platform for the fitness to practise directorate. A recent review of management information in fitness to Practise carried out by KPMG recommended that, once the functionality of CMS has been reviewed by teams within the NMC, the use of CMS should be mandated to improve the quality and timeliness of the information produced.
- 7.52 Further details on the details on the challenges with management information are included in the next section.
- 7.53 Along with issues with the applications, the NMC has struggled with the performance of its Information Technology infrastructure, much of which was migrated to a third party as part of an outsourced contract with Advanced 365.
- 7.54 A new overall ICT Strategy was presented to Council at the March meeting which reflected the issues identified in this report. The Council asked for this strategy to be independently reviewed before a revised strategy is presented to the Council seminar session in July and the management team have engaged KPMG to undertake this review.

Recommendation 13

- 7.55 It is clear that the IT systems at the NMC require significant new investment and development to be able to support an efficient organisation and to be able to supply management with the information it needs to effectively manage the organisation. We recommend that before further investment is made the NMC ensures it understands the capabilities of the systems it has and how these can be accommodated in a sustainable IT strategy. We also recommend that the decision on further investment in the IT infrastructure should not be made until the new Chief Executive is appointed and a revised ITC strategy completed.

Management information

- 7.56 The absence of meaningful and consistent management information limits the ability of the NMC to make informed decisions and to set appropriate strategy.**
- 7.57 As we noted in the interim report, management information and performance measurement are weak with inconsistencies in the level and focus of the information presented. We identified that a combination of poor information technology systems (see above), a lack of historical information and a failure to develop operationally focused measures has resulted in an absence of sufficient information to be able to manage the NMC effectively at both an operational and at strategic level.
- 7.58 A key weakness has been the failure to draw a clear link between current activity levels and the future performance and cost. This is demonstrated by the degree of revision to the budget required once the current levels of activity were analysed (see finance section). Management information should provide an early warning when key assumptions are not being borne out so that corrective action can be taken.
- 7.59 The quality of the information needs to be improved. Much of the information takes considerable time and effort to produce and, due to weaknesses in the information technology systems, it has to be compiled manually. This is both time consuming and prone to error. In its review of the management information within fitness to practise, KPMG analysed that the weekly reporting pack took approximately 35.5 hours to produce.
- 7.60 Data is often taken from different sources (and in some cases at different points in time) and manually manipulated within excel to provide the required information. The variety of data sources means that it is not always possible to cross reference the numbers within the information packs and understand the flow of numbers which raises questions as to the integrity of the information. In addition, the manual compilation of the information increases the risk of error with simple typing or calculation errors further undermining the quality of the information.
- 7.61 The focus and signposting of the information produced could also be improved. Typically the management information lacks meaningful and insightful commentary which explains the information and most importantly what that information is saying about current and likely future performance. Reasons for variances are not clearly stated and there are few indicators of how results compare against expected levels and whether performance is improving or getting worse. This is particularly evident in the presentation of fitness to practise information as noted later in this report.
- 7.62 There is also a lack of presentation of longer term trends which impacts on the ability of managers to make effective decisions. For example, a graph of the three year trend of fitness to practise referrals has been included in this years annual report but it does not routinely feature in the fitness to practise monthly management information.

- 7.63 Similarly the information produced is not pulled together into easy to read summaries which provide a snapshot of performance and there are few indicators which relate to the budget as we have noted in the section above.

Recommendation 14

- 7.64 We recommend that the NMC reviews its collection of management information to ensure it is focussed on meaningful and useful data, that it provides informative comparisons and trends and that it is proportionate to the purpose for which it is collected. We recommend that management data is reported accurately and consistently, is interrogated by Council and its committees and is used as the basis for sound decisions.

8. Regulatory functions

8.1 The NMC has four regulatory functions; standards, education, registrations and fitness to practise. These functions are currently delivered by four separate directorates. We set out below the key issues facing the management team in each of these areas.

Policy and standards

8.2 The NMC has recognised the need to re-focus its work and is currently developing and preparing to deliver its plans.

8.3 The NMC is planning to change the way in which it carries out its work on developing policy and standards. It recognises that it had not had a sufficient clarity of purpose or a strategic approach. As a result, development of policies and standards has been ad-hoc rather than aligned with the organisation's regulatory functions. The NMC has recognised that it should have prioritised the review of some of its standards which are out of date and had undertaken work which went beyond its regulatory remit.

8.4 The NMC has already halted or deferred the development of standards which it has decided either fall outside of its regulatory purpose or are not an immediate priority. It has also decided not to proceed with its plans for a helpline and is liaising with the Royal College of Nursing and the Royal College of Midwives about their future role in respect to this. It is currently refocusing its work and is developing a plan for the future which will encompass:

- building generic policy expertise and adopting an evidence based approach
- a systematic evaluation methodology for analysis of benefits, quality and added value
- a consistent and robust approach when consulting
- accessing contemporary, expert advice
- making use, when available, of fitness to practise trend analyses to inform the development of its standards and policies.

8.5 In view of this, we do not consider that further analysis is necessary at this time.

Education

8.6 The NMC's approach to education is not currently in line with right-touch regulation principles but it has just begun to think about the design of its new risk based approach.

8.7 The Nursing and Midwifery Order 2001 requires the NMC to quality assure education and training programmes delivered by programme providers (predominantly higher education institutions), to ensure educational standards are met. Quality assurance activities include approval of new programmes, reapproval of existing programmes and overall, monitoring of programme providers. The

NMC has recognised that quality assurance needs to be targeting the weaker education providers so that its approach is proportionate with risk. The current approach does not go far enough to meet the requirements of right-touch regulation as in the last five years, the number of unsatisfactory grades awarded following a monitoring event has been 3% or less, yet the level of monitoring activity has not changed. The NMC accepts this view and is now developing its strategic approach for the future. In the meantime, plans to bring quality assurance of education in house have been deferred.

- 8.8 Programme providers see its current approach as unnecessarily burdensome with little evidence that it contributes significantly to safeguarding the public. Quality assurance, particularly for pre-registration programmes, is currently focussed on systems and processes in place rather than looking at the evidence that demonstrates the outcomes achieved by programme providers in ensuring that those entering the NMC's register are fit to practise. Programme providers wish to see the NMC use evidence from a variety of sources, including self-declaration for those that consistently perform well in order to move to a risk based system. It does not currently make effective use of analyses of fitness to practise trends to inform the development of its education standards.
- 8.9 A large number of stakeholder organisations told us that they believe the NMC is confused about its role in developing standards for education. The NMC has been drifting into curriculum development; stakeholders believe that the NMC should concentrate on defining standards which outline what the education programmes should include and deliver.
- 8.10 Stakeholders said that the NMC need to develop a clear vision for nurses and midwives to demonstrate that they are up to date and fit to practise. All agree that the NMC has done little to check the impact of the Post Registration Education and Practise (PREP) process and they believe that revalidation could provide a real opportunity for ensuring that registrants are fit to renew their registration as required throughout their career. However, any model for continuing fitness to practise must be proportionate and not over burdensome. Revalidation may not be the right-touch to demonstrating continuing fitness to practise by nurses and midwives.
- 8.11 The NMC has recognised that its approach to quality assuring education providers is not aligned with right-touch regulation and it has identified the need to change its approach. This will be addressed as part of its new quality assurance strategy which it has begun to develop. We anticipate that it will base this upon healthcare intelligence from a wide range of sources.

