

Meeting of the NMC Council

to be held at 9.30am on Thursday 21 March 2013 in the Council Chamber at 23 Portland Place, London W1B 1PZ

Agenda

Mark Addison CB
Chair of the NMC

Matthew McClelland
Assistant Director,
Governance and Planning
(Secretary to the Council)

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| 1 | Welcome from the Chair | NMC/13/44 |
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| 6 | Report of decisions taken by the Chair since the last Council meeting | NMC/13/49 |

Corporate reporting

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| 7 | Francis Report update | NMC/13/50 |
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| 8 | Risk Register | NMC/13/51 |
| | Director of Corporate Governance | TO FOLLOW IN 48-hour PAPERS |
| 9 | Chief Executive's report | NMC/13/52 |
| | Chief Executive and Registrar | |

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| 10 | Fitness to Practise Performance report / Report from Fitness to Practise Committee | NMC/13/53 |
| | Director of Fitness to Practise / Chair of Fitness to Practise Committee | TO FOLLOW IN 48-hour PAPERS |
| 11 | Monthly financial monitoring | NMC/13/54 |
| | Director of Corporate Services | TO FOLLOW IN 48-hour PAPERS |
| Matters for decision | | |
| 12a | NMC 2013 – 16 Corporate Plan | NMC/13/55 |
| | Director of Corporate Services | |
| 12b | NMC budget 2013 - 14 | NMC/13/56 |
| | Director of Corporate Services | |
| 13 | Annual review of fees level and reviews policy | NMC/13/57 |
| | Director of Corporate Services | |
| 14 | Amendments to the guidance on conditions of practice and conditions of practice library | NMC/13/58 |
| | Director of Fitness to Practise | |
| 15 | Revisions to the guidance to panels on interim orders | NMC/13/59 |
| | Director of Fitness to Practise | |
| 16 | Principles of Council engagement with Midwifery Committee | NMC/13/60 |
| | Director of Registrations and Standards | |
| 17 | Standards for five year rule | NMC/13/61 |
| | Director of Registrations and Standards | |
| 18 | Questions from observers | NMC/13/62 |
| | LUNCH: (12.45 – 13.30) | |

Matters for discussion

- 19 **Report of the House of Commons Health Committee accountability hearing with the Nursing and Midwifery Council** NMC/13/63
Director of Corporate Governance
- 20 **Feedback from committee chairs of meetings held since last Council:** NMC/13/64
Finance and IT Committee
Chair of Finance and IT Committee
- 21 **Draft agenda for the Council meeting on 25 April 2013** NMC/13/65
Director of Corporate Governance

The next public session of the Nursing and Midwifery Council will be held on Thursday 25 April 2013 at 9.30am at the Nursing and Midwifery Council, 23 Portland Place, London W1B 1PZ.

Meeting of the Council
Held at 09:30 on 21 February 2013
at 23 Portland Place, London W1B 1PZ



Minutes

Present

Members:

Mark Addison CB	Chair
Dr Kuldip Bharj OBE	Council Member
Professor Judith Ellis MBE	Council Member
Sue Hooton OBE	Council Member
Lorna Jacobs	Council Member
Grahame Owen	Council Member
Nicki Patterson	Council Member
David Pyle	Council Member
Ruth Sawtell	Council Member
Bea Teuten	Council Member
Professor Jane Tunstill	Council Member

Lay advisors:

Louise Scull	Lay Advisor to Council
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NMC officers:

Jackie Smith	Chief Executive and Registrar
Katerina Kolyva	Director of Registration and Standards
Lindsey Mallors	Director of Corporate Governance
Sarah Page	Director of Fitness to Practise
Mark Smith	Director of Corporate Services
Maggie Wood	Interim Assistant Director, Governance and Planning (Secretary to the Council)
Paul Johnston	Council Services Manager (minutes)

The meeting of the Council commenced at 9.30am.

The report on the Francis Report was taken before the Risk Register report. All other items were taken in the order on the agenda. For reporting purposes, all items are recorded in these minutes in order of the agenda.

Minutes

13/22 **Welcome from the Chair**

1. The Chair welcomed all attendees to the meeting. The Chair noted that the agenda had been re-ordered so that the report on the Francis Report would be taken after Item 6. The Chair added that there would be a further late item on Overseas Registration Policy.

13/23 **Apologies for absence**

1. Apologies for absence were received from Alison Aitken, Carole Rees-Williams and Professor Nigel Ratcliffe.

13/24 **Declarations of Interest**

1. None.

13/25 **Minutes of previous meetings**

1. The Chair of the Fitness to Practise Committee said that minute 13/09 (4) should note that there were two separate areas the Committee was monitoring in relation to the PSA work: learning points from PSA, which would tie in with corporate learning from the Serious Events Review (SER) policy and actions from the PSA audit. Both these points would be taken forward by the Fitness to Practise Committee.
2. The Chair of the Midwifery Committee asked that minute 13/16 (3) be amended to reflect the Midwifery Committee's concerns around the applicability of PII to independent midwives.
3. The Chair of the Midwifery Committee also asked that minute 13/19 (2) refer to the concerns about the quality assurance aspect of outsourcing proposals for the LSA review function.
4. The Chair of the Audit Committee asked that minute 13/20 (2) be amended to reflect the emphasis that the Committee wanted to bring to Council on the importance of additional organisational resources being made available for the internal audit function and on developing an internal assurance framework.
5. In relation to minute 13/20 (4), the Chair of the Midwifery Committee asked that the minute be amended to include reference to the meeting held between herself, NMC Chair, NMC officers and the RCM on issues of joint interest.
6. Subject to the above amendments the minutes were approved.

13/26 Summary of actions

1. Members raised the following points:
2. Page 21, Action point 12/182/2. The review of fee levels should include scoping for payment of fees by direct debit.
3. Page 26, Action 13.20. Members of the Audit Committee had felt it important to seek assurance from Council around where responsibility lay for the scrutiny and delivery of the NMC's equality and diversity work. Officers said that overarching responsibility for equality and diversity was within the remit of Council, who would consider a report on progress at its April 2013 meeting.
4. Members said that the action list from Council to Fitness to Practise Committee would need to be brought in its entirety to Committee in future. The Chair of the Fitness to Practise Committee added that the Committee would take forward work on Plain English standards.
5. The Chair of the Midwifery Committee noted that the minutes of the Midwifery Committee held on 16 January 2013 had not been circulated more widely as they were awaiting final sign-off, and asked that a report be brought to Council on the principles of engagement between the Committee and Council.
6. Members raised a query about the publication and circulation of committee minutes to all Council members. Members discussed whether committee minutes should be available on the website and officers advised that this would be part of the considerations within the governance review. It was agreed that all committee minutes would be available on the members' intranet.

Action: Ensure Council actions for committees are included in each committee's agendas

For: Council Services Manager

By: 21 March 2013 (ongoing)

Action: Ensure that all committee minutes are published on the members' intranet

For: Council Services Manager

By: 21 March 2013 (ongoing)

Action: Bring a report on the principles of engagement between the Midwifery Committee and Council to March 2013 Council

For: Director of Registration and Standards

By: 21 March 2013

13/27 Report of decisions taken by the Chair since the last meeting

1. None.

13/28 Risk Register

1. Two new risks had been added to the Register relating to the publication of the Francis Report.
2. Members noted that Risk T9 had been closed and said that it was important that aspects of this risk, including the possible increase in referrals to FtP and consequential financial implications, should continue to be reflected as ongoing risks.
3. Members asked why the risk rating on T23: "Integrity of the Register" had increased, given that external auditors had recently provided assurance on this point. Officers said that this related to the potential for discrepancies between the organisation's CMS and WISER systems but agreed to provide further details.
4. Members asked what further work was being undertaken to reduce staff turnover, as per risk T25 on the register. This would be covered under the "HR and OD strategy" item.
5. Members said that some of the language in the Register, particularly around mitigations and further actions, was not written in plain English.
6. Members said that it was of concern that none of the top risks had a reduced risk rating since the previous Council meeting and advised that Council would continue to seek assurance that risk mitigation measures were in place.

Action: Amend risk T28 to reflect the ongoing risk around potential increase in referrals and consequential financial implications arising from the Francis Report

For: Director of Corporate Governance

By: 21 March 2013

Action: Provide further details on the rationale for the increase in risk rating on risk T23

For: Director of Corporate Governance

By: 21 March 2013

Action: Review the Risk Register to ensure it is written in plain English

For: Director of Corporate Governance

By: 21 March 2013

13/29 Chief Executive report

1. The Chief Executive updated members on the most recent meeting of the Public and Patient Engagement Forum, where the Francis report and the usability of the NMC website was discussed with attendees. Officers noted that there was more work to do in securing a wider attendance at Forum meetings. It was important that the NMC was not perceived as being London-centric, and officers agreed with members' suggestions around promoting involvement with the Forum with existing stakeholder groups.
2. Members noted that the outsourcing of quality assurance of education tendering process was on track.
3. Members queried the details of the EU balance of competence review health report. This related to a current EU consultation and officers agreed to provide members with further details
4. Members asked about the new e-learning platform for the organisation that went live at the end of January 2013. Officers said that this was a new system, and could be used by employees flexibly, either within their own time or during business hours.
5. Members asked why calls to registrations had increased significantly since the last Council meeting. Officers said that the registrations centre had now started receiving calls around Fitness to Practise cases and experienced an increase in calls as a result of new policies, notifications of practice and fees. Directors would shortly approve a business case for additional resources in this area.

Action: Provide information around the EU balance of competence review health report
For: Director of Registration and Standards
By: 21 March 2013

13/30 FtP performance report

1. The Chair of the Fitness to Practise Committee informed members of the items considered at the last Committee meeting on 19 February 2013.
2. These included the scrutiny of performance data, which showed that a number of key performance indicators were being met. The Chair advised that 20 CCC hearings a day were now being carried out. However, improvement remained fragile, which was reflected in the underperformance on the interim order KPI and the average days per hearing figures.
3. The Committee had also expressed its view that in order to fulfil delivery of its robust and regular oversight of performance, it would

continue to meet monthly and would suggest this as part of the transition process.

4. Members noted that 56 per cent of Interim Orders had been imposed within 28 days in January 2013 and asked that reporting in future reflect the outliers rather than the average performance. Officers noted that Council would consider a report in March 2013 detailing a proposed new approach to interim orders.
5. Members wished to give formal recognition to the achievements and hard work of all staff within the Fitness to Practise directorate.

Action: Report outliers in FtP interim order performance against the KPI rather than average performance
For: Director of Fitness to Practise
By: 21 March 2013

Action: Ensure that a further item on “revised guidance on IO hearings” is on March 2013 Council agenda
For: Secretary to the Council
By: 21 March 2013

13/31 Monthly financial monitoring

1. Members were pleased to see consistency in financial reporting but noted that this would be an important area for the reconstituted Council to continue to oversee and monitor.
2. Members asked about the lower QA of education costs due to a lower number of review days being utilised. This was noted as being good news, as it was indicative of a better working relationship between Higher Education Institutions (HEIs) and the NMC on reviews. Officers added that large contingencies had been put in place in previous budgets to cater for the anticipated requirements for extraordinary reviews.
3. Members queried whether the level of detail and the complexity of information presented within the report would be appropriate for the reconstituted Council and suggested that the Finance and IT Committee consider this issue at its next meeting as part of the transition planning process. Annexe 3 to the report would be amended for the next meeting, as per Council’s request at its January meeting.

Action: Ensure that the Finance and IT Committee considers the presentation of financial data for reconstituted Council
For: Director of Corporate Services
By: 19 March 2013

13/32 Corporate complaints

1. The Chief Executive introduced the report, noting that the development of processes for corporate complaints and for deriving organisational learning from complaints would be taken forward within the Corporate Governance directorate.
2. Members said that it was important that the Council be informed of complaints from patients and the public in their totality, a practice which was reflected in many NHS hospital trusts. Officers said that they would take this forward as part of the work undertaken on the Francis report, and would report back to Council in April.

Action:	Ensure that “revised corporate complaints processes” is an item on April Council agenda
For:	Secretary to the Council
By:	25 April 2013

13/33 Update on proposals for interim order hearings

1. The Director of Fitness to Practise introduced the report and said that the recommendation to Council was that the current policy, where registrant panel members considering interim order applications would have to be from the same part of the register as the registrant under investigation, would be revised.
2. Members sought clarity on the definition of “same part of register”, and were informed that this referred to the distinction between nurse, midwife and SCPHN.
3. Members said that they could agree the recommendations within the report provided that the policy, as currently drafted, encompassed safeguarding measures as agreed by the Council, including risk assessment and exclusion.
4. Officers agreed to monitor and report issues emerging from the amendments in policy and would report back to the Fitness to Practise Committee in the third quarter of 2013.

Action:	Report to Fitness to Practise Committee on issues emerging from the amendment in policy on panel composition for interim order hearings
For:	Director of Fitness to Practise
By:	September 2013

13/34 Engagement strategy

1. The Director of Corporate Governance introduced the item. The Chair noted that Council was being asked to approve the overarching engagement strategy and that a more detailed delivery plan would be presented to Council in April.

2. Members commented on:
- Aligning the timeframe of the strategy with the Corporate Plan 2013 – 16.
 - Ensuring that the language throughout the document was consistent.
 - Making it clear that the strategy included engagement with registrants.
3. Council agreed to:
- Call the document ‘Engagement commitment’ and, subject to the above amendment, approve it for publication.
 - Take an item in March seminar to share experiences in stakeholder mapping.
 - Consider the engagement delivery plan at the April 2013 Council meeting.

Action:	Incorporate members’ comments into engagement commitment document
For:	Director of Corporate Governance
By:	21 March 2013
Action:	Ensure item on Council seminar agenda on stakeholder mapping
For:	Director of Corporate Governance
By:	21 March 2013
Action:	Provide detailed engagement plan at Council in April
For:	Director of Corporate Governance
By:	25 April 2013

13/35 Supervision, support and safety: Report of the quality assurance of the local supervisory authorities (LSAs) 2011 - 12

1. The Director of Registration and Standards introduced the item, noting that the Midwifery Committee had considered the report. The Chair of the Midwifery Committee said that she welcomed the report, which offered a flavour of the issues that the Midwifery Committee was considering. Members noted that the updated Midwives Rules and Standards had now been published.
2. Members noted that the report covered the period up to March 2012 and asked why Council was only considering this report in February 2013. Officers said that this was dependent upon the receipt of reports from the Local Supervisory Authorities but said that they aimed to present this year’s report in the fourth quarter of 2013.
3. The report was approved.

13/36 HR and Organisational Development strategy

1. The Director of Corporate Services introduced the report.
2. Members said that they felt that the strategy did not comprehensively detail the NMC's organisational values. Officers replied that staff had undertaken some work on behaviours and that these were incorporated in the last strand. Officers advised that it was important for the NMC to develop a strategy that worked best for the NMC and, while being mindful of practice within the health sector, best practice should be drawn from across all sectors.
3. Members asked about inclusion of equality and diversity within the strategy, particularly in relation to internships. Officers said that it was intended that equality and diversity run through the entire strategy and should be implicit in what the NMC does.
4. Members asked about how delivery of the strategy would be measured and reported to Council. Officers said that, as part of business planning for 2013 – 14, they were developing a set of internal performance measures aimed at improving decision making and / or assuring Council of the health of the organisation's strategy. Officers said that, subject to Council approving the strategy, a report back to the reconstituted Council would be made available in either May or June.
5. Members asked about where Investors in People (IiP) accreditation sat within the strategy. Officers replied that the NMC was already IiP accredited but that directors would need to agree a future approach to this accreditation.
6. Members said that there were areas from the Francis report around organisational culture in the health sector and said that this needed to be reflected. Officers advised that the strategy before members had been drafted prior to the publication of the Francis report but said that they would reconsider the strategy to ensure alignment with the Francis report recommendations.
7. Members asked about how staff surveys were shaping development of HR and organisational development within the NMC. Officers said that the last staff survey had been undertaken in 2010, with the next survey to take place this year. Staff had recently been consulted on pay and grading and staff input was being used to shape work in this area. Members said that one important area emerging from the CHRE review last year was around staff morale and said that Council would require information on a regular basis to ascertain whether the strategy was delivering a significant improvement in morale.
8. Members asked whether there was current organisational capacity to

undertake the work outlined in the strategy. Officers said that the strategy was to be delivered in the medium- rather than short- term, but capacity issues were continuing to be addressed.