Registrations

- 8.12 **The NMC's registration function is improving but the technology system that underpins the register is a weakness and the register is not yet fully accessible to the public.**
- 8.13 The biggest internal challenge for registration is in addressing the issues that they are currently experiencing with the information technology application that forms the foundation of its register – WISER. Regular system outages and concerns

over the integrity of data impact on the team's productivity rates. Problems with the WISER system have been outlined in the section on information, communications and technology above.

- 8.14 Although the register is accessible online, it does not currently show information on registrants who have been suspended or struck off the register, though we understand that work is in progress to remedy this.

Fitness to practise

- 8.15 **CHRE has continually identified the need for improvement in fitness to practise. The NMC has produced action plans and improvements have been made in some areas. However, the result has not been as swift or as extensive as might be expected. We have sought during this review to discover the underlying reasons for this. We identify four main areas that require improvement: strategic oversight, planning, using information to manage and report delivery, and communicating.**

- 8.16 This report is intended to baseline the NMC's current performance and therefore it highlights the shortcomings that need to be rectified. We would like to acknowledge that we have noted areas of improvement, the work in progress and we commend the staff's energy and commitment. Our comments should be viewed in the context of the following information:

- the volume of cases handled by the NMC has risen since 2009 by just under 50% per cent, to over 4,000 cases
- fitness to practise is a linear process, there is a series of stages and steps that must be gone through some of which are set out in law, others are amenable to its control
- the volume of referrals cannot be predicted precisely, but can be estimated based on previous years and any known events that might cause an increase (e.g. The Francis public inquiry into Mid Staffordshire NHS Foundation Trust)
- referrals are received throughout the year. About one third of cases are carried forward to the next year: some cases take up to five years to close
- it is essential to manage workflow evenly, delays in one part of the processes that cause backlogs, stress the system and compound the problem unless relieved quickly
- towards the end of 2010, there were about 2,000 cases at the triage stage. This created a backlog of about 1500 cases awaiting investigations and hearings which are now referred to as 'historic' cases. A case progression plan was drawn up in March 2012 which aims to clear all these cases by March 2013. The NMC estimates that without an increase to its budget it will not be able to meet its adjudication KPI until the end of 2014.
- the NMC has under invested in fitness to practise compared to other health professional regulators⁷

⁷ CHRE is due to publish its *Cost effectiveness and efficiency review of the health professional regulators* this summer. This will provide a comparative analysis of the regulators expenditure on their functions. <http://www.chre.org.uk/satellite/414/>

- the NMC's Council authorised an additional £5.8m of expenditure on Fitness to practise in 2011-12 to fund the increase in workload drawing money from its reserves
 - fitness to practise plans to bring investigations in house which is estimated to save £4 million per annum, however recruitment of extra staff has been delayed due to budget constraints
 - the initial 2012-13 budget allocated to fitness to practise was £9 million less than it bid for against its forecast activity levels. The NMC reports that it will not be able to clear its cases within reasonable timescales unless it increases its income
 - it is short staffed including vacant management posts. It has high numbers of temporary and interim staff with a high turnover
 - fitness to practise management information is prone to error.
- 8.17 As we stated in our interim report, in order to carry out this regulatory role 'effectively, efficiently and economically' the NMC needs 'clear strategic direction and oversight based on reliable, meaningful information about its own performance, clear lines of accountability and decision making and sound implementation'. The fitness to practise function has floundered because it has not had this. Failure to improve and be seen to have improved has undermined confidence in it as an effective regulator and damaged its reputation.
- 8.18 Staff suggest that the NMC did not commit sufficient attention, determination or money to turning its performance around and only picked up its pace from 2010. We noted that the Council previously received only summaries, written by the NMC, of CHRE's performance reports which gave a more positive impression than the full report would have done.
- 8.19 The NMC's staff and Council describe fitness to practise as being complicated, and different from the workloads of other regulators because of the high volume of referrals. In our view, they have allowed themselves to become overwhelmed by this sense of complexity and need to view, manage and report their work more simply. We anticipate that the NMC will benefit greatly from the lean exercise that will be carried out shortly by KPMG to help it to streamline its processes.
- 8.20 The NMC has not yet found a way to present fitness to practise information simply and clearly. It tends to present data and leave readers to draw their own conclusions rather than providing them with a narrative evaluation. As a result, Council and the Fitness to Practise Action Group were drawn into detail rather than being provided with information in a format which enabled them to maintain a high level overview both of performance and progress with implementing the projects and initiatives designed to secure improvement. Data has been provided in isolation without reference to underlying assumptions, comparators, trends or targets which make it hard to work out whether delivery is on track or signals emerging problems. It makes it hard for staff too.
- 8.21 During interviews, staff demonstrated that they do not think readily in terms of linking activity to budget or to resource capacity. They referred to the increase in caseload as 'unexpected' and to referrals as 'unpredictable' rather than something

that could have been approximately forecast and responded to quickly using comparative data and estimating the impact of external initiatives such as its own road shows and the Francis Inquiry. We noted, for example, that a recent graph showing the breakdown of referrals makes no attempt to analyse the reasons for fluctuations beyond a generalised statement that other regulators have experienced increases and that other factors include the inquiry into failings at Mid Staffordshire NHS Foundation Trust and the NMC's previous strategy of actively seeking referrals. The timing of these events and their relationship to the peaks on the graph are not identified.

- 8.22 The NMC rapidly needs to improve its abilities in costing, planning and forecasting activity. It produces a great deal of management information but as noted in management information section above it takes approximately 35.5 hours a month to compile into performance management reports (up to 70 pages long) and it is not sufficiently useful either to those responsible for operational delivery or to those monitoring its performance or making strategic decisions. Management information is also not accurate. For example, KPMG conducted a review of a recent management information pack and found that only 82% of cases reviewed were accurately reflected, only 24 out of 60 cases had an accurate complaint referral date and in some instances the management information pack does not consistently present the volume of interim orders. KPMG also identified from a review of case files that 66% of cases on CMS had the correct stage within the fitness to practise process recorded.
- 8.23 We identified numerous occasions in which data within and between reports did not tally. The degree to which this represents a significant weakness in its ability to manage its workloads effectively is hard to gauge because the error rates are not known, nor does the NMC understand what its tolerances for variation in performance are, i.e. whether failing to meet a particular target by a due date is within tolerance if performance can be recovered.
- 8.24 As noted in the section on ICT, staff bypass the case management system (CMS) and maintain a series of separate excel sheets. Staff report that they do this because the CMS system is out of date due to the frequent changes to their processes and as a result they work around it. As a consequence CMS does not accurately reflect the sub-stage of all fitness to practise cases and may therefore not be fully accurate. It cannot be used to produce real time information on case progression. Information is collated from these different sources over an extended time period. This inevitably results in inaccurate information. KPMG concluded however that the CMS system has the capacity to capture the data required to meet the NMC's needs. KPMG recommended that once the functionality of CMS has been reviewed and data gaps addressed, the use of CMS should be mandated.
- 8.25 Greater clarity is needed over the assumptions that underpin the key performance indicators and reporting needs to be focused on whether these assumptions are being met at the current time. Based on the information produced it is not clear to us whether the NMC's key performance indicators will be achieved and whether the resources that are being expended on fitness to practise will result in the level of performance required to do so:

- it is difficult to get a clear picture of the state of the caseload because of inconsistencies in the NMC's data
 - the NMC still do not have clarity as to the expected referral rate and reasons for recent increases
 - there is little evidence that targets are based on actual measurements of casework handling and processing times. Some work has begun within the last six months in relation to plans to bring investigations in house.
- 8.26 We also found gaps in quality assurance processes. In its previous performance reviews CHRE has identified problems with the quality of decision making and noted, for example, that there is no system for cross-checking recommendations made by the new in house investigation team against panel decisions. Some panel members reported concerns that their feedback was not being responded to, although the NMC maintains that it does consider it. A process for completing some internal quality assurance audits has been established but this does not yet include the whole of the fitness to practise process.
- 8.27 Improving fitness to practise is a key priority for the NMC but it does not have an easily digestible narrative plan that can be referred to by Council or communicated to its staff and stakeholders. In our view it would benefit from having a fitness to practise strategy. This would enable the Council to think through its purpose, describe success, set specific objectives and then determine the measures needed to assure itself of delivery. Initiatives should then be aligned with the strategy to ensure that they are congruent with it and enhance public protection. Staff commented for example, that the NMC has not yet defined what 'fitness to practise' looks like for today's nurses and midwives, or considered what the NMC should be as a modern regulator. We were struck by the lack of time dedicated for staff to think strategically and to plan.
- 8.28 Fitness to practise has a number of individual projects (e.g. moving investigations in house, recruitment and induction of panel chairs), which are managed directly by the fitness to practise team. There has been no coherent overarching change management plan that brings together all of the various fitness to practise initiatives being undertaken, that clearly identifies the resource requirements and, where appropriate, the expected cost savings that are included within the budget assumptions. Changes of dates, changes in plans, delays in implementation all meant it was hard to gain a clear picture of what was intended and what was being achieved.
- 8.29 We understand that work on producing a more coherent overarching plan is underway. In developing this plan fitness to practise would benefit from adopting a programme approach. This needs to be a work stream within the NMC's change programme so that there is a single approach to and clear visibility of, all programmes across the organisation.
- 8.30 It would also benefit from clearly communicating this plan to staff within fitness to practise and within the wider organisation so that they understand all of the initiatives being undertaken and are able to anticipate the impact on the work they do. Staff outside fitness to practise expressed a certain amount of resentment toward the directorate, rather than viewing it as a corporate responsibility and

clearer communication of the strategic plan would help to alleviate this. Some panel members also expressed frustration about poor communication and like some staff, said that the NMC imposed changes top down rather than working collaboratively.

- 8.31 Staff and stakeholders have made suggestions for a number of improvements to its handling of fitness to practise cases which they thought would improve public protection and make it a more modern regulator. We noted in particular:
- high numbers of adjournment and part heard cases. The NMC is beginning to try to actively manage these. However, its key performance indicator is set at the date of the first hearing, rather than the final hearing. Although staff described action being taken to monitor and expedite these cases (and some panel members expressed their concerns with this) we think the NMC would benefit from measuring this because public protection and justice is not served until a final decision has been made
 - desire by staff and stakeholders for the NMC to adopt routinely modern civil procedures, such as dispensing with oral reading of witness statements.
- 8.32 There remain some significant areas for improvement – although we acknowledge much of it has begun or is on hold until the matter of its finances have been resolved.

Recommendation 15

- 8.33 The NMC executive must provide and sustain clear direction and oversight of operations including a fitness to practise improvement strategy within an overall operations plan. We recommend that they address the skill and capacity issues identified here, strengthening business planning and oversight, quality assurance and operational management

9. Conclusion

- 9.1 The NMC has had a troubled history. It is responsible for protecting the public and upholding public confidence. Stakeholders made clear to us that there is continuing support for the NMC. However, they are equally clear that it is not seen as carrying out its responsibilities for protecting the public well. Whilst it is continuing to fulfil its statutory obligations, albeit not as effectively and efficiently as it could, it has failed in its task of upholding confidence in the profession and in professional regulation.
- 9.2 Clarity of purpose is essential for successful organisations – and for effective regulation. It is of critical importance that the NMC's future Chair and Council provide strong strategic leadership. Its future Chief Executive will need to focus on changing the NMC's culture, tackling the hierarchical nature of behaviour and decision-making, encouraging responsibility and accountability in middle management, and challenging the mood of resigned resilience. Establishing open and transparent communications, creating efficient and effective operational systems and resolving permanently the problems with fitness to practise is imperative in building the NMC into a modern regulator and in restoring confidence.
- 9.3 We believe that there are some early signs of change which are not yet visible to the outside world. We emphasise that these changes are tentative, that they rely heavily on the determination of the current interim Chair and Chief Executive and they are not universally supported within the organisation itself. Nor is the NMC currently well placed to realise them given the broad extent of the weaknesses and gaps we have identified. However, there has been considerable activity at the NMC since January and support for change is beginning to be put into place.
- 9.4 Our review has identified a large number of areas where change is required to provide greater assurance to the stability and recovery of the NMC. We do not want to overwhelm the incoming Chair and Chief Executive and so to help the NMC cut through complexity, we have limited our recommendations to those areas that we believe are crucial to improvement. We hope that this will provide it with a framework within which it can organise the numerous specific initiatives that are needed.
- 9.5 Both the restructuring and introduction of a new Chair, Chief Executive and Council will affect the organisation's ability to initiate change quickly. Therefore, the NMC should be allowed time to understand the task and to implement change. It needs to set itself realistic targets but then be sure that it meets them to build confidence both inside and outside the organisation. It also needs to ensure that all staff within the organisation are given the opportunity to contribute to the changes being made. We would expect to see demonstrable improvement within two years.
- 9.6 The new Chair, Council and Chief Executive will carry a heavy responsibility for these changes. Their behaviour, communication, skill and leadership will shape the NMC. No regulator can be permitted to continue to consistently underperform

as the NMC has done. Staff, registrants, and the public must get the leadership and practical action they need and deserve.