9. Council approved the strategy subject to the above comments being incorporated in future work.

Action:	Revise HR and OD strategy as necessary to ensure alignment with wider Francis report recommendations on organisational culture
For:	Director of Corporate Services
By:	21 March 2013
Action:	Report to reconstituted Council on progress of development of the HR and OD strategy
For:	Director of Corporate Services
By:	23 May 2013

13/37 Publication of expenses information

1. The Director of Corporate Services introduced the report, noting that the publication of members' and directors' expenses was in keeping with trends in good corporate governance.
2. Members agreed the principles but stressed that information should not compromise confidential information about individuals.
3. Council agreed to the recommendation that expenses incurred by Council members and members of the senior management team be published.

13/38 Education Committee – Terms of Reference and appointments

1. Members agreed the amendments to the Education Committee's Terms of Reference.

13/39 Transition planning for reconstituted Council

1. The Chair updated Council on the recruitment process to date for reconstituted Council. Short-listing of the 397 applications had now taken place and interviews would begin on 25 February 2013.
2. Members said that it was important to stress that the reconstituted Council held responsibility for oversight and strategy of the NMC from the date of their formal appointment on 1 May 2013. Members suggested that it would be useful if current committee Chairs were able to meet with reconstituted Council members in order to ensure that matters of importance for committees were taken forward appropriately.
3. Members suggested holding a short Council meeting during the two

day induction for reconstituted members to establish formally the reconstituted Council.

4. Members suggested that, as well as considering the competencies mix for reconstituted Council members to sit on particular committees, it would be important to identify members who were able to sit on registration and appeal panels.
5. Given that appointments would only be confirmed by the Privy Council in April 2013, there was a risk of the initial Council meetings being inquorate. The Chair said that officers were aware of this issue and agreed that shortlisted candidates be informed of Council dates during the interview process.

Action:	Revise programme for induction days on 1 and 2 May 2013 to include formal Council meeting
For:	Director of Corporate Governance
By:	21 March 2013
Action:	Ensure that transition planning covers registration and appeal panels and that shortlisted candidates are made aware of Council dates for 2013
For:	Director of Corporate Governance
By:	21 March 2013
Action:	Develop a comprehensive induction plan to cover the first six months of the reconstituted Council being in place
For:	Director of Corporate Governance
By:	21 March 2013

13/40 Questions from observers

1. Ms Rose Ann O'Shea, Scottish Government, said that she had found the discussion around the Francis Inquiry report interesting. She suggested that, in respect of healthcare support workers, lessons could be learnt from the Scottish model. She said that she would echo comments from Council around revisiting the Code. She said that the Scottish Government would welcome the opportunity to be involved in revalidation discussions and work and around developing registration processes. She concluded by saying that the work on the engagement strategy was very welcome and that there was a strong appetite in Scotland for further discussions and engagement in this area. The Chair said that he welcomed the offer.
2. Ms Rosemary Wills said that she and colleagues in the nursing profession felt that 12-hour shifts could be too long and could result in less debriefing opportunities. She said that there were limits in promotion opportunities on the 'frontline' and that this could impact on staff morale. She added that there were points in the Francis report around health and safety provision with which she did not

agree. Members said that the majority of comments should be taken forward with the Royal College of Nursing.

3. Ms Clare Wood, Royal College of Midwives, asked about whether it may be appropriate to maintain a watching brief on LSAs and asked where the source of midwifery advice would come from in the future within NHS commissioning boards. Officers agreed that this was an important point, and Members said that the transition from Strategic Health Authorities to the new NHS commissioning model was an important area for the NMC to monitor. Members asked that this be added to the Risk Register.

13/41 Francis Report

1. The Chair introduced the item, which was the first formal opportunity for Council to consider the outcomes of the Francis Inquiry report that had been published on 6 February 2013. Council's input was sought on a number of areas covered by the Francis report, particularly around widening the NMC's profile amongst patients and the general public, proactive regulation, education and standards, revalidation, and the possibility for registration of healthcare support workers. Members were informed that an Assistant Director had been seconded to lead on coordinating the response to the report's recommendations.
2. Members said that, with regard to education, officers were currently undertaking a mapping exercise against the Francis report on both theory and practice. Members said that external stakeholders, including the Council of Deans, were currently being consulted with in order to form a consensual view on ways forward. Members noted that a number of recommendations within the report were already covered within the NMC standards.
3. Members commented on the process for responding to the Francis Report, both in terms of feeding into the DH response, as well as ensuring Council involvement in the longer term in the formulation of the NMC response and action plan. Members discussed the possibility of forming a Task and Finish Group specifically for the purpose of leading on Francis report work but agreed, on balance, it was more appropriate for the Council to discuss and form the strategic response and plan.
4. Members said that it would be important in communications with the Department of Health (DH) to outline the areas where the NMC felt that they already carried out their regulatory role in adherence with Francis recommendations, the areas which would continue to see improvements in performance, and the areas of responsibility which the NMC did not feel were within its remit.
5. Members said that the Francis Report was likely to be of considerable interest to registrants and asked officers about the

communication work that the NMC was planning to undertake in this area. Officers said that this was an important point and that communications work would commence following Council's broader steer at the meeting.

6. Members emphasised the importance of the NMC raising its profile in order to ensure that patients and public with genuine concerns about the care that they had received were aware of the NMC's role as regulator of nurses and midwives. Members did however recognise that there could be unintended consequences of the impact of a raised profile on the number of inappropriate referrals. Officers said that one of key Francis report recommendations was around raising the profile of the NMC and they were comfortable with the potential consequences of this. The Chief Executive advised that the NMC would be proactive in working collaboratively with other regulators to share intelligence and have a joined-up approach to regulation. There was an important piece of work to ensure closer working with local clinical governance bodies, for example, to help ensure that referrals were made, and dealt with, at the most appropriate level.
7. Members recognised that the Francis Report has supported the creation of a register for all healthcare support workers which would be maintained by the NMC. While recognising that this was ultimately a decision for the Government to take forward, Members said that the NMC would have a view on issues within the organisation, such as capacity, to undertake such work.
8. Members commented on issues surrounding the Code in view of the Francis Report, and considered whether it was realistic to strengthen the Code, particularly around areas of delegation of duties from nurses to healthcare support workers. Officers responded that questions around whether the Code put patients and public protection first and whether the Code was clear about delegation of responsibilities were important areas to be examined.
9. Members said that there was a delicate balance to strike between ensuring that the NMC was responding appropriately to recommendations within the Francis Report, whilst at the same time not being diverted from its current upward trajectory in performance terms.
10. Members stressed their support for Government proposals to review current legislation that would allow for more flexibility and efficiency in, for example, Fitness to Practise processes as well as other operational areas for the NMC. Officers said that they had already written to DH to welcome these proposals.
11. On revalidation, officers said that the NMC was committed to a model of revalidation, which would also require changes to the

current legal framework. A meeting between the NMC and stakeholders had taken place recently, which had looked at how to ensure employer and patient input into revalidation proposals, and that revalidation would be an important area for the reconstituted Council to take forward.

12. Members noted that there were some recommendations within the Francis report where the areas of medicine and nursing were considered to have similar solutions. While it could be appropriate for the GMC and NMC to adopt similar models in response to certain recommendations, it would not be appropriate in all instances.
13. Members agreed that Council consider Francis report outcomes and developments on the NMC's response plan as a standing item on future Council agenda, and that it would be appropriate to consider issues around gaps in responses to recommendations and the alignment of NMC activity with the Francis report at the next Council seminar.

Action: Francis Report to be a standing item on Council agenda
For: Secretary to the Council
By: 21 March 2013 (ongoing)

NMC/13/42 Feedback from committee chairs of meetings held since last Council

1. The Chair noted that Professor Ratcliffe, Chair of the Appointments Board, was unable to attend the meeting. Officers said that many of the issues set out within the Board's January report had been superseded, and that it would be appropriate for Council to consider a report from the Chair of the Board at the next Council meeting. Officers did however advise that the Board had recommended the appointment of further registrant panel members to deal with the current large number of caseloads and Council agreed that aspect could be taken forward as a Chair's Action.
2. Officers agreed to bring back further information about an issue raised by members on panel members' resignations due to an inability to commit to the time requirements as Panel members.

Action: Provide further information about an issue raised by members on impact on registrant panel members of being asked to provide more availability for hearings than they had committed to on appointment
For: Director of Fitness to Practise
By: 21 March 2013

13/43 Draft agenda for the Council meeting on 21 March 2013

1. Members noted that there had been a number of changes to the agenda since publication of the papers. A revised agenda would be

prepared.

13/44 Overseas registration policy

1. Members received a tabled report on overseas registration policy.
2. The Director of Registration and Standards introduced the report, noting that the NMC was currently undertaking a review of overseas registration policy and processes.
3. Members agreed the content of the report, but asked that it be noted that the content reflected the principles of the policy rather than the policy itself.

The date of the next meeting is to be 21 March 2013.

The meeting ended at 2.45pm.

Council

Summary of actions

Action: For information.

Issue: A summary of the progress on completing actions agreed by the meeting of Council held on 21 February 2013 and progress on actions outstanding from previous Council meetings.

Core regulatory function: Supporting functions.

Corporate objectives: Corporate objective 7: "We will develop effective policies, efficient services and governance processes that support our staff to fulfil all our functions."

Decision required: To note the progress on completing the actions agreed by the Council held on 21 February 2013 and progress on actions outstanding from previous Council meetings.

Annexes: None

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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Summary of actions outstanding

Brought forward actions (Council meetings prior to 21 February 2013)

Minute	Action	For	Report back to: Date:	Progress
12/163	Review reserves policy annually	Director of Corporate Services	Council 21 March 2013	Report on agenda for March meeting.
	Develop strategy for IT future requirements	Director of Corporate Services	Council 23 May, 18 July and 24 October 2013	Interim report taken to Council in January. Agreed to bring forward 'next steps' report to May Council
12/166	Review the effect of the revised guidance and criteria for making decisions on voluntary removal during fitness to practise investigations	Director of Fitness to Practise	Council 12 September 2013	Qualitative and quantitative data is being gathered to assess the effect of this and a report will be prepared for September Council
12/167	Review priority and other options for investment in relation to improving speed of answering calls into registrations	Director of Registrations and Standards/Director of Corporate Services	Council 21 March 2013	To be included in budget 12/13 discussions which will be proposed to Council on 21 March 2013
12/182	Carry out annually a robust review of fee levels, which include consideration of different levels based upon registrants' income level	Director of Corporate Services	Council 21 March 2013	Report on agenda for March meeting.

Minute	Action	For	Report back to: Date:	Progress
12/206	Produce a number of target outcomes for engagement work to enable monitoring by Council	Director of Corporate Governance	Council 25 April 2013 (was due 21 March 2013)	Being developed as part of business planning process and to be reported in April 2013
12/210	Review effectiveness of Council and Committees (excluding Practise Committee members)	Director of Corporate Governance	Council 25 April 2013	Committee Chairs have been asked whether they wish to consider this due to the overlap with the governance review. Committees will consider this at the Committee Chair's request.
12/212	Prepare a series of options on revalidation for Council consideration	Director of Registration and Standards	Council 12 September 2013	Not yet due
31 January 2013				
13/05	Ensure learning points from customer complaints are presented to the March Council meeting	Chief Executive and Registrar	Council 25 April 2013 (was due 21 March 2013)	Corporate complaints policy will be considered at the April meeting

Minute	Action	For	Report back to: Date:	Progress
13/06	Fitness to Practise Committee to examine capacity issues for registrant panel members	Director of Fitness to Practise	Council 21 March 2013	Capacity issues for registrant panel members were considered at the Appointments Board on 14 February 2013, following which a recommendation was made - subsequently progressed under Chair's action - to the appointment of a number of further registrant panel members
13/11	Report results of research and data analysis to Fitness to Practise Committee and Council in relation to the development of further guidance around the meaning of impaired fitness to practise	Director of Fitness to Practise	Fitness to Practise Committee 23 April 2013 Council 18 July 2013	Not yet due
13/14	Seek legal advice as to whether a non-midwife registrant is permitted to sit on the Midwifery Committee	Director of Corporate Governance	Council 21 March 2013	Legal advice has been sought and members will be informed upon receipt of advice

Minute	Action	For	Report back to: Date:	Progress
13/16	Include Professional Indemnity Insurance on the March 2013 Council agenda	Director of Registration and Standards / Director of Corporate Governance	Council 25 April 2013	Originally to be considered in March but will now be considered at Council seminar in March and Council in open session in April
13/18	Report ICT strategy to Finance and IT Committee in March and Council in May	Director of Corporate Services / Secretary to the Council	Finance and IT Committee 19 March 2013 Council 23 May 2013	See comment against 12/163 above
13/20	Report progress on the NMC's equality and diversity objective and action plan	Director of Corporate Governance	Council 25 April 2013	Not yet due

Actions arising from open session Council meeting on 21 February 2013

Minute	Action	For	Report back to: Date:	Progress
13/26	Ensure Council actions for committees are included in each committee's agendas	Council Services Manager	Council 21 March 2013	Ongoing
	Ensure that all committee minutes are published on the members' intranet	Council Services Manager	Council 21 March 2013	Committee minutes, once approved by the Chair, will be published on the members' intranet
	Bring a report on the principles of engagement between the Midwifery Committee and Council to March 2013 Council	Director of Registration and Standards	Council 21 March 2013	On agenda
13/28	Amend risk T28 to reflect the ongoing risk around potential increase in referrals and consequential financial implications arising from the Francis Report	Director of Corporate Governance	Council 21 March 2013	Complete
	Provide further details on the rationale for the increase in risk rating on risk T23	Director of Corporate Governance	Council 21 March 2013	Complete
	Review the Risk Register to ensure it is written in Plain English	Director of Corporate Governance	Council 21 March 2013	Complete

Minute	Action	For	Report back to: Date:	Progress
13/29	Provide information around the EU balance of competence review health report	Director of Registration and Standards	Council 21 March 2013	Further information emailed to members following the Council meeting on 21 February 2013
13/30	Report outliers in FtP interim order performance against the KPI rather than average performance	Director of Fitness to Practise	Council 21 March 2013	This is included in the March FtP performance report
	Ensure that a further item on 'revised guidance on interim order hearings' is on March 2013 agenda	Secretary to the Council	Council 21 March 2013	Complete
13/32	Ensure that 'revised corporate complaints processes' is an item on the April 2013 Council agenda	Secretary to the Council	Council 25 April 2013	Added to forward work plan
13/34	Ensure item on Council seminar agenda on stakeholder mapping	Director of Corporate Governance	Council 21 March 2013	Complete
	Incorporate members' comments into engagement commitment document	Director of Corporate Governance	Council 21 March 2013	Complete
	Provide detailed engagement plan at Council in April	Director of Corporate Governance	Council 25 April 2013	Added to forward work plan

Minute	Action	For	Report back to: Date:	Progress
13/36	Revise HR and OD strategy as necessary to ensure alignment with wider Francis Report recommendations on organisational culture	Director of Corporate Services	Council 20 June 2013	This will be included in future reports on organisational development.
	Report to reconstituted Council on progress of development of the HR and OD strategy	Director of Corporate Services	Council 20 June 2013	Not yet due
13/39	Revise programme for induction days on 1 and 2 May 2013 to include formal Council meeting	Director of Corporate Governance	Council 21 March 2013	Complete
	Ensure that transition planning covers registration and appeal panels and that shortlisted candidates are made aware of Council dates for 2013	Director of Corporate Governance	Council 21 March 2013	Complete
	Develop a comprehensive induction plan to cover the first six months of the reconstituted Council	Director of Corporate Governance	Council 21 March 2013	In progress
13/41	Francis Report to be a standing item on Council agenda	Council Services Manager	Council 21 March 2013	Council forward plan amended

Minute	Action	For	Report back to: Date:	Progress
13/42	Provide further information about an issue raised by members on impact on registrant panel members of being asked to provide more availability for hearings than they had committed to on appointment	Director of Fitness to Practise	Council 21 March 2013	<p>Recently recruited an additional 46 registrant panel members by Chair's action.</p> <p>It has been confirmed that registrant panel members have been asked to provide a minimum of 20 days availability for hearings, which is consistent with what has been said during the recruitment of registrant panel members before appointment, and is in accordance with our current business need.</p>

Actions for Committees

Appointments Board

No current actions arising.