10. Appendix 1: Feedback from Focus Groups

Feedback from staff

- 10.1 As part of the review we held 19 focus groups with staff to understand their views of the NMC and to give them a chance to contribute to our review. Across all of these meetings a number of consistent themes emerged which are summarised below for the consideration of the Council and the management team.

Regulatory Purpose

- Failure to be clear with registrants as to what they are paying for, based upon questions raised within the Registrations function
- Lack of strategic stakeholder engagement plan, which is focused on desired outcomes
- Lack of effective relationship (or management of) between NMC and the DH

People and Culture

- The NMC lacks proactivity in pursuing cost savings , i.e. excessive time taken to implement changes such as expenses policy
- Suggestions from staff not always welcomed or followed up, leading to feeling of staff being under-used
- Risk management is not taken seriously
- Staff have a fear of speaking up in terms of reprisal, based on experiences learnt from previous restructure
- Lack of sharing of what is going on across directorates/work being performed leads to duplication of effort
- Lack of openness and consistency across the organisation
- Staff are not treated as senior professionals despite recruited to provide professional advisory role
- The hierarchical structure limits information flows and impacts on the way the organisation works
- Too many decisions are made with a 'short term' view
- Staff feel there is a lack of interaction with Council members
- Reasons for high staff turnover are unclear
- Poor and inconsistent induction process
- Limited progression for staff/lack of succession planning

Operational Management

- A lack of control over project spend

- A lack of budget accountability below director and assistant director levels
- The organisation has a culture of 'spend to get the job done' regardless of budget
- Excessive use of consultants and lack of transparent process for procuring them
- The procurement team is not aware of all purchasing activity until too late into the process when funds are already committed. The team is therefore unable to use their expertise to ensure the NMC is obtaining best value.
- An inconsistent application of the expenses policy
- Business cases having to be written retrospectively for budgetary overspends
- Lack of organisation wide sharing of performance information
- Lack of understanding of directorate direction. Organisational issues understood, but lack of understanding on impact to directorate.
- Concern over director capabilities to manage strategic change. Some directors been with organisation since last CHRE review
- Organisation needs to slow down and prioritise key tasks, and where necessary push back on stakeholders (including CHRE) to make it clear not everything can be done at once
- Changes are made to a process in absence of impact of IT systems
- Training is not focused on organisational need
- Lack of training given to the role of line manager
- Inconsistent application of the annual appraisal process, not helped by lack of alignment with corporate objectives

Regulatory functions

- FtP case officers have an excessive caseload
- Inadequate information given to Employers so that it is clear as to the extent of information needed to process FtP referrals
- FtP case officers have to incur overtime to contribute towards meeting performance targets
- Excessive resources are incurred for quality reviewing documentation, yet no measure of success of outcome, i.e. what is the error rate.
- Staff have received a lack of explanation of the issues being faced by FtP
- Recent communications have been heavily focused on FtP, potentially damaging wider organisational spirit
- Lack of robust process to communicate decision to amend procedure (potentially poorly thought through decision based on risk)
- Due to current communications there is an increasing divide between FtP and rest of organisation

- Changes are made to a process within a directorate in absence of impact of other departments
- There is limited interaction between directors and staff within certain directorates
- Inadequate staff resources to deal with fluctuations caused by absence, in particular within FtP
- CMS system is used inconsistently
- There is a lack of guidance for managing contractors
- The NMC lacks a database which captures the different skills and competencies of staff
- Staff were recruited into roles which soon after joining became redundant roles

11. Appendix 2: External Stakeholders

11.1 During the course of our review we were provided with feedback, either written or verbal from the following stakeholder organisations:

- Royal College of Midwives
- Royal College of Midwives, Scotland
- Royal College of Midwives, Northern Ireland
- Royal College of Nursing
- The office of the Chief Nursing Officer, England
- The office of the Chief Nursing Officer, Wales
- The office of the Chief Nursing Officer, Scotland
- The office of the Chief Nursing Officer, Northern Ireland
- Council of Deans, England
- Cyngor, Wales
- Council of Deans, Scotland
- Executive Nurse Directors Forum, Scotland
- Local Health Board Executive Nurses Directors Forum, Wales
- Representatives of Executive Nurse Directors in England
- Welsh Nursing and Midwifery Committee
- Northern Ireland Practice and Education Council for Nursing and Midwifery
- NHS Education Scotland
- Independent Doctors Forum
- Patients Association
- Gibraltar Health Authority
- Care Quality Commission
- Health Professionals Council
- Protection of Vulnerable Nurses

We also received contributions from registrants and members of the public; these have not been named for confidentiality purposes.

12. Annex 1: Strategic review of the Nursing and Midwifery Council – terms of reference

February 2012

Key questions

- 12.1 Is the leadership, management, organisational structure, and resource allocation, of the NMC correctly aligned to ensure that it can deliver its regulatory functions in the most efficient and effective manner?
- 12.2 If not, what changes need to be made to ensure that the NMC (at strategic leadership, management, organisational, and resources allocation levels) is focussed on delivering against its statutory duties, and is able to build capacity to deliver its core functions in a more efficient and effective manner?

Background

- 12.3 The NMC has had difficulties in performance of its statutory duties for many years. It holds the largest register of any UK regulator, some 690,000 nurses and midwives and has an annual income of over £52 million. It employs over 400 staff.
- 12.4 The Parliamentary Under Secretary of State has asked CHRE for advice on whether 'the way in which the NMC is structured, the manner in which it allocates its resources and its strategic leadership are aligned to enable the organisation to deliver its core regulatory functions in a manner that is efficient, effective and in keeping with the principles of right-touch regulation'⁸
- 12.5 The minister has further written that she 'would welcome recommendations from CHRE as to how the NMC might be able to achieve the necessary improvement' and has requested a final report by early summer 2012.