Audit Committee

Minute	Action	For	Report back to: Date:	Progress
12/169	Report on learning (from SERs, data breaches, complaints, FOIs and litigation) with single policy and template developed	Director of Corporate Governance	Audit Committee 19 April 2013	Reported to Audit Committee in December and Council in January and further work needed. Report to Audit Committee in April 2013

Education Committee

No current actions arising.

Finance and IT Committee

Minute	Action	For	Report back to: Date:	Progress
12/163	Review reserves policy annually	Director of Corporate Services	Finance and IT Committee 19 March 2013 Council	Added to the Finance and IT Committee agenda for 19 March.

Minute	Action	For	Report back to: Date:	Progress
			21 March 2013	
12/163	Develop strategy for IT future requirements	Director of Corporate Services	Finance and IT Committee 30 May 2013 Council 23 May, 18 July and 24 October 2013	Interim report taken to Council in January. Agreed to bring forward 'next steps' report to May Council meeting
12/182	Carry out annually a thorough robust review of fee levels which will include consideration of different levels based upon registrants income level	Director of Corporate Services	Finance and IT Committee 19 March 2013 Council 21 March 2013	Added to the Finance and IT Committee agenda for 19 March
13/18	Report ICT strategy to Finance and IT Committee in March and Council in May	Director of Corporate Services / Secretary to the Committee	Finance and IT Committee 19 March 2013	This is being taken forward in collaboration with action point 12/163 above.
13/31	Ensure that the Finance and IT Committee considers the presentation of financial data for reconstituted Council	Director of Corporate Services	Finance and IT Committee 19 March 2013	This point, alongside the broader point of ensuring that information is presented in an appropriate and material form to reconstituted Council, will be taken forward as part of

Minute	Action	For	Report back to: Date:	Progress
				the transition planning process. Committee will have a further opportunity to discuss the issue at 19 March 2013 meeting.

Fitness to Practise Committee

Minute	Action	For	Report back to: Date:	Progress
12/166	Review the effect of the revised guidance and criteria for making decisions on voluntary removal during fitness to practise investigations	Director of Fitness to Practise	Fitness to Practise Committee TBC Council 12 September 2013	Qualitative and quantitative data will be gathered to assess the effect of this
12/199	Monitor FtP11, estimate of adjudication level to be completed each month	Director of Fitness to Practise	Fitness to Practise Committee Standing item	Included in FtP Committee monitoring
13/11	Report results of research and data analysis to Fitness to Practise Committee and Council in relation to the development of further guidance around the meaning of impaired fitness to practise	Director of Fitness to Practise	Fitness to Practise Committee 23 April 2013	Not yet due
13/33	Report to Fitness to Practise Committee on issues emerging from the amendment in policy on	Director of Fitness to Practise	Fitness to Practise Committee September 2013	Not yet due

Minute	Action	For	Report back to: Date:	Progress
	panel composition for interim order hearings			

Midwifery Committee

Minute	Action	For	Report back to: Date:	Progress
13/14	Examine how the Midwifery Committee can work more closely with partner organisations and with Council This item will be considered by Council at its March 2013 meeting	Chair of Midwifery Committee / Director of Registration and Standards	Midwifery Committee 17 April 2013	This item will be considered by Council at its March 2013 meeting

Remuneration Committee

No current actions arising.

Council

Report of decisions taken by the Chair since the last Council meeting

- Action:** For information.
- Issue:** The report details decisions taken by the Chair under delegated powers (as per NMC Standing Orders).
- Core regulatory function:** Supporting functions.
- Corporate objectives:** **Corporate objective 7:** We will develop effective policies, efficient services and governance processes that support our staff to fulfil all our functions.
- Decision required:** Members are asked to note the Chair's decisions taken on behalf of Council since the last meeting.
- Annexes:** Annexe 1: Chair's action sign-off sheet and accompanying report to Chair
- Further information** If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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Chair's actions

- 1 **Approval of appointment of 44 registrant panel members to the Conduct and Competence Committee; and reinstating of 7 registrant Conduct and Competence Committee panellists as Panel chairs**
- 2 At its meeting on 14 February 2013, the Appointments Board considered recommendations that a further 44 registrant panel members be appointed to the Conduct and Competence Committee and that 7 registrant Conduct and Committee panellists be reappointed as Panel chairs.
- 3 The recommendation was made to the Board to ensure that sufficient numbers of panellists and Chairs are available to meet business requirements.
- 4 The Chair, on behalf of Council, agreed the recommendations on 28 February 2013. A copy of the signed action sheet and accompanying report to the Chair is available as Annexe 1.
- 5 Public protection implications, resources implications, equality and diversity implications, risk implications and stakeholder engagement are considered within Annexe 1.

Chair's Action

The Chair of any committee shall have the power to authorise action on minor, non-contentious or urgent matters falling within the authority delegated to it by the Council between meetings of the committee. The Chair will take reasonable steps to consult with other committee members before doing so. The Secretary to the Committee will be informed of such actions and will keep a record of them for report to the next meeting (Standing Order 47).

Date: 25/2/2013

Requested by: Darren Wheatley

Detail: To meet the current FtP business need for registrant panel members the Chair is asked to appoint the following to sit on the Conduct and Competence Committee as registrant panel members.

Deborah Carter	Mary Monnington
Alice Clarke	Shane Moody
Mary Clarke	Lucie Moore
Helen Convey	Christopher Morrow-Frost
Diane Corderoy	Laura Morton
Jane Davis	David O'Brien
Susan Foster	Angela O'Neill
Gill Frame	Veronica Offredy
Jane Fraser	Catherine Rice
Andrew Galliford-Yates	Judith Robbins
Claire Gill	Sally Shearer
Anna Guildford	Julia Sirett
Christine Somerville	Mooi Standing
Alyson Hoyles	Faith Thornhill
Allison Hume	Deborah Tymms
Elaine Hurry	Anita Underwood
Janet Kelly	Paul Warburton
Joanne Lay	Paul Webb
Janet Leonard	Caroline Williams
Amy Lovell	Mark Hulme
Patricia Lynch	Deirdre McNamee
Sarah Merritt	

This appointment is subject to satisfactory completion of an induction process and training taking place on 28 February 2013.

Full details are contained in the Chairs action paper that accompanies this form.

Detail: To meet the current FtP business need for registrant panel chairs the Chair is also asked to reinstate the following registrant panel members as panel chairs:

Gill Barker
Anna Buchan
Andrew Coleman
Virginia Garnett
Rachel O'Connell
Camilla Wiley
Judith Worthington

The Chair is asked to approve the Appointments Board emergency measure recommendation to reinstate the 7 registrant Conduct and Competence Committee panellists as panel chairs whose second term of appointment was extended until 31 December 2013 by the Council Chair's action on 12 December 2012

Full details are contained in the Chairs action paper that accompanies this form.

Signed Mark Addison (Chair)

Council

Report of Appointments Board (following 14 February 2013 meeting)

- Action:** For decision.
- Issue:** We have made a commitment to our external stakeholders which include the PSA and the Department of Health that we will clear our historic cases (those received prior to January 2011) by September 2013. We urgently require more Conduct and Competence Committee panel chairs and registrants to achieve this.
- Core regulatory function:** Fitness to Practise
- Corporate objectives:** We will take swift and fair action to deal with individuals whose integrity or ability to provide safe care is questioned, so that the public can have confidence in the quality and standards of care provided by nurses and midwives.
- Decision required:**
- 1 The Council is recommended to approve the Appointments Board recommendation for the appointment of 44 registrant panel members to the Conduct and Competence Committee, subject to successful completion of induction training.
 - 2 Approve the Appointments Board emergency measure recommendation to reinstate the 7 registrant Conduct and Competence Committee panellists as panel chairs whose second term of appointment was extended until 31 December 2013 by the Council Chair's action on 12 December 2012.
- Annexes:** The following annexe is attached to this paper:
- Annexe 1: List of 44 registrant panel members recommended for appointment.
 - Annex 2: List of 7 registrant panel members recommended for reinstating as panel chairs.
- Further information:** If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

- Context:**
- 3 The recruitment for registrant panel members for the Conduct and Competence Committee was approved by the Appointments Board on 14 February 2013 due to the urgent business need for additional registrants.
 - 4 The above mentioned 44 registrant candidates have been invited to complete the induction programme involving 5 e-learning platforms and a 'face to face' training on the 28 February 2013.
 - 5 We will be increasing the amount of substantive hearings in 2013 to an average of 22 per day.
 - 6 The Appointments Board has recommended the emergency measure of the reinstatement of the 7 registrant Conduct and Competence Committee panellists as panel chairs with immediate effect.
 - 7 The Appointments Board has also recommended an urgent recruitment process to appoint additional Conduct and Competence Committee panel chairs.
- Discussion:**
- 8 Council is asked to agree the following recommendations from the Board:
 - 9 Following consideration of the process by the Board, and the subsequent recommendations by the Board, Council is asked to formally recommend the appointment of the 44 successful candidates, subject to successful completion of the induction training.
 - 10 Following consideration of the urgency of the business need for additional Conduct and Competence Committee panel chairs by the Board, Council is asked to approve the recommendation to reinstate the above mentioned 7 registrant Conduct and Competence Committee panellists as panel chairs with immediate effect
- Public protection implications:**
- 11 To ensure that we have enough panel members to manage the increase of FtP activity.
- Resource implications:**
- 12 None.
- Equality and diversity implications:**
- 13 There are no equality and diversity implications.
- Stakeholder engagement:**
- 14 These names have been considered approved by the Appointments

Board for appointment to the Conduct and Competence Committee.

**Risk
implications:**

- 15 There is a risk if these individuals are not appointed we will not be able to manage the increase of FtP activity and therefore a risk to public protection.

Council

Francis report - update

Action: For information

Issue: This paper provides an update on how the work involved in fully considering, responding to and implementing the recommendations made in the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis report) which may directly or indirectly affect the work of the NMC will be approached.

Core regulatory function: Fitness to Practise, Registrations, Education, Standards

Corporate objectives: The recommendations in the report are relevant to all the NMC's Corporate Objectives.

Decision required: None

Annexes: The following annexe is attached to this paper:

Annexe 1: A blueprint setting out the groups of key outcomes and indirect outcomes arising out of the report so far and the project teams addressing those issues.

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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Context:**Background**

- 1 On Wednesday 6 February 2013 the report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis report) was published. The Chair of the Public Inquiry was Robert Francis QC.
- 2 The background and contents of the Francis report are known to the Council and were summarised in the previous paper (NMC/13/41) which went to the February 2013 Council meeting.
- 3 Since that time, we have been represented at two System Forum meetings at the Department of Health (DH) and have been in weekly contact with officials at DH in relation to communications and other issues. The Chief Executive has also been in contact with the Law Commission in relation to the Prime Minister's statement in the House that the government was now prepared to consider our requests for legislative change.
- 4 We have issued an initial press statement in response to the report and we have published the Chair's response to the Secretary of State's letter. We have also provided DH with a summary of the actions we have taken since 2009 to date related to Francis recommendations and, following the discussion at the February Council meeting, our provisional views on the recommendations that may affect our work. DH has in turn agreed to provide us with the terms of reference for the Camilla Cavendish review relating to health care support workers.
- 5 We are also continuing to progress a number of Fitness to Practise cases relating to Mid-Staffs employees and to review the evidence given to the Inquiry.

Next steps for DH

- 6 The next steps for DH are as follows:
 - 6.1 DH is currently planning to publish its initial response to the Francis report on Friday 26 March and there is likely to be a statement in the House. This response is likely to be thematic rather than addressing each individual recommendation.
 - 6.2 DH is keen to reach a consensus on the key issues in its response, where this is possible, and will be engaging closely with key organisations, including the NMC over the next few weeks.
- 7 No final view from DH has yet been communicated to us in relation to a number of proposals involving other organisations which may have a direct or indirect impact on the work of the NMC. A further verbal update will be provided at the March Council meeting if more information is available at that time.

**For
Information**

Next steps for us

- 8 We are proposing to adopt the following approach to the publication of the initial DH response:
- 8.1 Engage closely with DH and other key players such as CQC and GMC over the next few weeks at the various seminars and other meetings to ensure our views are heard on the key issues and a consensus is reached where possible.
 - 8.2 Review the DH draft response carefully when it is available and brief the Chair and the Council.
 - 8.3 Identify any further issues on which the Council may wish to reach and communicate a view to DH before the DH response is published (e.g. if any recommendations are to be publicly supported by DH which do not accord with our core regulatory purposes and current corporate plans)
 - 8.4 Issue a short statement for release on 26 March giving our initial response to the DH response, detailing our progress to date and setting out our own timetable for a full response and the outstanding issues to be decided by the reconstituted Council.
 - 8.5 Aim to publish our full response to the Francis report in June or July, once the reconstituted Council is in place and has had an opportunity to properly consider any outstanding issues and recommendations.
- 9 In the meantime, we propose to immediately start scoping and planning work in relation to the recommendations which have already been accepted in principle by the Council, do not rely on other organisations accepting related recommendations, and are clearly in line with our existing business and improvement plans, namely:
- 9.1 appropriately raising our public profile, increasing our pro-activity and improving means of referral
 - 9.2 introduction of an employer liaison model and a review of our fitness to practise thresholds to support our aim to make our fitness to practise processes more proportionate.
 - 9.3 improved internal information and data gathering and improved joint working and intelligence sharing with other regulators
 - 9.4 a review of our education standards, Code and professional standards in the light of the Francis recommendations and any new duties created and the strengthening of messages

where appropriate.

- 10 A draft blueprint is annexed to this paper dividing the key outcomes we want to achieve following Francis into three key groups of direct outcomes and one indirect outcome group. These are then subdivided into manageable projects.
- 11 This tool enables us to see the interdependencies of these projects and present our aims in a more accessible way. We are satisfied that all the recommendations that we have either accepted or agreed to consider, or may be forced to consider, can be properly placed under one of these project headings, allowing us to pick things up quickly if needed. Whilst many of these projects will be managed in-house, certain key projects might benefit from scoping and costing work being undertaken by external consultants.
- 12 Project leads have now been identified for these areas of work. Much of the work is already included in the corporate and directorate business plans but progress on these issues will be co-ordinated and monitored by the Francis report Lead in order to inform our full response to the Francis report in due course and enable Directors and Council to be kept up to date with the progress being made.

The key objective

- 13 The key objective must be for us to use the opportunity presented by Francis to develop and progress our existing plans to become a more efficient and effective regulator. The overall outcome we should be working towards is to be part of a joined-up, risk-based, right touch system of healthcare regulation in which we hold and share detailed and accurate data and information about our registrants and the settings in which they work and the employers for whom they work. This information can then be used to support our registration, revalidation and fitness to practise functions.
- 14 Our public profile would be higher and we would be more proactive in working with employers so it is likely that we will receive more referrals. It is therefore imperative that such profile-raising work is accompanied by a recalibration of our approach to fitness to practise to ensure that we are using our resources as effectively as possible to protect the public and revision of our legislation to ensure that our procedures are as efficient as possible.
- 15 This will be achieved in part by robust education standards and QA, clear professional standards encouraging more personal responsibility and professionalism, and more robust registration, readmission and revalidation processes. This should mean that individuals will only be able to join and remain on our register if they are, and remain, fit to practise. Risk-based audits, informed by data from other regulators and ourselves, will assist with this aim.

- 16 We should then work with settings and employers in taking local action when it is appropriate to do so, in order to support and enable those registrants who are willing to accept such support, and are capable of safe and effective practice, to continue practising. Where we have sufficient concerns about a setting or employer to feel unable to rely upon appropriate local action being taken, we should act to protect patients there by referring our information and concerns to the appropriate systems regulator so that the wider concerns can be addressed by appropriate action.
- 17 Our full fitness to practise processes can then be focused on those situations where a registrant presents such a serious risk that he or she is not fit to practise in any setting or does not accept the need for any remediation.
- 18 All of the recommendations in the Francis report that we have accepted or are considering will allow us to move towards this vision.

Public protection implications:

- 19 This paper is for information only.

Resource implications:

- 20 This paper is for information only. Once further decisions have been made about the specific actions the NMC wishes to take in response to these recommendations, then actual or estimated costs can be provided.

Equality and diversity implications:

- 21 Under the Equality Act 2010, we have a requirement to analyse the effect of our policies and practices and how they further the equality aims.
- 22 This paper is for information only. Once further decisions have been made about the specific actions the NMC may wish to take in response to these recommendations, then equality impact assessments will be undertaken as part of each project before any final decisions are reached.

Stakeholder engagement:

- 23 This paper is for information only. Once further decisions have been made about the actions the NMC may wish to take in response to these recommendations, then appropriate stakeholder mapping and engagement with key stakeholders can be planned and undertaken as part of each project.

Risk implications:

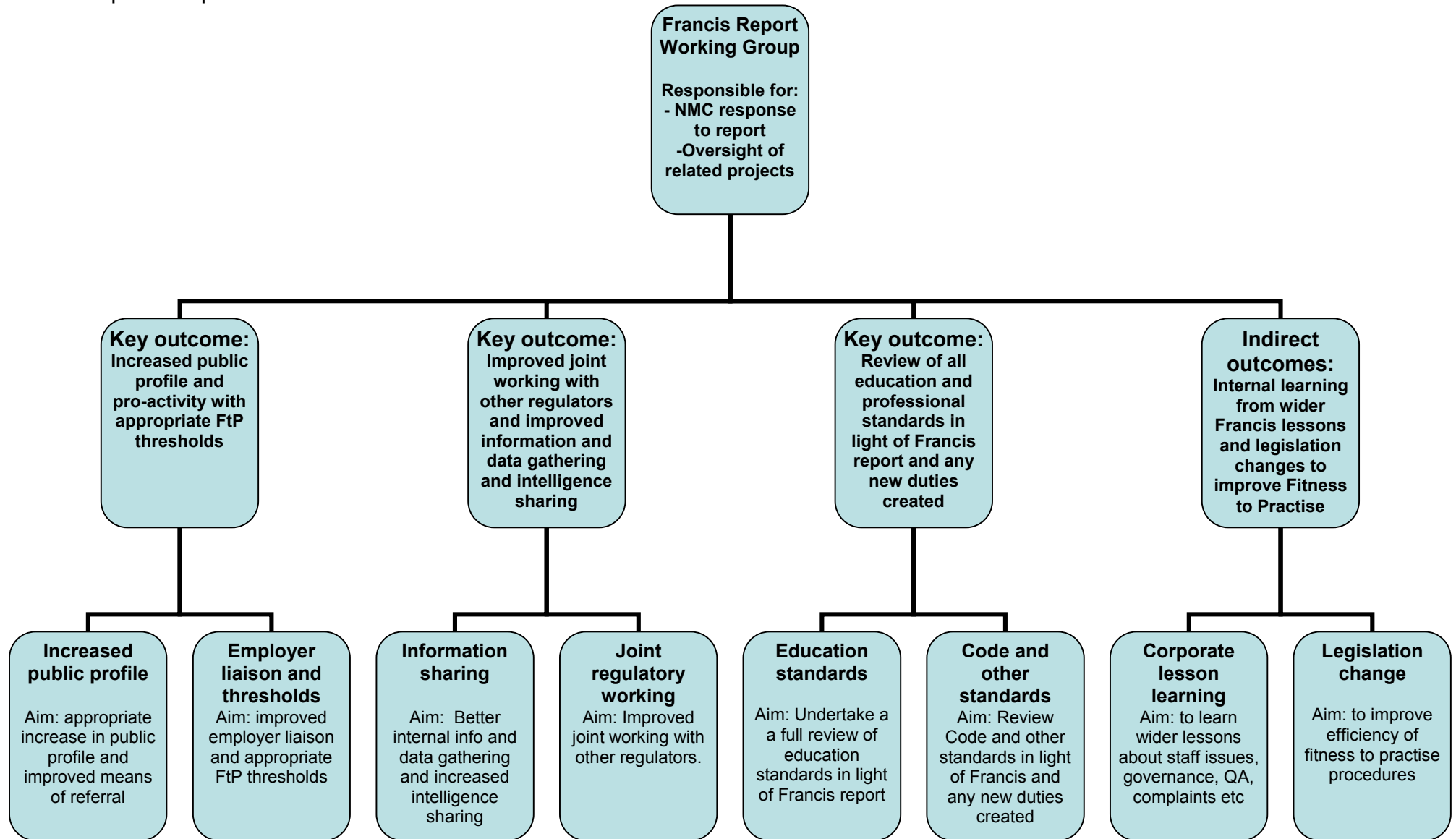
- 24 This paper is for information only. Once further decisions have been made about the actions the NMC may wish to take in response to these recommendations, the full risk implications can then be

assessed as part of each project.

Legal implications: 25 None at present.

NMC/13/50
Annexe 1

Francis report blueprint – March 2013



Council

Chief Executive's report

Action: For discussion.

Issue: This paper reports on key strategic developments and performance against the NMC's Corporate plan 2012-2015.

Core regulatory function: This paper covers all of our core regulatory functions.

Corporate objectives: This paper reports against all of the NMC corporate objectives.

Decision required: No decision is required but the Council is invited to note and discuss progress, including the balanced scorecard and Key Performance Indicators (Annexe 1) and the Change Management Portfolio High Level Delivery Plan update (Annexe 2).

Annexes: The following annexes are attached to this paper:

- Annexe 1: Balanced scorecard February 2013 report (to follow).
- Annexe 2: Change Management Portfolio High Level Delivery Plan update.

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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Context: 1 This paper is a standing item on the Council's agenda and reports on key developments against the Corporate plan 2012-2015.

Balanced scorecard (Annexe 1)

2 As agreed by Council, this will be provided 48 hours before the meeting to ensure that the most up to date information is available.

Discussion Strategic context

Professional Standards Authority

3 The Professional Standards Authority's annual meeting with the NMC to discuss the evidence submitted for the performance review 2012-2013 took place on 18 February. It is anticipated that the Professional Standards Authority will produce its final report on the performance of the NMC in June.

Regulation of health and social care professionals – Law Commission

4 The Law Commission published its analysis of the consultation on Regulation of health care professionals and Regulation of social care professionals in England on 20 February 2013. In total 192 individuals and organisations submitted responses, including all eight other health professions regulators, the Professional Standards Authority, the Department of Health, the Department of Health, Social Services and Public Safety, Scottish Government and Welsh Government as well as the Royal College of Nursing, Royal College of Midwives, UNISON and Unite.

Health Select Committee

5 Following the Chair and Chief Executive's evidence session to the House of Commons Health Committee as part of our annual accountability hearing on 16 October 2012, the committee's report was published on 6 March 2013. The NMC has welcomed the report. Further information is presented in Item 19 of this agenda.

Engagement with professional bodies, unions, educators and other regulators

6 The Francis Inquiry report has been the main focus of engagement.

7 On 5 February 2013, the Chief Executive attended the monthly Chief Executives Steering Group comprising representation from the health regulatory bodies, the Professional Standards Authority and the Department of Health.

8 On 6 February 2013, the Chair and Chief Executive attended a 'lock in' where invitees were given access to the Francis Inquiry report

prior to publication later that day.

- 9 On 8 and 28 February 2013, the Chief Executive attended meetings of the Mid Staffordshire System Forum at the Department of Health. The forum brings together organisations impacted by the Francis Inquiry report.
- 10 On 12 February 2013, the Chief Executive attended the Care Quality Commission Quarterly Health and Social Care Regulators Forum.
- 11 On 21 and 22 February 2013, the Chief Executive took part in a Professional Standards Authority symposium, the focus of which was on how organisations will respond to the Francis Inquiry report.
- 12 In March 2013 the Chief Executive will attend the following engagements to discuss the Francis Inquiry:
 - 12.1 A Director of Army Nursing Services Symposium (1 March). Revalidation will also be on the agenda.
 - 12.2 The DH National Stakeholder Forum (5 March).
 - 12.3 The DH Professional Standards Strategy Board (6 March).
- 13 On 14 March the Chief Executive will participate in a Fitness to Practise panellist seminar to discuss continuing progress.

Engagement with public and patient groups

- 14 The third meeting of our Patient and Public Engagement Forum took place on 13 February 2013. The forum discussed how we can make our website more user friendly for patients and the public. The forum also had the opportunity to ask questions following the publication of the Francis report.
- 15 The forum's comments will be incorporated into a review of our homepage and the 'General Public' section of the website that is aimed toward making the webpages more accessible and audience-focused.
- 16 A summary of the discussion and an action plan will be shared with all participants and placed on the website. The forum will next meet on 16 May 2013.

Internal challenges

Change Management Programme

- 17 The Change Management Programme has now been in existence for six months and has delivered many changes across the organisation. As part of our commitment to continuous improvement we are carrying out lessons learnt exercises for each of the projects

that have been completed during the last six months and will embed learning from those projects into our future work.

- 18 We are also assessing the impact of the recommendations outlined in the Francis report on the Change Management Programme. It is likely that some of the outcomes we envisaged at the outset will need to be changed or updated as a result of our response to the recommendations.
- 19 Following approval of our engagement commitment, we will now develop a detailed engagement delivery plan. This work will build and facilitate relationships to support the delivery of our regulatory activities as well as strengthening our public profile, so that the public understands who we are and what we do.
- 20 The following projects have been completed and will not appear on the high level delivery plan from April 2013 onwards:
 - 20.1 Fee rise – this was successfully implemented in February 2013
 - 20.2 FtP improvement plan phase 1 – all of the outputs from this phase have been delivered in January 2013
 - 20.3 Voluntary removal and public register changes – these changes were successfully implemented in January 2013

Regulatory priorities

Fitness to Practise

- 21 The Fitness to Practise (FtP) performance report, providing full information about activity in FtP, is included on the meeting agenda.

Registration

- 22 The review of overseas registration continues. We had originally hoped to restart the processing of applications on 1 March 2013. However, as the review has taken longer than expected this has been delayed until 2 April 2013. EU applications continue to be received and processed by the team.
- 23 The new cease to practise and voluntary removal process have added both increased variety and complexity to processing UK registrations.
- 24 We have 25 registration appeals pending, of which 22 are appeals against the Registrar's decisions to reject their applications and three are appeals against additional conditions in the form of adaptations that the Registrar had requested be completed prior to registration. Two of the appeals have been awaiting a hearing for over nine months. One was scheduled for January 2013 but the

appellant has requested a further adjournment until April 2013. The other one is awaiting the outcome of a criminal case.

- 25 We have so far held four hearings in February and another hearing is scheduled for 27 February 2013. Of the four hearings, the Registrar's decision was upheld in two, one was referred back to the Registrar and one was withdrawn on the day. Six hearings are scheduled for March and 10 for April 2013.

Professional indemnity insurance

- 26 The Department of Health (DH) has launched its consultation on draft legislation that will make holding an indemnity arrangement a condition for nurses and midwives to register with the NMC. An analysis is currently being undertaken of the existing arrangements by which nurses and midwives are able to secure insurance and to highlight those groups who may be negatively affected by the new requirement. We will be responding to the DH consultation and are encouraging nurses and midwives to do the same.

Revalidation

- 27 The Chair, Chief Executive, a Council member and the Director of Registration and Standards had a session on revalidation with key stakeholders, including the four UK Chief Nursing Officers, professional bodies, unions, NHS employers and the Council of Deans in February. An update on work the NMC had carried out so far was provided followed by a discussion on key areas for further work. All stakeholders expressed their commitment to work collaboratively with the NMC in preparation for its overall strategy and model that Council will consider later in the year. The group will meet again in April 2013 and a task and finish group will also be set up to support the development of the strategy.
- 28 We have appointed an Assistant Director of Revalidation and an Interim Programme Manager to take forward our Revalidation Programme. This will enable us to focus on the delivery of a strategy and plan for implementation over the next few months.

Standards compliance

- 29 On 27 February 2013 we received responses to the invitation to tender for the provision of UK-wide quality assurance services. The tender panel is evaluating the bids and the bidders are due to present to the panel on 25 March. The panel will meet on 2 April to agree the contract award and a recommendation from the panel will be put to the April Council meeting. The new contract 'go live' date is 30 April 2013. Once the contract has been awarded, work will begin on transitioning from the current to the new contract.
- 30 There are a number of other workstreams underway in preparation

for the new contract 'go live' date. These include the development of: a QA framework document which clearly sets out the framework and its purpose for our stakeholders, some guiding principles for educational audits to strengthen public protection in practice placement areas, criteria for approved education institutions and a role profile for lay education reviewers. Council will consider these at its April meeting.

Governance issues

- 31 Procurement of new internal audit provision is underway and an update will be provided at the meeting.
- 32 The project to identify and establish a governance model that is fit for purpose is underway. Interviews with the Executive, the Chair and the Chairs of committees have been completed and a workshop held. Document reviews and benchmarking is ongoing and interviews with external stakeholders are planned. A seminar session for Council members will be held in March.

Supporting functions

Human Resources

- 33 During February 2013 we had 26 new starters, including the Interim Assistant Director, Investigations.
- 34 Mercer, who are supporting us with our pay and grading review, conducted a number of focus groups with approximately 60 employees to explore the views and expectations of employees. Mercer also met the Director group to understand the strategic direction of the organisation's total reward offering. Over the course of the focus groups it became apparent that employees feel that current role descriptions are of varying quality and accuracy as a result of the change in the new operating model. To ensure that the new pay and grading system is credible and it delivers a fair and transparent process the NMC will provide an opportunity for employees to review their job descriptions with their manager and amend if appropriate, and further work on developing this is underway.
- 35 Four new e-Learning modules for inducting new panel members have been completed in February. These include: FtP processes, Conditions of Practice, Interim Orders, Hearings and Indicative Sanctions Guidance. We are revising and updating the Information Security module, and this will be available to all staff from 11 March.
- 36 New panel members experienced a new blended learning approach to training delivery utilising e-Learning to support classroom based activities on 28 February and this will also be available to existing

panel members from May onwards.

- 37 Human Resources will be testing e-recruitment and employee self service, allowing managers and staff to manage leave and other payroll information online. This will be tested comprehensively to ascertain views on user friendliness prior to organisational implementation.