CHRE's approach to the strategic review

- 12.6 CHRE will conduct the review in partnership and with the co-operation of the Council and directors of the NMC.
- 12.7 We will work with the NMC and its stakeholders to identify strengths and weaknesses in its organisation and systems.
- 12.8 We will apply the principles of right-touch regulation to the NMC:
- To identify and describe the regulatory outcomes it should be achieving
 - To confirm if its approach is proportionate and targeted
 - To ensure it is focussed on public protection.

⁸ Letter from Anne Milton MP to Harry Cayton, CHRE, 26 January 2012

- 12.9 Having clarified regulatory outcomes we will ask:
- Does the organisational structure support those outcomes?
 - Are the plans they have formed capable of achieving those outcomes?
 - Are resources appropriately allocated to give it the ability to achieve its objectives?
 - Are internal processes efficient, effective and economic?
- 12.10 Having reviewed, structure, operations and resource allocation we will consider how the governance and management need to conduct themselves in order to be effective:
- Is the Council strategic in its approach, does it hold the executive to account, does it provide proper stewardship of its resources, is it transparent and accountable in its performance?
 - Is the executive organised for effective delivery and accountability?
 - Does the organisational leadership work as a team, supporting and challenging each other?
 - What competencies, skills and experience should be sought in the new Chief Executive and Chair to secure the future of the organisation?

Timescale and resources

- 12.11 CHRE will aim to complete a report for the NMC and Department of Health in four months from the date it is authorised to commence work and has control of the necessary additional resources.
- 12.12 The review will be overseen by Harry Cayton, Chief Executive and managed by Christine Braithwaite, Director of Standards and Policy.
- 12.13 We will second in for the period of the work two additional audit staff to carry out the field work and draft the findings and report.
- 12.14 We will provide an interim report with key findings in April 2012.
- 12.15 The review will take into account the information available from CHRE Performance Reviews, audits and the current progress reports on fitness to practise the NMC is providing. It will also take account of the cost effectiveness and efficiency review of the regulators already underway.
- 12.16 We seek perspectives from key stakeholders in the nursing and midwifery sector including trades unions and professional bodies.
- 12.17 We will ensure we obtain perspectives from the administrations in Scotland, Wales and Northern Ireland and from the nursing and midwifery sectors in those countries
- 12.18 We may need to seek legal advice on possible interpretations of the NMC's legislation.

Timetable

Month one February 2012	<ul style="list-style-type: none">• Induction for auditors• Scoping• Initial interviews• Fact-finding
Months two/three March/April 2012	<ul style="list-style-type: none">• Observation• Follow-up interviews• Preliminary conclusions• Interim report
Month four May 2012	<ul style="list-style-type: none">• Report drafting• Assurance and review• Final report

13. Annex 2 - Strategic Review of the Nursing and Midwifery Council Interim Report

Introduction

- 13.1 The NMC is a large organisation with a set of important statutory responsibilities relating to patient safety, public protection and the regulation of nursing. In order to carry out these regulatory roles effectively, efficiently and economically it needs clear strategic direction and oversight based on reliable, meaningful information about its own performance, clear lines of accountability and decision making and sound implementation.
- 13.2 In this Interim Report we set out our initial findings in relation to organisational purpose, structure, governance and leadership, including the management of operations by the executive of the NMC and the oversight of its Council. We do this in order to enable the NMC to make rapid progress towards necessary organisational reforms including the recruitment and selection of a new Chair and Chief Executive. This report, completed in less than two months is inevitably brief but we believe it is fair and accurate.
- 13.3 In our full strategic review to be published in June 2012 we will consider a wider range of issues including whether current activities to address the NMC's deficiencies are likely to lead to sustainable and longer term improvements. We are continuing to work with the NMC to monitor progress in Fitness to practise and are reporting to the Department of Health monthly. CHRE's effectiveness and efficiency review of the regulators will be published in May 2012, and will provide comparative data on costs across the health professional regulators. Our Performance Review for 2011-12 will also be complete. In our final report we will set out in more detail the reasons for our overall conclusions and recommendations.

Background

- 13.4 The NMC has had difficulties in high quality performance of its statutory duties for many years. It holds the largest register of any UK regulator, some 670,000 nurses and midwives and has an annual income in excess of £52 million. It employs over 400 staff.
- 13.5 CHRE was commissioned by the Parliamentary Under Secretary of State at the Department of Health in January 2012 to carry out a strategic review of the NMC and to report back within four months. At the same time we agreed to produce an interim report in April. The full terms of reference to the review appear in Annex 1.
- 13.6 The NMC invited and has welcomed the review and has cooperated fully with us, providing us with all the information and records we asked for and with access to Council members and staff as required. We also commend the effort that is being put in by Council and staff across the NMC and their willingness to learn from recent events and to take the NMC forward.

Our approach

- 13.7 This strategic review does not attempt to examine in detail what has gone wrong at the NMC in the past. Our primary concern is with the NMC's future. Nevertheless we need to consider the organisation's structure, management, information systems, leadership and governance, as they have been problematic in recent years, in order to make realistic and constructive recommendations for the future.
- 13.8 It should be noted that the NMC is making changes to the organisation in parallel with our review and as a result, some of our preliminary findings and recommendations may have already begun to be addressed.
- 13.9 To date we have reviewed a wide range of management information including Council papers and minutes, management accounts, business plans and performance reports. We have also carried out individual interviews with all of the Council's members, all of the Directors, some external stakeholders and a small number of staff from different functions and levels across the organisation.
- 13.10 We have invited a large number of people and organisations to meet with us or write to us with their comments. We also welcome unsolicited evidence and a dedicated email address has been set up at nmcreview@chre.org.uk – also by post to NMC Review, CHRE, 157-197 Buckingham Palace Road, London SW1W 9SP.
- 13.11 CHRE reviews and investigations are covered by a code of conduct and a copy of this may be found on our website http://www.chre.org.uk/img/pics/library/110830_Code_of_conduct_for_Staff.pdf

Regulatory purpose

- 13.12 At the heart of the NMC's inability to succeed lies confusion over its regulatory purpose, lack of clear, consistent strategic direction, unbalanced working relationships and inadequate business systems.
- 13.13 For an organisation to succeed, it must understand its primary purpose. The principal functions of the NMC, as defined by the Nursing and Midwifery Order 2001 are:
- 'to establish from time to time standards of education, training, conduct and performance for nurses and midwives and to ensure the maintenance of those standards'....'The main objective of the Council in exercising its functions shall be to safeguard the health and well being of persons using or needing the services of registrants.'*
- 13.14 The role of the NMC as a regulatory body has not been helped by that Order nor has it been subsequently clearly defined or universally understood and that has placed its Council, senior executive and staff at a disadvantage. We will comment further on the matter of defining its regulatory purpose in our final report.