ICT

- 38 Scoping work for further changes to Wiser to accommodate process changes following the review of our overseas registration policy is underway. We are working with the vendor to deliver the first phases in April 2013.
- 39 The planned new version of the Case Management System (CMS) was delivered by the suppliers on schedule and is now being tested with the ICT department before being released for user testing. The final release of this new version 2.0 was delayed for two weeks after some changes were identified in testing and a new project plan is being prepared to deliver the release in late March or early April 2013. Further changes to CMS are planned for later in the year and initial business requirements are currently being developed.
- 40 The information gathered during a recent software audit has been used to facilitate the procurement of a new three year agreement. The procurement exercise was completed in mid February 2013 and a new Microsoft enterprise agreement should be signed by March.
- 41 Our information security programme has been reviewed and work is underway on addressing the high priority items identified in our gap analysis. A vendor has been selected to work with us on our improvement programme.
- 42 The ICT Strategic Delivery Programme continues on track. The first project is the upgrade of the current telephony systems. The detailed work to deliver this project will start in early March with an anticipated duration of three months. The upgraded telephony system will also provide a basis for the delivery of improved video conferencing facilities.
- 43 Initial planning for the next projects (desktop and Office upgrade) is also now in progress.

Finance

- 44 The first accountability meeting with the DH is scheduled for 7 March and will review performance against the conditions set out in the £20m grant offer letter.
- 45 Work is commencing in March on an upgrade to the accounting

system, which will be completed in June 2013.

Public protection implications:	46	Public protection implications arising from the activities in this paper are addressed as part of individual workstreams and projects.
Resource implications:	47	The resource implications of the various workstreams and projects are described in the monthly financial monitoring report on the meeting agenda.
Equality and diversity implications:	48	Equality and diversity is addressed as part of individual workstreams and projects, with equality impact assessments carried out as appropriate.
Stakeholder engagement:	49	Stakeholder engagement is detailed, as appropriate, in the body of this report.
Risk implications:	50	Any high level corporate risks that arise from the activities described in this paper, which are currently rated as red, are detailed in the risk register which is included on the meeting agenda.
Legal implications:	51	Detail here any legal implications that arise from the activities or recommendations proposed in the paper.

Change management portfolio delivery

Council - Set strategic direction and hold the executive to account in delivery of public protection

Directors Group - Lead delivery of public protection effectively, efficiently and economically

Governance
Putting robust systems, procedures and decision-making at the heart of everything we do
Corporate Goals 2&3
Owner: Director Corporate Governance

Leadership
Changing the culture
Corporate goals 1,2&3
Owners: Directors Group

Delivery
Delivering world class regulatory functions
Corporate goal 1
Owners: Directors of Fitness to Practise, Registrations & Standards

Enabling
Strengthening our capability and capacity
Corporate goal 3
Owner: Director Corporate Services

Delivery 6 months (January 2013)

Management of risk ▲
Engagement strategy ▲

Vision and strategic aims ▲

FtP improvement plan Phase I ▲
Voluntary removal and public register changes ▲

Fee rise ▲
New Ways of Working ▲

Delivery within 12 months (July 2013)

Quality Assurance framework △
Appointment of reconstituted Council ▲
Governance review ▲

Learning and performance improvement △

FtP improvement plan Phase II △
Review of Standards △

Data quality & integrity ▲
CMDDB and IT Audit ▲
Desktop and office upgrade ▲
Pay, grading and pensions review ▲
Finance systems upgrade ▲

Delivery 24 months plus (July 2014/2015)

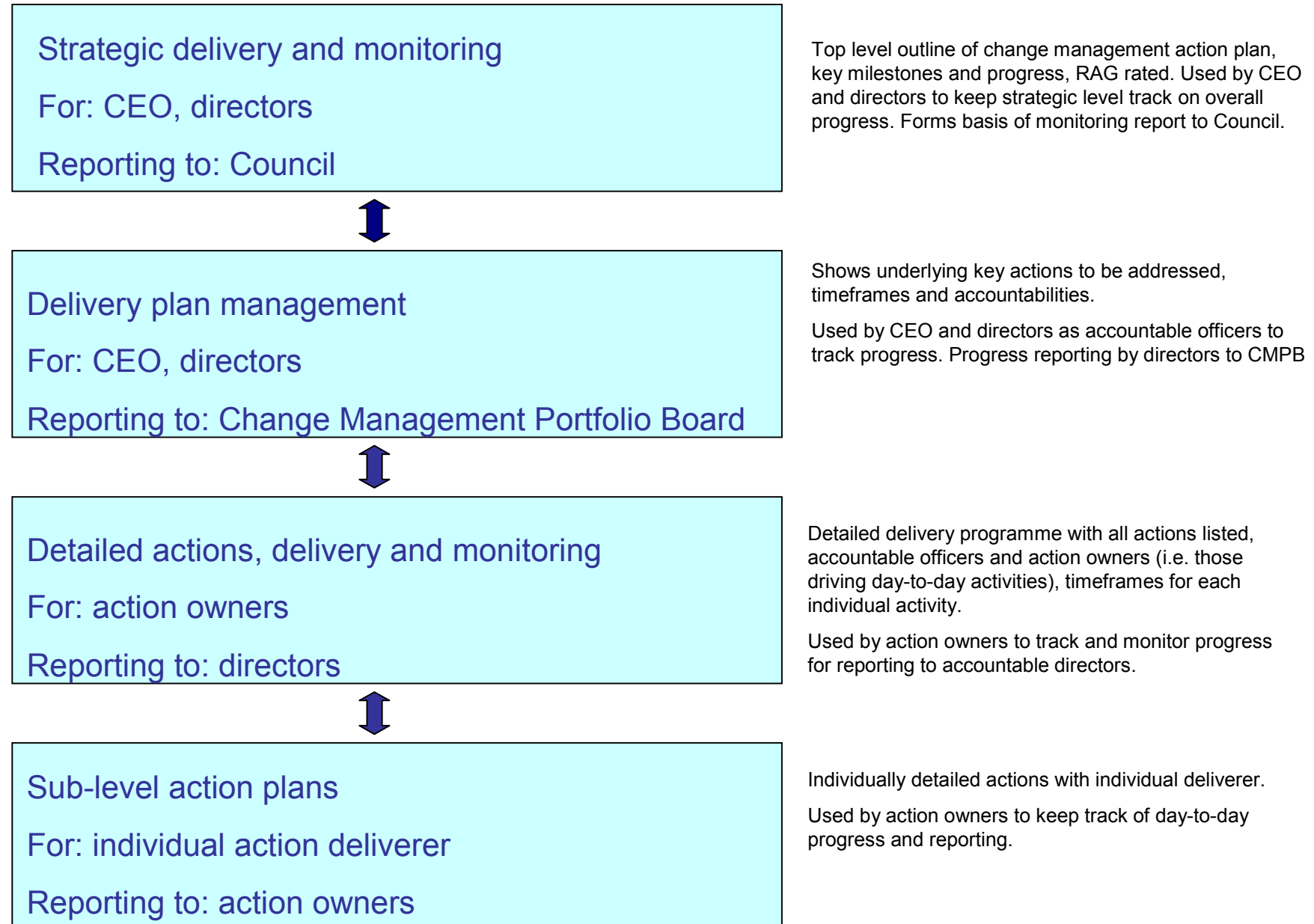
Appointment of Chief Executive Officer △

Key
Priority and risk
■ High risk, high priority
■ Medium risk, work scoped or to be scoped
■ Achieved and maintaining
Progress
▲ No progress or significant issues
▲ On track, some issues
▲ On track, milestones met
△ No action yet

Quality assurance of Education and LSA ▲
Engagement strategy delivery △
FtP improvement plan Phase III △
Revalidation ▲
Registration Improvement plan ▲
Professional indemnity insurance △

ICT strategy delivery ▲
Financial strategy ▲
HR strategy ▲

Change Management Portfolio Delivery framework



Council

Corporate Plan 2013 - 2016

Action: For decision.

Issue: This paper presents the Corporate Plan 2013–2016 for Council's approval.

Core regulatory function: The Corporate Plan covers all of our core regulatory functions.

Corporate objectives: The Corporate Plan details what we plan to do under our corporate objectives.

Decision required: The Council is recommended to approve the Corporate Plan (paragraph 9).

Annexes: The following annexe is attached to this paper:

- Annexe 1: Corporate Plan 2013 - 2016

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 The business planning process for 2013-2016 began in October 2012 and has been completed in conjunction with the development of the budget for 2013-2016.
 - 2 At a seminar session in November 2012 the Council reviewed the corporate goals and objectives contained within the Corporate Plan 2012–2015, and were content that they aligned with our core regulatory purpose.
 - 3 Directorates have prepared directorate business plans and these have been placed on the extranet for Council’s information. These business plans will be a key tool for use by directors in managing the performance of their directorates, as well as providing the basis for reporting on performance to the Directors Group and Council. The directorate business plans will inform team work plans and individual staff objectives.
 - 4 Following a review of directorate business plans and resource implications, the draft Corporate Plan for 2013–2016 was produced reflecting high level objectives, key deliverables and outcomes.
- Discussion**
- 5 The Corporate Plan aims to change the way the organisation carries out its regulatory functions. It is designed to ensure we carry out our business more efficiently and effectively, so that we can better fulfil our primary role of protecting patients and the public.
 - 6 The plan has been prepared taking account of two major external influences. These are the recommendations of the review carried out by the Professional Standards Authority (then the Council for Healthcare Regulatory Excellence) in 2012 and the publication of the Francis Inquiry report.
 - 7 The need to deliver on our fitness to practise commitments and carrying out our core regulatory functions efficiently and effectively are the core considerations of the plan.
 - 8 Key aspects of the plan are:
 - 8.1 Continued improvements to fitness to practise processes.
 - 8.2 Ongoing review of our registration policies and processes.
 - 8.3 Implementation of a system for ensuring nurses and midwives continue to be fit to practise.
 - 8.4 Implementation of an engagement strategy which supports the delivery of our regulatory activities.

8.5 The continued roll out of our HR and ICT strategies.

8.6 An improved governance framework.

9 Recommendation: The Council is recommended to approve the Corporate Plan 2013–2016.

Public protection implications:

10 The Corporate Plan places public protection at the heart of everything we do.

Resource implications:

11 The Corporate Plan is underpinned by the proposed budget for 2013-2016.

Equality and diversity implications:

12 The Corporate Plan includes objective 4:

12.1 Objective 4 – We will improve our understanding and use of diversity data, embedding equalities good practice, so that we are inclusive and treat people fairly.

Stakeholder engagement:

13 This plan has been developed by the Executive and has been informed by Council discussion in seminar session. Once approved by Council, the plan will be published and shared with stakeholders.

Risk implications:

14 Any high level corporate risks that arise from the activities described in this paper, which are currently rated as red, will be detailed in the corporate risk register. Amber and green risks will be identified and managed at directorate level.

Legal implications:

15 Legal implications that arise from the activities in this plan will be addressed as part of individual workstreams and projects.

Council

NMC budget 2013-2014

Action: For decision.

Issue: The proposed budget for 2013-2014.

Core regulatory function: Supporting functions.

Corporate objectives: The recommendations in this paper are consistent with Objective 7 of the Corporate Plan for 2012-2015, namely 'We will develop effective policies, efficient services and governance processes that support our staff to fulfil all our functions.'

Decision required: The Council is recommended to:

- Approve the proposed budget for 2013-2014 (paragraph 67).

Annexes: The following annexes are attached to this paper:

- Annexe 1: Comparison of three year budget to financial strategy
- Annexe 2: Graph of progress towards meeting the reserves target versus financial strategy
- Annexe 3: Comparison of principal costing assumptions in the financial strategy and budget
- Annexe 4: Forecast 2012-2013 and three year budget summary 2013-2016.
- Annexe 5: Commentary on forecast 2012-2013 to budget 2013-2014 key variances

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 The budget for 2013-2014 has been completed as part of a three year financial plan, in conjunction with the development of the Corporate Plan for 2013-2016.
 - 2 The development of the budget and Corporate Plan has been overseen by the Finance and IT Committee, and was considered by Council in seminar in February 2013.
 - 3 Under our Financial Regulations, the budget is required to be approved by Council at the March 2013 open meeting.
 - 4 This paper should be read in conjunction with NMC/13/57, *Annual review of fee levels and reserves policy*, which provides further context on the three year plan and overall funding considerations.
 - 5 The budget is based primarily on the financial strategy which was used to determine the decision on fees taken by Council on 25 October 2012, and in addition takes into account regulatory developments since that point.
 - 6 The principal drivers of the budget are:
 - 6.1 To deliver our FtP performance to the standard and levels required to protect the public, and meet our commitments to external stakeholders
 - 6.2 To maintain our core regulatory focus
 - 6.3 To ensure that our activity is managed within the funding levels agreed in our financial strategy
 - 6.4 To ensure that we are able to restore reserve levels to plan, to ensure financial sustainability.
- Discussion and options appraisal:**
- 7 The proposed budget for 2013-2014 is presented both in the context of the financial strategy, and in comparison with the forecast results for the current financial year 2012-2013.
 - 8 The discussion in the body of this paper concentrates on the comparison of the proposed budget to the financial strategy.
 - 9 A detailed comparison of the proposed budget to the forecast for the current year 2012-2013 is set out at Annexe 5, Commentary on forecast 2012-2013 to budget 2013-2014 key variances.
 - 10 We have included sensitivity analysis where appropriate to support Council in their considerations and decision making.

Financial strategy

- 11 Council had extensive discussions in relation to expenditure requirements and various funding options over the summer 2012, which culminated in the decision to increase the registration fee to £100 at the meeting on 25 October.
- 12 The proposed budget is set out at Annexe 1, together with a comparison to the financial strategy.
- 13 The impact of the proposed budget on our available free reserve levels versus the financial strategy, is illustrated in the graph at Annexe 2.
- 14 Available free reserves are our key financial indicator and are based on free reserves less our pension deficit. Council agreed in September 2012 that our risk-based reserve level should be in the range of £10 million to £20 million. The financial strategy was approved on the basis that available free reserves would be restored to the minimum target level of £10 million, by January 2016.
- 15 Based on the proposed budget, we will achieve this within the target timeframe; at this stage the projections indicate this level will be achieved in the summer 2015.
- 16 This improvement in outturn versus the financial strategy projection is driven principally by the lower than projected expenditure this year 2012-2013, arising from slower than expected staff recruitment across the NMC, operational efficiencies and lower operational costs achieved during the year, and credits in relation to prior year activity. Available free reserves at 31 March 2013 are now expected to be £7.2 million versus the financial strategy projection at that date of £1.4 million.
- 17 This underspend will not result in additional expenditure in future years, so the increased reserve level is effectively maintained throughout the budget period, although offset to an extent by increased expenditure in several areas, the need for which has been identified in the period since October 2012.
- 18 Annexe 1 sets out the principal financial indicators in the budget versus the financial strategy.

Income

- 19 Total income varies year on year over the three year period due to the treatment of the £20 million grant from the Department of Health. In the financial strategy it was assumed we would receive the money on a monthly basis and we would treat it as additional monthly income, until December 2014. However, we have been given the grant in one instalment and are recognising it all as income in 2012-2013 (restricted), and will release equal amounts from restricted

reserves into free reserves over the period to December 2015.

- 20 Periodic fee income arising from the revised fee is in line with the financial strategy in each year, as the register volumes are assumed to be unchanged.
- 21 Other income levels are higher than financial strategy (£0.5 million in 2013-2014) due to higher interest income on the increased cash balance principally represented by the grant.

Revenue expenditure

- 22 Revenue expenditure in 2012-2013 is lower than the financial strategy as outlined in paragraph 16 above.
- 23 Revenue expenditure in 2013-2014 is budgeted to be broadly in line with the financial strategy (some £0.3 million less than the financial strategy – less than 1% variance). Within this variance, there are some movements as described below.
- 24 Variances from the principal assumptions are some £2.1 million, as set out below. Further comparison of the principal assumptions is in Annexe 3.