- 13.15 Protecting patients, service users and the public is achieved through the effective delivery of the NMC's four regulatory functions. Precisely how that should be achieved has been open to interpretation. The NMC at the time of CHRE's earlier investigation (2008) was governed by a Council who primarily represented the nursing and midwifery professions. The Council's composition has since changed and Council members, whether registrants or not, are not representatives of the professions. However, some interviewees (who are not on the Council) told us that they perceived that on occasions, a sense of representation still persists within the organisation as well as in the expectations of external bodies.
- 13.16 Whilst the patient protection remit is now recognised by all, from Council members to junior staff, it is our view that this has not been translated into a clear statement of strategic direction and prioritisation. Additional projects have been undertaken which do not support the primary regulatory objective; for example, creating an index of nursing students, or campaigning for the statutory regulation of healthcare support workers. These ambitions for expansion and influence have caused the NMC to be distracted from its core functions. They also serve to confuse registrants and external stakeholders about its regulatory role.
- 13.17 An efficient, mature regulatory body with strong leadership might have had the capacity to stretch to accommodate additional projects, had they been in the public interest but the NMC has not been in that position. It continues to have a back log of cases in its fitness for practise directorate, whilst experiencing a reported 52 per cent rise in referrals over the past two years and a continuing upward trend. Its income is fixed (unless it increases registration fees) and it is now spending down its reserves. Its business planning is weak, its management information is unreliable and its IT systems are at risk. Whilst its staff continue to deliver, and their perseverance and dedication are admirable, they have been hampered by multiple organisational weaknesses.

Recommendations

- 13.18 The NMC needs as a whole organisation to have a clear and consistent focus on its regulatory purpose. It needs not only to clearly articulate its values, but also to ensure that they are understood throughout the organisation and to put those values into practice in what it does and how it does it.
- 13.19 The NMC should ensure that it communicates its regulatory purpose clearly to its stakeholders.

Governance

- 13.20 A governance framework exists in the NMC but has not been consistently complied with. The Council and executive management team have not been sufficiently transparent and accountable. We have identified the existence of unsatisfactory and sometimes dysfunctional relationships between:
- the Chair and the Council
 - the Chair and the Chief Executive

- the Chief Executive and the staff
- 13.21 and further between the understanding and practice of:
- individual and collective responsibility
 - strategic and operational management.
- 13.22 These imbalances seem to have been endemic in the NMC for many years. They played out in a different way in the Council and management before 2008. The rebalancing of vision and purpose, strategy and operations, governance and delivery, Council and staff, to create an effective, efficient, economic regulator will be the test of success or failure of the new Chair and Chief Executive.
- 13.23 By achieving a balance between individual and collective responsibility we mean that an effective Council member should exercise individual responsibility before a decision is made for considering, probing and challenging, and they should then accept collective responsibility once that decision has been made and support the organisation in delivering it.
- 13.24 Council members and staff have described instances which led them to believe that the Chair was too aligned with the Chief Executive. Council members felt disempowered and felt they were discouraged from challenging the executive, and some staff told us that they felt inhibited about raising matters with the Chief Executive. There appears to have been little interaction between Council members and the executive and staff or between members of the executive. Council members felt that there was no clear route to raise concerns internally. The NMC's whistle-blowing policy, which has recently been revised, was not previously visible and staff were not generally aware of its existence. Vital checks and balances were therefore absent.
- 13.25 The NMC lacks a clear long term financial strategy and a challenging budget has been set for 2012-13 against falling reserves, fixed fees, rising caseloads, the need for IT investment and inadequate workflow forecasting. Against this backdrop it is imperative that the Council has at least one member who is financially qualified, to ensure it can exercise proper stewardship of its funds. In addition, the Chair of the Audit Committee is not a Council member. The Council has recognised this gap but Council members and the former Chair disagreed in their account of why this was not addressed. It must now be addressed.
- 13.26 The Council reviewed its governance arrangements in 2010 and agreed to reduce the number of its Committees to three: Midwifery (a statutory Committee), Audit Committee and a Remuneration Committee. This reduction was intended to allow all Council members to be fully involved in all of the Council's business and to share in decisions. This was a reasonable and appropriate change but it did mean that Council agendas needed to be well managed, and papers presented succinctly with sufficient information, option appraisals, costings and benefit realisations carefully and clearly explained to allow the Council to make well-informed decisions. As we noted in our report on the General Social Care Council (2009) Councils are entitled to be able to trust and rely upon the executive to present accurate and honest information but they must also remain vigilant and

challenge when necessary.⁹ Our examination of Council papers, interviews and observation of Council meetings have found deficiencies in the quality and accuracy of papers and room for greater efficiency and effectiveness in the way in which the Council conducts its business during meetings.

- 13.27 The NMC has already decided that the current Committee structure does not allow it to delve sufficiently into detail and has recently established a number of task and finish groups. It will benefit from keeping this under review. Committees are useful in allowing closer examination of critical issues and Council members who sit on these should ensure that they brief the full Council at appropriate intervals. Task and finish groups are appropriate for the short term management of time limited projects. Ultimately the responsibility and focus must remain with the Council.
- 13.28 We are also concerned that decision making by the Council is not sufficiently transparent. Council meetings are divided between confidential and open sessions with many items being discussed in private before being brought to the public session, resulting in an inconsistent level of public debate and scrutiny. There is a third informal session, known as seminars, where issues are debated before reaching the formal Council meetings. We believe these seminars should be focused solely on training and development, with issues requiring discussion reserved to formal meetings. This would allow for a greater audit trail supporting decisions made as the seminar sessions are not currently minuted. The Council should move into private session after meeting in public only to discuss matters that are genuinely confidential. The Council should reinstate the opportunity for observers and members of the public to make comments and ask questions at the end of the formal meeting.

Recommendations

- 13.29 We support the DH's decision to consult on a Constitution Order for a smaller Council and urge them to proceed swiftly.
- 13.30 In light of the lack of a long term financial strategy and the current financial position, we recommend that there is a member with financial expertise on Council and that the Chair of the Audit Committee is a member of Council.
- 13.31 We recommend that there should be a presumption that matters will be considered at a public Council session except where it is essential for reasons of confidentiality to hold them in private. We also recommend that the practice of inviting members of the public to ask questions at the end of the meeting is reinstated.
- 13.32 The NMC should introduce a process by which Council members can raise concerns and be sure they are being heard and discussed. It is for Council to determine what process this should be.