	Budget 2013-2014 £M	Financial strategy £M	Variance £M
Increase ICT running costs	0.7	1.0	0.3
Cease paying VAT on rent	0	(0.3)	(0.3)
Revalidation running and project costs	0.6	2.0	1.4
PSA levy	0	0.8	0.8
QA increased costs	0.4	0.3	(0.1)
	<u>1.7</u>	<u>3.8</u>	<u>2.1</u>

- 25 Although the assumptions were externally validated, they continue to be monitored over time.
- 26 The PSA levy has been deferred for one year. The VAT issue is still under negotiation with our landlords, so we have taken a prudent view for 2013-2014, and have assumed its implementation from 2014-2015 onwards.
- 27 The revalidation variance is due to a re-phasing of the spend over the three year period – see paragraph 49 below.
- 28 Further reduced requirements have been identified versus the financial strategy, in FtP due to reduced run rates for expenses (£0.4 million), lower ICT running costs (£0.4 million), savings from the Old Bailey (£0.3 million) and lower costs than assumed in the

restructured departments (£0.6 million).

- 29 Offsetting these lower costs, additional costs or provisions have been identified in the budget for the registrations improvements (£1.3 million), potential impact of the pay and grading review (£1.1 million), consultancy to support process review and improvement (£0.6 million), and a slightly larger Central Pool contingency (£0.2 million).
- 30 A comparison of the key fee strategy expenditure assumptions and the proposed budget assumptions is set out at Annexe 3.
- 31 Expenditure in 2014-2015 is £1.5 million higher than the financial strategy which assumes a continuation of current spending patterns. It should be noted that the lease on the Old Bailey ceases in November 2014, increasing venue costs in FtP from that point.
- 32 Expenditure in 2015-2016 is £3.5 million higher than the financial strategy which again assumes a continuation of spending patterns and the maintenance of headcount levels to continue initiatives to improve the quality of what we do.
- 33 Further information on specific cost areas is set out below.

Fitness to practise

- 34 The primary drivers of the cost of the NMC's regulatory workload are:
 - 34.1 the rate of referrals to Fitness to Practise. As previously discussed by Council, since the decision to refer is outside our control, the level of referrals is difficult to predict.
 - 34.2 The length of time to complete cases referred to the Conduct and Competence Committee. Substantive conduct hearings are the most expensive single element of the fitness to practise process. We are planning to substantially increase the use of substantive meetings in appropriate cases in order to consider and conclude cases more expeditiously.
- 35 The fee strategy was predicated on planning assumptions of an 8 percent annual increase in referrals, an average length of 3.5 days per hearing, and activity levels based on 20 hearings per day in April and May 2013, rising to 22 in June 2013, until December 2014. At that point activity returns to 'steady state' levels, which have been increased at a rate of 8% per annum from the 2011-2012 baseline.
- 36 These assumptions have been considered and incorporated for current caseload and practice into the three year budget projections.
- 37 Although the referral level has reduced in 2012-2013, this is not the experience of other regulators who are experiencing significant

increases. The publication of the Francis report has been accompanied by the raising of concerns in a number of other NHS trusts which may well translate into referrals to the NMC.

- 38 For the purposes of the three year projections, an 8% increase in referrals and resultant caseload year on year has been assumed. This is baselined on current caseload volumes.
- 39 It has been assumed that the resulting caseload will be managed through a combination of hearings (at an average of 3.5 days per hearing) or via substantive meetings where appropriate. The overall caseload will be impacted by a number of initiatives designed to improve overall case management and disposal, including such initiatives as voluntary removal and consensual panel determination.
- 40 The management of the caseload is aimed at ensuring the delivery of the FtP KPIs on target and as agreed with the Department of Health, by December 2014.
- 41 Based on current projections for referrals, investigations, hearings and meetings, and taking into account the efficiencies arising from the initiatives currently being implemented, FtP expenditure is now projected to rise from 2012-2013 levels of £36.7 million to £39.9 million in 2013-2014, rising to £40.3 million in 2014-2015 and £40.6 million in 2015-2016.
- 42 The budget for Investigation Committee meetings is for 19 per month, which is slightly higher than the current rate of 15 per month. The budget for Investigation Committee Interim Orders is for 2.5 per day (625 per annum) which is consistent with the financial strategy but slightly lower than the current rate of 2.9 per day.
- 43 The projected efficiency savings of £25.1 million over the three years per the financial strategy have been factored into the budget. These efficiencies are being monitored by the Corporate Efficiency Board which will also monitor the progress in relation to substantive meetings, voluntary removal and consensual panel determination.
- 44 Although the budget is based on a number of specific assumptions, a change in the referral rate or average length of hearings would have the greatest impact on the financial position. The table below sets out the cumulative financial impact of changes (in £ million) to the length of hearings and referral rates, over the three year budgetary period.

		Referral increase		
		4%	8%	12%
Hearing days	4.5	(15)	(17)	(19)
	3.5	2	0	(2)
	2.5	17	16	15

The base scenario is for an 8% referral rate, 3.5 days average length of a hearing and 189 cases to be concluded per month to December 2014.

- 45 From this it can be seen that the management of the average length of hearings is a key determinant of success in meeting our commitments.

Registrations

- 46 Since the completion of the fee strategy, there has been a substantial review of registrations, in particular in relation to overseas registration. As a result, additional investment has been earmarked for this area.
- 47 Additional staff, support and ICT resource have been factored into the three year budget projections, and further work is ongoing to determine the scope of both the Registrations improvement plan, the depth and timing of any ICT engagement required, and how this fits with the delivery of the ICT strategy. These costs are factored into the directorate budget costs or as a potential Central Pool bid.
- 48 The incremental costs included in the 2013-2014 budget over and above the financial strategy are some £1.3 million, being staff costs to strengthen management and delivery of the improvement plans (£0.8 million), legal and consultancy costs (£0.2 million), and ICT costs in relation to the improvement plan (£0.3 million).

Revalidation

- 49 The budget is for £4.4 million over the three year period as set out below:

	Budget 2013-2014 £K	Budget 2014-2015 £K	Budget 2015-2016 £K
Staff costs	270	220	226
IT/consultancy	280	706	710
Registration running costs	-	1,000	1,000
Total	550	1,926	1,936

- 50 This compares to the £4.6 million in the financial strategy which was

phased as follows:

	Fin strategy 2013-2014	Fin strategy 2014-2015	Fin strategy 2015-2016
	£K	£K	£K
Staff costs	190	190	190
IT/consultancy (project costs)	1,000	-	-
Registration running costs	1,000	1,000	1,000
Total	2,190	1,190	1,190

- 51 The costs have therefore been moved 'to the right' following the rescoping of the work required to deliver revalidation by 2015.
- 52 A significant change in revalidation scope or sample size would incur additional costs, and these are factored into our reserve risks.

Francis report

- 53 The possible scoping of an 'affiliates' programme has been included in the FtP consultancy budget. Costs associated with actual implementation are assumed from 2016-2017 only (some £1.4 million based on 15 staff and costs).
- 54 Other costs arising from implementation of recommendations are not budgeted at this stage.

Quality Assurance of education

- 55 The budget includes assumed costs and transition costs relating to a new contract, including £250k for the costs of transition from existing to new QA arrangements.
- 56 The underlying QA budget has also increased from current 2012-2013 levels but is in line with the financial strategy, being £1.4 million for 2013-2014 vs. £0.8 million in 2012-2013. This includes the QA of new standards which will be coming onstream, which accounts for £120k of the increase in 2013-2014.
- 57 The QA contract tender is expected to be finalised in March 2013.

Headcount and salary budget

- 58 The budget is based on the assumption of a full 'establishment' of approved roles, for the whole year.
- 59 For budgeting purposes only, a 2.3% increase in salary has been included (£0.4 million in 2013-2014). No decisions will be made on pay until the new year, and only then on the basis of affordability.
- 60 Provision for the possible outcomes of a pay and grading review

have been budgeted at £1.1 million in the Central Pool based on 5% of the total salary and oncosts.

- 61 The restructure in 2012 was expected to deliver, and has delivered, annualised savings of some £2.4 million in non-FtP directorates. This saving is factored into the budget.
- 62 The outcomes of the pension review including auto-enrolment are expected to be cost neutral, but some minor additional support has been budgeted in HR and Finance for implementation.
- 63 At present the budgeted approved headcount is 540 FTEs. There are currently 569 employees including temporary staff, and also including the FtP investigation transition team which is being phased out as inhouse investigation comes fully onstream.

Central Pool

- 64 The Central Pool potential bids includes those items which are yet to be substantively approved, together with an unallocated contingency balance of £0.5 million. Budget funding for items in the Central Pool potential bids are not released until business cases have been presented and approved.
- 65 The potential bids to the Central Pool are set out at Annexe 5, section 15.

Capital expenditure

- 66 The financial strategy included a total spend of £15 million on the ICT strategy and estates strategy over the three year period. The phasing of this spend has changed from £5 million each year to £3 million in 2013-14 and £6 million in each of the next 2 years, reflecting current progress and available information.
- 67 The capital expenditure budget is set out in Annexe 5, section 16.

Recommendation: to approve the proposed budget for 2013-2014.

Public protection implications:

- 68 The determination of an appropriate budget enables the NMC to ensure it has sufficient resources to deliver continued public protection.

Resource implications:

- 69 This paper is concerned with the budgeting of all NMC resources.

Equality and diversity implications:

- 70 There are no specific equality and diversity impacts associated with this paper. Equality and diversity will be considered in relation to individual workstreams, where EqlAs will be carried out as

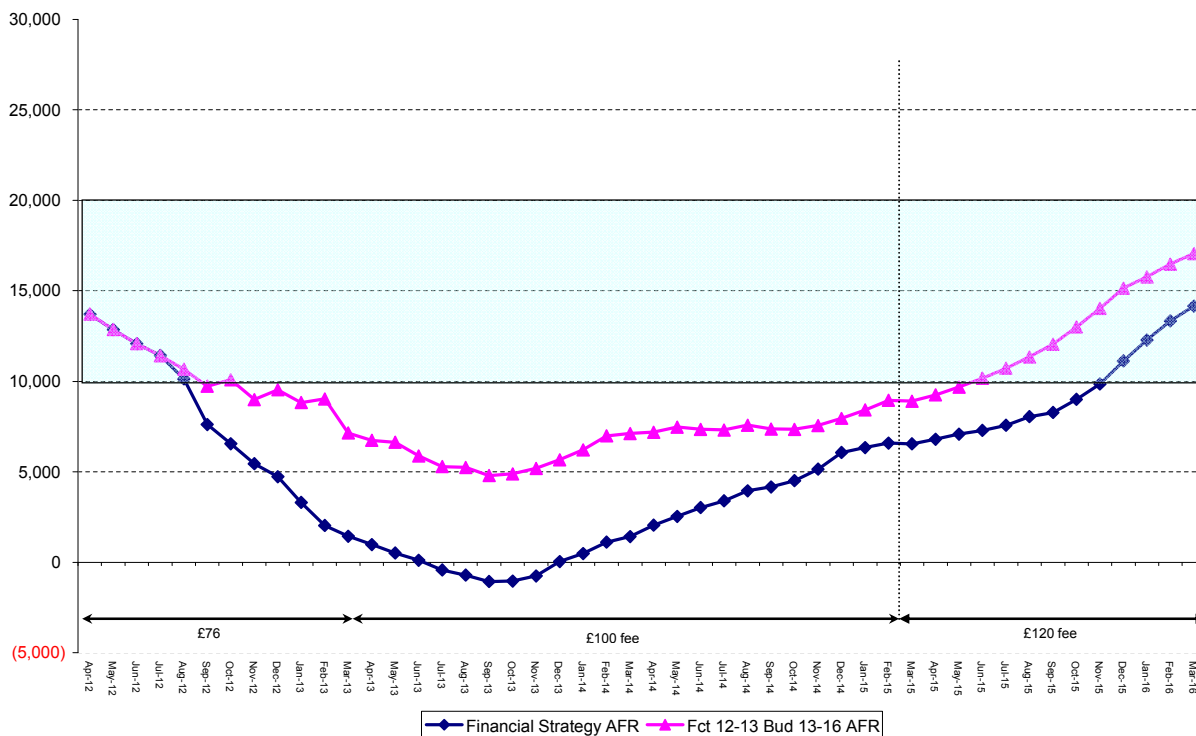
appropriate.

Stakeholder engagement: 71 The budget will be shared with stakeholders.

Risk implications: 72 The setting of a suitable budget mitigates the risk that the NMC has insufficient resources to ensure public protection. The budget is set in a way that provides prudently for financial risk. The annual review of reserves policy sets out further considerations of risk.

Legal implications: 73 None.

Available free reserves for the budget period 2012-2016 versus approved financial strategy



Comparison of principal costing assumptions underpinning NMC financial strategy and budget 2013-2016

Fitness to Practise

- 1 *There will be an 8% increase in referrals to Fitness to Practise year on year, beginning in 2012-2013*
 - 1.1 Assumption still valid in the 2013-2016 budget.
- 2 *Average FtP case hearing length (of final substantive hearing at Conduct and Competence Committee) is assumed to be 3.5 days*
 - 2.1 Assumption still valid in the 2013-2016 budget.
- 3 *Efficiency savings of £25 million over the next three years will be realised through a number of initiatives including:*
 - 3.1 *bringing case investigations in-house,*
 - 3.2 *reducing Investigating Committee Interim Order events,*
 - 3.3 *voluntary removal from the Register,*
 - 3.4 *changing the use of shorthand writers.*
 - 3.4.1 Assumptions still valid in the 2013-2014 budget.

Capital expenditure

- 4 *Capital expenditure is assumed to be £15 million over the next three years split as £10 million ICT (investment underpinning the ICT strategy) and £5 million for building requirements including refurbishment.*
 - 4.1 Assumptions still valid in the 2013-2016 budget but re-phased over the three years.

Revalidation

- 5 *The revalidation project will cost £1.2 million over the current and next year to complete.*
- 6 *From 2013-2014 additional staff requirements are assumed due to the operational requirements of revalidation (of £1 million per annum)*
 - 6.1 The revalidation project will cost £4.4 million in total (including staff costs) over the budgeting period, in comparison with £4.6 million in the financial strategy.

- 6.2 Within that envelope, additional staff requirements are assumed due to the operational requirements of revalidation (of £1 million per annum) from 2014-2015 onwards.

Other

- 7 *General inflation is assumed at 3.5% per annum from 2013-2014, and wage inflation 2%*
- 7.1 General inflation is assumed at 2.5% per annum from 2013-2014, and wage inflation 2.3%
- 8 *The implementation of the ICT strategy from 2013-2014 will increase the ICT cost base by £1 million per annum*
- 8.1 The implementation of the ICT strategy from 2013-2014 will increase the ICT cost base by £0.7 million per annum
- 9 *Staff numbers and costs in non-Fitness to Practise directorates are based on the levels assumed in the rebased budget for 2012-2013. The reduction in staff numbers has resulted in savings of £2.4 million per annum.*
- 9.1 Assumption still valid in the 2013-2014 budget.
- 10 *The provision of Quality Assurance of education will be maintained based on normal approval and monitoring levels.*
- 10.1 Assumption still valid in the 2013-2014 budget.
- 11 *The pension scheme contribution levels and Recovery Plan payments to clear the pension deficit will continue at current levels*
- 11.1 Assumption still valid in the 2013-2014 budget.
- 12 *We are expecting to cease paying VAT on rent from 2013-2014 saving £0.4 million per annum*
- 12.1 We are expecting to cease paying VAT on rent from 2014-2015 saving £0.4 million per annum
- 13 *The introduction of a CHRE levy will cost £0.8 million per annum from 2013-2014*
- 13.1 The introduction of a CHRE levy has been deferred for a year so will cost £0.8 million per annum from 2014-2015
- 14 *A dilapidations provision (on leased premises) will cost £0.1 million per annum*
- 14.1 Assumption still valid in the 2013-2014 budget.

Commentary on forecast 2012-2013 to budget 2013-2014 key variances

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
Grant Income	20,000	0	0	0	(20,000)	0	0
Periodic Fee Income	51,340	60,947	67,220	75,409	9,607	6,273	8,189
Other Income	2,080	2,335	2,258	2,306	255	(76)	48
Total Income:	73,420	63,282	69,479	77,715	(10,138)	6,197	8,237
Office of the Chair & Chief Executive	479	566	578	590	(87)	(12)	(12)
Corporate Governance	2,598	3,128	2,900	2,922	(531)	228	(22)
Registration & Standards	4,996	6,495	6,753	6,889	(1,499)	(258)	(136)
Corporate Services	13,604	14,652	13,924	13,553	(1,048)	729	371
FTP	36,657	39,914	40,255	40,609	(3,257)	(341)	(355)
Projects	605	106	0	0	499	106	0
Depreciation	2,710	3,068	3,080	3,796	(358)	(12)	(716)
NMC Corporate/General	1,269	57	57	57	1,212	0	(0)
CHRE Fee	0	0	750	750	0	(750)	0
Central pool	713	3,516	4,457	4,457	(2,803)	(941)	0
Revenue Spend	63,631	71,502	72,753	73,623	(7,871)	(1,251)	(870)
Surplus / (Deficit)	9,789	(8,220)	(3,274)	4,093	(18,009)	4,946	7,367
Capital	1,852	2,851	6,000	6,000	(999)	(3,149)	0

Income for the period 2012-2016

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
Grant Income	20,000	0	0	0	(20,000)	0	0
Periodic Fee Income	51,340	60,947	67,220	75,409	9,607	6,273	8,189
Subsequent Registration Fee	53	38	38	38	(15)	0	0
Overseas Registration	35	46	46	46	11	0	0
Overseas Applications	179	203	203	203	24	0	0
Eu Assessment Fee	326	316	316	316	(11)	0	0
Recorded Qualifications	94	100	100	100	6	0	0
Verifications	150	151	151	151	2	0	0
Replacement Of Pin Card	4	0	0	0	(4)	0	0
Interest Income	1,240	1,480	1,404	1,452	241	(76)	48
Total Income:	73,420	63,282	69,479	77,715	(10,138)	6,197	8,237

Fee income increases year on year as the fee rise to £100 impacts all of the register. The approved financial strategy allows for a further fee increase in March 2015 to £120, this would add £8.2 million in 2015-2016, and is included in this plan.

Other income levels are expected to remain stable over the time period, with the exception of pin card replacements which will not generate any income from 2013-2014 as pin cards are phased out.

Interest income will increase over the period as the fee increase will lead to increased cash balances. We have kept the interest rate in line with current low levels. A more aggressive investment strategy could increase this income but would increase the risk.

The £20 million grant from the Department of Health is released into available free reserves equally until December 2015 at £571k per month.

Office of the Chair and Chief Executive:

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
Office of the Chair & Chief Executive	479	566	578	590	(87)	(12)	(12)

Office of the Chair and Chief Executive:

1 Chief Executive and Registrar - £87k increase.

1.1 Expenditure is higher than 2012-13 in:

1.1.1 Staff salaries & associated costs - £74k increase – this is due to the creation of a strategic programme office to manage our overall change programme being included in OCCE from April 2013.

Corporate Governance

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
Communication	883	901	777	786	(18)	124	(8)
Council Services	336	512	499	475	(176)	13	24
Governance	1,060	1,301	1,211	1,240	(241)	90	(29)
Policy	319	414	412	421	(95)	2	(9)
Corporate Governance	2,598	3,128	2,900	2,922	(531)	228	(22)

Corporate Governance

2 Communication - £18k increase.

2.1 Expenditure is lower than 2012-13 in:

2.1.1 Staff salaries & associated costs - £117k decrease – mainly driven by reduced headcount in the media cost centre after the organisational restructure that took place in September 2012.

- 2.1.2 Professional and legal costs - £21k decrease – legal professional work was required by the appointments board in 2012-13; however, this is not expected to be required in 2013-14.

2.2 Expenditure is higher than 2012-13 in:

- 2.2.1 External communication costs - £167k increase. This is due to £26k increased printing and postage costs for the additional production of publications for distribution, £15k annual survey and a £120k cost for website development, which was postponed from 2012-13.

3 Council Services - £176k increase.

3.1 Expenditure is higher than 2012-13 in:

- 3.1.1 Staff salaries & associated costs - £40k increase. £82k increase is due to the team being fully staffed for the full financial year as they were all in place from December 2012. This is partly mitigated by a £42k decrease in contractors, which are not required due to the fully staffed team.
- 3.1.2 External party expenses - £71k increase due to three new committees being created, Finance and IT, Education and FtP, and increased frequencies of other committees being anticipated compared to 2012-13.
- 3.1.3 Professional and Legal costs - £52k increase for the recruitment of the Chair and lay members of the committees.
- 3.1.4 External communication costs - £11k increase due to increased printing costs in line with the increase in three new committees.

4 Governance - £241k increase.

4.1 Expenditure is higher than 2012-13 in:

- 4.1.1 Staff salaries & associated costs - £89k increase. £234k increase is due to the governance team being fully staffed for the full financial year and an additional role for part of the year to cover a maternity leave. This is partly offset by £151k saving in temporary and contractor staff, which is not required due to budgeting a fully staffed team.
- 4.1.2 Professional and legal costs - £147k increase. £96k increased professional fees, owing to £60k additional investment in internal audit, £15k facilitation support for embedding the refreshed approach to risk management across the NMC and £15k facilitation support for improving and embedding performance measurement and monitoring across the NMC. Consultancy and legal costs have increased by £50k for additional work, which is anticipated to emerge from the governance review project.

5 Policy - £95k increase.

5.1 Expenditure is higher than 2012-13 in:

- 5.1.1 Staff salaries & associated costs - £72k increase. This is due to the team being budgeted as fully staffed for the full financial year.
- 5.1.2 Professional and legal costs - £26k increase. This is due to external legal support being anticipated as extra resource to assist with regulatory legislation.

Registration and Standards:

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
Registration	3,077	3,411	3,216	3,285	(334)	195	(69)
Standards	1,920	3,085	3,537	3,604	(1,165)	(453)	(67)
Registration & Standards	4,996	6,495	6,753	6,889	(1,499)	(258)	(136)

6 Registration - £334k increase.

6.1 Expenditure is higher than 2012-13 in:

- 6.1.1 Staff salaries & associated costs - £122k increase – this is driven by an increased headcount to support the registration review and improvement programme.
- 6.1.2 Professional & Legal costs - £231k increase – the Registrar Appeals cost centre will have an increase in appeal hearings during 2013-2014 due to the publication of information in relation to appeals on the website.
- 6.1.3 Panellist costs - £47k increase – panellist costs are correlated to appeal hearings.

6.2 Expenditure is lower than 2012-13 in:

- 6.2.1 External Communications costs £67k decrease – £53k of which is due to changes in the personalisation of documentation and to the pin card documentation.

7 Standards - £1,165k increase.

7.1 Expenditure is higher than 2012-13 in:

- 7.1.1 Professional & legal costs - £935k increase - £263k driven by the development of the revalidation standards which then increases quality assurance costs for the return to practise programme, £586k in Quality Assurance from the development of new standards and due to the estimated increased costs associated with the new QA contract, £95k in Standards development due to specialist advice required during the development stage of each new standard of which there are four planned for 2013-2014.

- 7.1.2 Staff costs - £154k increase - £166k increase is due to the team being budgeted as fully staffed from 1 April 2013.
- 7.1.3 External communications costs - £45k increase - due to stakeholder engagement on education, standards and revalidation (four nations, different parts of the register, etc).

Corporate Services:

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
ICT	4,081	4,887	4,845	4,934	(806)	42	(90)
Finance	1,848	1,999	1,889	1,929	(151)	111	(40)
Facilities Management	4,587	4,977	4,693	4,181	(389)	283	512
HR&OD	3,087	2,790	2,497	2,508	298	292	(11)
Corporate Services	13,604	14,652	13,924	13,553	(1,048)	729	371
Depreciation	2,710	3,068	3,080	3,796	(358)	(12)	(716)

8 Information and Communication Technology - £806k increase.

8.1 Expenditure is higher than 2012-13 in:

- 8.1.1 Software licence costs - £247k (increase) – due to the CMS licence uplift as a result of increased FtP headcount and the investment in automated testing tools for IT systems.
- 8.1.2 Software maintenance costs - £349k (increase) – due to Microsoft assurance as there has been a major change to licensing to bring it in line with EU pricing and the NMC may no longer be eligible for the charities discount rate as a result of the Microsoft qualification rule changes. It also includes an increase in the CMS support costs due to the FtP headcount increase.
- 8.1.3 PC equipment costs - £86k (increase) this is due to changes to our refresh policy for IT equipment and new pc's to accommodate the increase in headcount.
- 8.1.4 Outsource costs - £56k (increase) - changes in the headcount result in an increase in our storage and per user administration fees per month. This increase accommodates the estimated level of headcount for the NMC.
- 8.1.5 IT Telecoms - £53k (increase) this is due to Kemble Street and the Old Bailey building communications lines coming into the BAU budget from the project.
- 8.1.6 CMS Maintenance - £60k (increase) - increased releases in 2013-2014.

8.2 Expenditure is lower than 2012-13 in:

- 8.2.1 Professional & Legal costs £40k (decrease) this is due to specific work that was conducted externally in 2012-13 and not required in 2013-2014.

- 8.2.2 Staff salaries & associated costs £40k (decrease) – ICT has a full permanent complement and any additional contractual resource will be accounted for in the upcoming project budgets.

9 Finance - £509k increase (including depreciation £358k increase).

- 9.1 Staff salaries & associated costs – increased by £71k. £177k increase is due to the team being budgeted as fully staffed from 1 April 2013. This is partly mitigated by £110k decrease in temporary staff costs, which is not required due to the fully staffed budgeted team.
- 9.2 Professional and legal fees – increased by £24k. An increase of £127k is due to increased pension, consultancy and legal advice being required in 2013-2014 to support the review of pension strategy and auto enrolment. This is offset by £101k decreased consultancy costs as there is no requirement for interim costs.
- 9.3 Total Office administration costs – increased by £387k driven by an increase of £358k in depreciation which reflects all known capital projects, including a full year of depreciation on the Old Bailey. A further £29k increase in bank charges is also anticipated.
- 9.4 Insurance costs have increased by £24k, reflecting the increased staff numbers, activity and premises.

10 Facilities Management - £389k increase.

- 10.1 Expenditure is lower than 2012-13 in:
- 10.1.1 Building repairs & maintenance costs - £49k (decrease) – Due mainly to a decrease in anticipated maintenance at 61 Aldwych compared to last year. However, these can be difficult to budget accurately due to the nature of these costs.
 - 10.1.2 IT – Business continuity costs - £28k (decrease) – This activity will cease on expiry in September 2013.
 - 10.1.3 Restaurant subsidy - £61k (decrease) – due to reallocation of catering costs for hearings to Fitness to practise.
- 10.2 Expenditure is higher than 2012-13 in:
- 10.2.1 Rent and rates - £332k (increase) due principally to Old Bailey costs now being included for the full financial year.
 - 10.2.2 Consultancy costs - £60k (increase) due to a rent review requirement for 61 Aldwych (£40k), and advice for the air circulation system in a number of buildings (£35k)
 - 10.2.3 Cleaning contractor costs - £51k (increase) – due to inclusion of Old Bailey costs for the full financial year.

- 10.2.4 Heat and light - £37k (increase) – due to inclusion of general energy costs increases together with the inclusion of Old Bailey premises for a full twelve months.
- 10.2.5 Equipment repairs & maintenance- £38k (increase). Costs have now been budgeted to include full year costs associated with the inclusion of the Old Bailey premises.

11 HR & OD - £298k decrease.

11.1 Expenditure is lower than 2012-13 in:

- 11.1.1 Staff salaries & associated costs - £513k (decrease) due to an early retirement commitment paid in 2012-2013.
- 11.1.2 Professional and Legal costs - £200k (decrease) due to there not being a need for the level of external contractors or specialist advice that was required in 2012-13 to support the restructure and cover gaps in leadership in this area.

11.2 Expenditure is higher than 2012-13 in:

- 11.2.1 External party expenses £134k (increase) – there is a significant increase in panellist training days, 1000 days estimated for 2013-2014 which has a impact on costs associated with the arrangement of a training day. The budget for the panellist attendance and expenses for training is held in FtP.
- 11.2.2 Staff salaries & associated costs - £314k (increase) - £73k is due to provision for two scheduled NMC staff events, £170k increase in staff training as a result of the recognition of future staff and organisational development needs, £21k assumes the recruitment of 110 positions based on a 20 percent staff turnover, £40k increase in temporary and contractor staff to provide support during the pay and grading review and the remaining £16k is due to a increase in occupation health costs as a result of increasing the visiting days by half a day.

Fitness to Practise

12 FtP - £3,257k increase.

	Full Year						
	ACT 12	BUD 13/14	BUD 14/15	BUD 15/16	vs ACT 12	vs BUD 13/14	vs BUD 14/15
Directors office	1,210	920	946	958	290	(27)	(12)
Screening	990	1,274	1,304	1,334	(284)	(29)	(30)
Case Investigations	5,088	1,936	1,958	2,077	3,153	(22)	(119)
Case Investigations - Edinburgh	306	538	550	563	(231)	(12)	(13)
Case Investigations - July	332	508	519	531	(176)	(12)	(12)
Case Investigations - October	193	510	522	534	(317)	(12)	(12)
Case Investigations - December	127	517	529	541	(391)	(12)	(12)
Investigations - IC	1,191	1,705	1,709	1,714	(514)	(4)	(5)
Case Management	1,626	288	295	301	1,338	(7)	(7)
Scheduling	568	840	859	879	(272)	(19)	(20)
Case Preparation	585	1,469	1,503	1,538	(884)	(34)	(35)
Admin / General	1,204	1,328	1,360	1,392	(124)	(32)	(32)
Adjudication	2,234	2,594	2,653	2,713	(360)	(59)	(60)
CCC	12,979	16,524	16,312	16,026	(3,545)	212	286
HC	909	649	708	800	259	(58)	(92)
Investigations - ICIO	2,854	2,861	3,151	3,642	(7)	(290)	(491)
Regulatory Legal Team	3,603	4,117	4,053	3,783	(514)	64	271
Panel support	528	1,335	1,324	1,284	(807)	11	40
Quality Assurance	129	0	0	0	129	0	0
FTP	36,657	39,914	40,255	40,609	(3,257)	(341)	(355)

	Hearing Days		Variance
	2012/13	2013/14	
CCC Substantive	4,177	5,416	(1,239)
CCC IO Non Substantive	384	292	93
HC	159	100	59
IC	181	228	(47)
ICIO	738	625	113
TOTAL	5,640	6,660	(1,020)
Working Days	246	250	
Substantive hearings / day	17.0	21.7	(4.7)

- 12.1 Hearing days are budgeted to increase by 1,020 year on year, which is mainly driven by the increase in CCC substantive hearing days. On average, 2012-13 saw 17.0 CCC hearings per day which is 4.7 hearings per day less than 2013-14, which is budgeted at an average of 21.7 CCC hearings per day.
- 12.2 Staff salaries & associated costs – increased by £1,543k. This is due to full headcount of 340 FTE positions being budgeted from 1 April 2013. No temporary staff have been budgeted for as the assumption used is that any savings seen in salary costs due to vacancies will be mitigated by associated increases in temporary staff costs.
- 12.3 In December 2012, analysis work was carried out on the four main cost drivers to see how the budgeted assumptions of costs per hearing days compared to the run rates seen YTD. The lower run rates seen for witness costs and panellists expenses claimed have been factored into the 2013-14 budget, however, legal assessor fees and panellist attendance allowances are held at the original budget assumptions. As the legal assessors and panellist attendance fees are fixed amounts, in theory, no price variances should arise.