⁹ Report and Recommendations to the Secretary of State for Health on the conduct function of the General Social Care Council (2009)

- 13.33 During the period in which the NMC is managed by the interim Chair and interim Chief Executive we recommend that a transition or change team is established by the NMC with strengthened expertise in risk and change management, to support the interim Chief Executive and report to Council on progress.
- 13.34 Allied to this there needs to be a clear statement or visible transition plan to demonstrate to staff and external stakeholders what action is being taken to improve the NMC, including the issues we have identified in this report and in our performance reviews. It should also demonstrate how the risks facing the NMC, (including those introduced due to the transition to a substantive Chief Executive and Chair) are being actively managed.

Leadership

- 13.35 It is the role of the Council to set the strategic direction of the organisation. It is the responsibility of the Chair to lead, support and guide them in doing so and their collective responsibility to hold the executive to account for delivery. It is the function of the Chief Executive to determine the means by which the strategy will be delivered and his or her responsibility to ensure that it is. Over recent years the Council and executive have been constrained from exercising effective leadership as a result of two main factors.
- 13.36 First and foremost are relationships. Our interviews reveal that the interplay of relationships between the former Chair, Council and former Chief Executive have been marred by poor communication, lack of mutual respect and an absence of trust.
- 13.37 To an extent, this may be seen as a legacy from the previous Council. The Council members perceived that the Chair was overly anxious to avoid poor relationships with the executive and to prevent Council members from interfering with operational matters; as a result they instead saw him as being too close to the Chief Executive and aligned with the executive rather than Council.
- 13.38 The Chief Executive told us that he was concerned that the Chair was not commanding respect and, doubting the Council's proficiency, he pushed ahead in the direction he thought right and focussed on building the confidence of external stakeholders. Council members who became increasingly uneasy with both the former Chair and the former Chief Executive raised concerns with the former Chair but felt they lacked a further avenue when no action appeared to be taken. The Chair told us that Council members did not raise concerns regarding relationships with the Chief Executive until October 2011. He also told us he tried to challenge the Chief Executive albeit, as he saw it, without much success.
- 13.39 Secondly, the former Chair, Council and former Chief Executive all lacked insight, although in different respects. The former Chair failed to recognise or to resolve his Council members' concerns and did not lead them into becoming a cohesive team or ensure they had the individual and corporate skills, knowledge, information and competencies they needed as a board. Council members recognised that, as a group, they lacked financial expertise and gradually became

aware that information coming to the Council was not sufficient to support effective decision making.

- 13.40 Ultimately a Chief Executive is responsible for the performance of an organisation. He or she must recognise weaknesses in their organisation's operating systems. The executive team at the NMC have told us that they felt disenfranchised by the introduction of the Corporate Leadership Board and generally were reluctant to challenge. In addition, the former Chair and Council permitted the NMC to fill a perceived vacuum in professional leadership and so extended its activities beyond the delivery of the four main functions and beyond the capacity of the organisation given its limitations.
- 13.41 As a consequence the organisation has not turned its fitness to practise directorate around as quickly as it might, nor managed internal and external relationships positively despite the endeavours of its staff. Leadership has therefore been deficient.

Qualities required for Chair and Chief Executive roles

- 13.42 Leadership resides in the Council and management teams together but is most clearly demonstrated in the roles of Chair and Chief Executive. At the time of writing this interim report, the Chair had recently stood down, leaving both the Chair and Chief Executive positions filled on an interim basis. Both positions need to be converted into permanent positions through open recruitment. CHRE recommends that resourcing for the two roles should be completed in close parallel (with the Chair being appointed first to take part in the appointment of the Chief Executive) to help ensure that complementary skills are obtained, recognising that a close working relationship is essential.
- 13.43 It is in our view of fundamental importance that the new Chair and Chief Executive have the qualities, competencies and experience necessary to bring about both change and stability to this important professional regulator. There is no evidence, in our view, that to do this either of the posts need to be held by a registrant, although it may be that incidentally, there are nurses or midwives who have these personal qualities.
- 13.44 The qualities required of chief executives in large, complex organisations are so vital that securing these should not be compromised by the addition of any requirement that is not fundamental to that skill set. In our view therefore, consideration might be given to separating the role of Registrar from that of Chief Executive.
- 13.45 We set out some high level personal qualities which we think will be necessary in the people who are appointed to those roles in the future. In identifying these qualities we do not make any judgement as to their relevance to previous or present incumbents.

Chief Executive

- 13.46 The Chief Executive officer needs:
- Clarity of purpose
 - Strong management and operational skills
 - Determination and resilience
 - Ability to build relationships and motivate others
 - Good financial understanding and management
 - Capability in implementation and tactics
 - Influencing and negotiating skills
 - Ability to work in partnership with the Chair
 - Ability to gain and keep the confidence of Council, staff and stakeholders.

Chair

- 13.47 The Chair of the NMC needs:
- Strategic vision and understanding
 - Intellect and analytic thinking
 - Highly effective interpersonal skills
 - Good skills in communicating, listening and responding
 - Good standing and personal authority
 - Diplomacy and political awareness
 - To be an effective chair of meetings
 - Ability to hold the CEO to account, to support and to guide them.

Recommendation

- 13.48 The appointment of a new Chair and Chief Executive should be carried out swiftly and with regard to the personal qualities we have set out above.
- 13.49 Consideration should be given to separating the roles of registrar and Chief Executive so that the role of Registrar might be held by another post-holder.

Decision making and control

- 13.50 In the NMC it has not been consistently clear where and how decisions have been made, who was responsible for making them, how they are recorded and reported, or on what basis resources were agreed and allocated. Until recently there was no executive management team meeting and no effective decision making forum. Project management systems are also weak with lack of centralised control or clear authorisation procedures.

- 13.51 Interviewees explained to us that the previous Chief Executive had introduced a Corporate Leadership Board which included the directors and assistant directors. The Corporate Leadership Board has been described as an ineffective forum for making decisions as the size of agenda (regularly consisting of paperwork exceeding 100 pages for each of the fortnightly meetings) did not allow for adequate debate prior to decisions being made. It has now been discontinued and has been replaced with the Directors Group as the decision making body.
- 13.52 Evidence of the impact of poor quality management information on decision making is illustrated by the NMC's decision in 2011 to down-size its Registration function. It has now discovered that its staff resources are too low and do not match demand and more staff will need to be recruited.

Recommendations

- 13.53 We recommend that the executive management team is restructured to reflect the regulatory purpose of the NMC to ensure that it is an effective and accountable decision making body within a new scheme of delegation that reflects the emerging organisational structure. Minutes must be kept and decisions properly reported both upwards to Council and outwards to staff.
- 13.54 The NMC needs to improve both the quality of performance data available to the management team and the Council and the presentation of that data so it enables good decision making.
- 13.55 In particular the quality of papers presented to Council needs focus with a requirement for adequate information (not necessarily more information), to allow Council to reach informed decisions. The Council must ensure it is fully satisfied with the quality of reports received to enable consistent and informed decision making. Council minutes should state clearly where decisions have been reached, and where actions have arisen.
- 13.56 Financial management, budgeting, reporting to Council and control need to be strengthened with a focus on making the link clear between operational activity and financial outcomes.

Operational management

- 13.57 The operational structure of the NMC has undergone many changes over its recent history. Our view is that those changes have left it in an unsatisfactory position and as a result further change is needed, a view which is also recognised by the NMC's current management. The current structure does not support efficient delivery of the statutory objectives and overall purpose of the NMC. Any restructure should bear in mind the need to facilitate better cross directorate working as staff and executive management have indicated that directorates tend to operate in silos. As an example, we understand that there was limited consultation between directorates when the Case Management System was designed, and as a result, the information now being captured does not easily lend itself to supporting the development of future policy and standards.

- 13.58 There has been significant turnover at the director level over the last twelve months which has resulted in an executive with half of its roles filled by a mix of interim or 'acting up' directors which is not ideal for them or for the NMC. We recognise the commitment and hard work of those currently holding those roles.
- 13.59 Management information and performance measurement are weak with inconsistencies in the level and focus of the information presented. Our review has identified that a combination of poor IT systems, a lack of historical information and a failure to develop operationally focused measures has resulted in an absence of sufficient information to be able to manage the NMC effectively at both an operational and at strategic level. We have identified management information reports that are inconsistent in terms of layout, data, trend analysis, lacking the ability to draw clear comparisons, limited high level reporting, and limited use of summaries. Due to the weaknesses in the underlying data many reports have to be compiled manually rather than generated by the IT system. It is therefore difficult for Council and the executive team to make good decisions based on accurate and appropriate data.
- 13.60 Financial reporting to Council has been insufficient. There needs to be better modelling of workflow and the costs and consequences of decisions. We have noted examples of papers being presented to Council which do not clearly identify the financial consequences of the actions being proposed, and instances where detailed analysis of the alternative options available have not been made clear.
- 13.61 Business planning also needs to be improved. Staff need to understand clearly what they need to do to deliver the strategy. In interviewing both Council and staff it is apparent that although people are passionate about their roles with the NMC and understand that the focus of the organisation should be on public protection, they are not clear about the organisation's strategy or the role they have to play.
- 13.62 The 2011-2014 corporate plan contains a set of three goals but lacks commentary as to how the goals will be achieved or how success will be measured. These goals have been loosely broken down into directorate objectives but we observed a lack of consistency in the description and clarity of these objectives, including differences in the definition of performance measures across directorates. It is not clear how these objectives meet the overall strategic goals of the NMC. Reports to Council on progress against the corporate objectives include detailed descriptions of activity but it is difficult to tell whether they are actually delivering the objectives.
- 13.63 The commitment of the staff needs to be harnessed, focussed firmly on the NMC's core function and a common understanding of what that means, supported by strong leadership and clear objectives both in the short and long term. The NMC is in the process of revising their corporate and business plans to enable this.
- 13.64 Our review has also identified that the NMC does not have a clear understanding of what success looks like. In well run organisations, strategic, business or operating plans are written with performance measures which enable those charged with monitoring performance to determine whether such plans have been successfully implemented. We have reviewed the high level performance measures that the NMC have used for 2011/12 and in our view, these are not sufficiently aligned with the NMC's regulatory objectives, with the majority being

focused on internal operational issues. This prevents those responsible for monitoring organisational progress from doing so effectively.

- 13.65 Both Council and executive management recognise fitness to practise as an organisational priority due to the current backlog of cases. It will require a significant proportion of the NMC's annual expenditure to address the backlog. In addition the NMC needs to address the challenge of a reported 52 percent rise in the number of referrals over the last two years with indications that they will continue to rise in the future. However, it is important to recognise that the NMC has other core regulatory functions it cannot ignore. This makes it imperative that a clear financial strategy is developed, which supports the regulatory purpose within the confines of the limited funding available at present, and that appropriate controls are in place to ensure that the resultant budget is robust and achievable. We believe this is a fundamental gap and requirement, and needs to be urgently addressed. The NMC has recently commissioned work to model workflows and costs to enable it to develop this strategy.

Recommendations

- 13.66 The overall strategy of the organisation needs to be better articulated by Council, implemented by management and understood by staff. A structured approach to strategic and business planning, aligned with personal objectives, will enable greater joined up working across the NMC. Clear prioritisation will bring clarity not only to the overall strategic direction but also the allocation of funds.
- 13.67 The organisation needs a clearer understanding of what success looks like once it has defined its corporate objectives. Plans should define the performance measures to be used to enable appropriate management of performance. This should be supported by financial and business strategies which address both short and long term aspirations. It will then be necessary to ensure that staff fully understand the strategic direction and have objectives which they can relate to, in the context of the required regulatory objectives.

Areas for final report

- 13.68 In our full strategic review to be published in June 2012 we will have completed our evaluation of a wider range of NMC processes and systems. Whilst not conclusive, we set out below the areas we will be focusing on over the next two months:
- Interaction and positioning with stakeholders
 - Stakeholder views
 - Role of sub-Committees and action groups
 - Assurance framework
 - Performance management framework
 - Staff engagement and development
 - Financial management
 - Project and programme management

- ICT
- Management information
- Specific directorate issues.

Conclusion

- 13.69 Inadequate corporate governance is at the heart of many organisational failures. The UK Corporate Governance Code suggests 'every company should be headed by an effective board which is collectively responsible for the long-term success of the company'¹⁰. The Code also states 'the [chair] is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role'¹¹.
- 13.70 In our interviews with Council members we have identified a pattern of weakness in organisational relationships which have had a detrimental effect on the ability of individuals and bodies within the NMC to govern the organisation efficiently and effectively. Our view is that ineffective relationships in which the wrong balance has been struck have been the primary cause of failure, as against individual actions.
- 13.71 We believe that the interim arrangements currently in place at the NMC are appropriately focussed on its regulatory purpose. We acknowledge the effort the Council, executive team and staff are putting into managing this transition. We hope that our recommendations will allow the NMC to act rapidly to recruit a new Chair and Chief Executive and so give staff and registrants the regulatory leadership they need and deserve.

¹⁰ UK Corporate Governance Code, Main Principle A.1

¹¹ UK Corporate Governance Code, Main Principle A.3

Council for Healthcare Regulatory Excellence
157-197 Buckingham Palace Road
London SW1W 9SP

Telephone: **020 7389 8030**
Fax: **020 7389 8040**
Email: **info@chre.org.uk**
Web: **www.chre.org.uk**

© CHRE April 2012