The view here is to hold budget assumptions until more claims have been processed and conclusive results can be determined.

Cost Item	Original budgeted run rate / hearing day	Restated budgeted run rate / hearing day	Variance / hearing day
Panellist Attendance	1,288	1,288	0
Panellist Expenses	606	444	162
Legal Assessors	670	670	0
Witness Costs	320	205	115

12.4 Total external party expenses – increased by £3,372k. This is driven by increased hearing costs in line with increased hearing days seen year on year. This increase will be partly offset by savings seen in panellist expenses and witness costs as the updated budget assumptions have been decreased to align with the YTD run rate seen (as per the table above).

12.5 Professional and legal costs – decreased by £1,815k.

12.5.1 Total professional fees have increased by £826k. This is owing to increased legal assessor costs of £1,003k and £92k agent fees and medical reports, both of which are in line with the increased hearing days budgeted year on year. This is mitigated by a saving of £64k in consultancy costs; some consultancy costs have been factored into the budget but not at the same level of activity as that seen in 2012-13, and a saving of £207k in shorthand writers where a full year of not issuing transcripts is now factored in.

12.5.2 Legal fees have decreased year on year by £2,642k. This is driven by fewer cases being sent externally, partly offset by increased external case presenters and increased appeal costs, both in line with the budgeted increase in hearing days. In 2012-13, 1,370 cases are to be sent externally for the full year compared to 456 cases budgeted to be sent externally in 2013-14. The reduction is due to all in house case investigation teams being fully staffed as of 1 April 2013 combined with them all being fully up to speed on processes and procedures.

12.5.3 Total other costs have increased by £263k driven by increased in house catering costs. The original budget assumptions of approximately £12k have been updated to an average monthly cost of £56k, which reflects the increased labour allocation from our catering supplier.

13 NMC Corporate/General

13.1 Costs are lower in 2013-2014 due to the one off costs of the restructure incurred in 2012-2013.

14 NMC Revenue projects

14.1 The table represents expenditure on projects, which are not classified as directorate 'business as usual'.

Full Year	BUD 13/14
Induction & training new Council	20.0
Governance review	35.0
Plain english project	20.0
QA retendering exercise	31.0
Revenue Spend	106.0

15 NMC Central Pool Potential Bids

Full Year	BUD 13/14
Pay & grading review	1,061.0
Pay & grading review consultancy cost	31.7
Senior support for registration review	51.9
Unallocated	500.0
Dilapidations	110.0
QA transition costs	250.0
Consultancy	500.0
Registration improvement plan ICT	300.0
Registration centre officers x3	63.8
Registration peak period staff	78.9
Registration review (Programme manager + Interim manager x 2)	193.3
Strategic Programme Office (Officer and Admin)	75.0
Registration managers	300.0
Revenue Spend	3,515.6

15.1 The Central Pool represents the NMC's contingency fund held to meet unexpected in-year expenditure. In the proposed budget the listed 'potential bids' represent likely or potential expenditure for which business cases are required before allocating to directorate budgets.

15.2 A £500k unallocated amount is also included here.

16 NMC Capital Projects

16.1 The table represents the capital expenditure plan for 2013-2014.

Full Year	BUD 13/14
Upgraded back office system	61.0
ICT stabilisation	2,405.0
FM Capital Allowance	50.0
New scanners and franking machine	35.0
ICT general capital allowance	300.0
Capital Spend	2,851.0

Council

Annual review of fee levels and reserves policy

Action: For decision.

Issue: Council have agreed to review fee levels and the reserves policy on an annual basis. In addition, Council agreed to consider varying levels of fee, and the feasibility of permitting fee payments in instalments by direct debit.

Core regulatory function: Supporting functions.

Corporate objectives: The recommendations in this paper are consistent with Objective 7 of the Corporate Plan for 2012-2015, namely 'We will develop effective policies, efficient services and governance processes that support our staff to fulfil all our functions.'

Decision required: The Council is recommended to:

- Agree that the annual registration fee should remain at its current level of £100, and an increase in the fee to take effect from April 2014 should not be sought (paragraph 40).
- Agree the proposed amendments to the risks informing the reserves level, and agree the target range of reserves between £10 million and £25 million (paragraph 48).
- Agree the scope of the review of subsidiary fee levels, and note that this review will take place in the summer 2013 (paragraph 54).
- Agree that varying levels of fee for different categories of nurses and midwives should not be implemented at this stage (paragraph 88).
- Agree that the ability to offer increased frequency of payment via direct debit should not be implemented at this stage (paragraph 89).
- Agree to include the functionality to be able to offer varying fee levels and payments by instalments within the scope of the new integrated registration database which is being developed as part of the ICT strategy (paragraph 90).

Annexes:

The following annexes are attached to this paper:

- Annexe 1: Graph of progress towards meeting the reserves target
- Annexe 2: Major risks and potential financial impact, to be covered by reserves.
- Annexe 3: Legal advice received on amendments to approach to registration fees.
- Annexe 4: Review of evidence related to variable fee options and payment by instalments.

Further information:

If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 As part of the decision on fees taken on 25 October 2012, Council agreed to undertake an annual review of registration fees. This is primarily to ensure that the NMC has sufficient funds in order to carry out its regulatory functions to the level required to protect the public.
 - 2 Council also discussed two issues raised by respondents to the consultation that should be considered in more detail, being the possibility of different levels of payment for different categories of nurses and midwives, and the feasibility of payment by monthly direct debit.
 - 3 The scope of the annual fee review and the consideration of specific issues raised was agreed by Council in November 2012, in NMC/12/126, *Annual review of registration fees*. This included reviewing the risks informing the target reserves level.
 - 4 This paper is structured to address the scope of the annual review, as agreed by Council in November. It is informed by:
 - 4.1 The current work on the three year Corporate Plan and budget
 - 4.2 The current status of the NMC risk register
 - 4.3 The current regulatory environment
 - 4.4 Work that has been undertaken in relation to varying fee levels, and payment by instalments.
- Discussion and options appraisal:**
- 5 Council agreed that the annual review of registration fees should take four factors into account:
 - 5.1 the NMC's regulatory workload,
 - 5.2 the organisation's financial position,
 - 5.3 the external environment, and
 - 5.4 other factors of concern to stakeholders.
 - 6 In assessing these four factors, Council should consider whether any of them has changed substantially enough to warrant an increase or reduction in the level of fees. Any proposal for a change in fees would require consultation.
 - 7 The latest three year budget projections are based on the work completed this year in conjunction with the business planning for 2013-2014 to 2015-2016. The latest projected reserves level taking income and expenditure into account, and in comparison to the financial strategy, is illustrated in the graph at Annexe 1. These are

discussed further in the section on reserves below.

- 8 Projected requirements for funding are treated as follows:
 - 8.1 Incorporated into the base directorate, project or capital budget projections, or
 - 8.2 Treated as a potential bid to the Central Pool, or
 - 8.3 Treated as an identified risk which should be provided for via reserves.
- 9 Where the requirement for funding cannot be accommodated within the categories above, or the timescale or quantum required exceeds the reserve provision, then a potential rise in registration fee may be indicated.

Regulatory workload

Fitness to practise

- 10 The primary drivers of the cost of the NMC's regulatory workload are:
 - 10.1 the rate of referrals to Fitness to Practise. As previously discussed by Council, since the decision to refer is outside our control, the level of referrals is difficult to predict.
 - 10.2 The length of time to complete cases referred to the Conduct and Competence Committee. Substantive conduct hearings are the most expensive single element of the fitness to practise process. We are planning to substantially increase the use of substantive meetings in appropriate cases in order to consider and conclude cases more expeditiously.
- 11 The fee strategy was predicated on assumptions of an 8 percent annual increase in referrals, an average hearing length of 3.5 days, and activity levels based on 20 hearings per day in April and May 2013, rising to 22 in June 2013, until December 2014. At that point activity returns to 'steady state' levels.
- 12 These assumptions have been considered and incorporated for current caseload and practice into the three year budget projections.
- 13 Although the referral level has reduced in 2012-2013, this is not the experience of other regulators who are experiencing significant increases. The publication of the Francis report has been accompanied by the raising of concerns in a number of other NHS trusts which may well translate into referrals to the NMC.
- 14 For the purposes of the three year projections, an 8% increase in referrals and resultant caseload year on year has been assumed.

This is baselined on current caseload volumes.

- 15 It has been assumed that the resulting caseload will be managed through a combination of hearings (at an average of 3.5 days per hearing) or via substantive meetings where appropriate. The overall caseload will be impacted by a number of initiatives designed to improve overall case management and disposal, including such initiatives as voluntary removal and consensual panel determination.
- 16 The management of the caseload is aimed at ensuring the delivery of the FtP KPIs on target and as agreed with the Department of Health, by December 2014.
- 17 The FtP case volumes and management are considered in more detail in NMC/13/56, *NMC budget 2013-2014*
- 18 Based on current projections for referrals, investigations, hearings and meetings, and taking into account the efficiencies arising from the initiatives currently being implemented, FtP expenditure is now projected to rise from 2012-2013 levels of £36.7 million to £39.9 million in 2013-2014, rising to £40.3 million in 2014-2015 and £40.6 million in 2015-2016.
- 19 These projections are in line overall with funding levels assumed in the financial strategy.

Other regulatory workstreams

- 20 Since the completion of the fee strategy, there has been a substantial review of registrations, in particular in relation to overseas registration. As a result, additional investment has been earmarked for this area.
- 21 Additional staff, support and ICT resource have been factored into the three year budget projections, and further work is ongoing to determine the scope of both the Registrations improvement plan, the depth and timing of any ICT engagement required, and how this fits with the delivery of the ICT strategy. These costs are factored into the directorate budget costs or as a potential Central Pool bid.
- 22 There is a possibility of the need for wide ranging changes to registration practice, or a review of the eligibility for registration of some categories of current registrant. The risk of these is factored into the review of reserve risks below.
- 23 Although the Francis report suggested a revalidation model for the NMC based on the GMC's medical revalidation model, our current plan is to continue to develop a suitable, proportionate, risk-based model. The costs are factored into the three year projections.
- 24 A significant change in revalidation scope or sample size would incur additional costs, and these are factored into the review of reserve

risks.

- 25 Other regulatory strands discussed in the Francis report which impact the NMC included 'proactive regulation', the registration of healthcare support workers, and the sharing of risk intelligence between regulators.
- 26 The Francis report also made it clear that whilst these initiatives were desirable, additional funding was likely to have to be put in place to deliver them.
- 27 These initiatives have been treated in the three year projections as follows:
 - 27.1 Proactive regulation – the possible scoping of an 'affiliates' programme has been included in the FtP consultancy budget. Costs associated with actual implementation are assumed from 2016-2017 only (some £1.4 million based on 15 staff and costs).
 - 27.2 Healthcare support workers – the risk that we may be required to scope the delivery of standards and registration for this group was initially noted as a reserve risk. This has now been excluded as specific funding would be expected to be sought for such an initiative, should it be mandated.
 - 27.3 Risk intelligence – not yet included in any category of projection although there has been initial consideration.

Financial position

Reserves

- 28 Council decided in September 2012 to adopt a risk-based reserves policy, and agreed that, on the basis of the risks as assessed at that time, available free reserves should be in a range of £10 million to £20 million. The NMC's reserves at September 2012 were £9.8 million and are currently forecast to be some £7 million by March 2013.
- 29 Council's decision to accept a Government grant of £20 million and to increase fees to £100 per annum was based in part on the projection that reserves would be restored to a minimum level of £10 million by January 2016.
- 30 It should be remembered that the reserves are now held to provide the 'headroom' to deal with significant unplanned circumstances, whilst alternative funding (as necessary) is secured, e.g. in the form of a fee rise.
- 31 Until we reach the minimum level, we are still vulnerable to

unexpected events.

- 32 In reviewing the fee level, Council should consider:
- 32.1 progress in restoring the reserves, and
 - 32.2 the current risk profile, and review whether the level of reserves is still sufficient to meet those identified risks.
- 33 In addition, Council should consider progress made in identifying and achieving efficiencies, and the scope for further efficiencies to provide internal funding.

Progress in restoring reserve levels

- 34 The latest three year budget projections are based on the work completed this year in conjunction with the business planning for 2013-2014 to 2015-2016. The latest projected reserves level in comparison to the financial strategy, is illustrated in the graph at Annexe 1.
- 35 At this stage the projections show that the current minimum reserves target level of £10 million will be achieved in a sustainable way in the summer 2015.
- 36 This improvement in outturn versus the financial strategy projection is driven principally by the lower than projected expenditure this year 2012-2013, arising from slower than expected staff recruitment across the NMC, operational efficiencies and lower operational costs achieved during the year, and credits in relation to prior year activity. Available free reserves at 31 March 2013 are now expected to be some £7 million versus the financial strategy projection at that date of £1.4 million.
- 37 This underspend will not result in additional expenditure in future years, so the increased reserve level is effectively maintained throughout the budget period, although offset to an extent by increased expenditure in several areas, the need for which has been identified in the period since October 2012.
- 38 The underlying income and expenditure assumptions contributing to the resulting reserves levels are considered in more detail in NMC/13/56, *NMC budget 2013-2014*.
- 39 On the basis that we are on track at this stage to achieving our targets, a change in the fee level from £100 with effect from April 2014 does not appear to be warranted at this stage.
- 40 Recommendation:** agree that the annual registration fee should remain at its current level of £100, and an increase in the fee to take effect from April 2014 should not be sought.

Review of risks underpinning the reserves target

- 41 The current risk profile underpinning the reserves target level has been reviewed against the latest risk register.
- 42 A proposed amended risk profile is set out at Annexe 2 - Major risks and potential financial impact, to be covered by reserves.
- 43 A number of changes have been made in relation to the assessment of the likely financial impact, and the addition of several new risks.
- 44 The new risks added are in relation to:
- 44.1 The risk to registrant volumes and therefore a reduction in income arising from, for instance, the requirement to hold professional indemnity insurance, or demographic changes. The risk has been assessed on the basis of a two to five percent decrease in the number of registrants and periodic fee income.
 - 44.2 The risk of the potential requirement to introduce enhanced identity checks for overseas applicants, the set up costs of which would have to be borne pending an increase in the overseas application fee.
 - 44.3 The possibility that we may need to validate the registration of some current registrants, based on a targeted risk assessment.
 - 44.4 The possibility that Fitness to practise will not achieve its ongoing targets in relation to the number of cases it needs to conclude each month, which will be managed via a combination of means including substantive hearings and meetings.
- 45 The potential financial impact has been adjusted on several risks, in the light of further information or consideration, since September 2012. The publication of the Francis report has removed part of the unknown element in relation to several risks. In addition, the report made it clear that additional funding would be required for a number of initiatives, for instance in relation to the registration of healthcare support workers.
- 46 Other risks currently on the risk register are not factored in for reserves consideration. In relation to pensions, the current pension review is expected to be cost-neutral. Exposure in relation to the integrity of the register, and in relation to information security is addressed via specific funding in the budget.
- 47 Potential cost exposures can also be mitigated to an extent by the achievement of efficiencies. In addition to the efficiencies identified during the compilation of the fee strategy (£25 million over three

years), there are additional efficiencies to be secured in relation to, for instance, the holding of substantive meetings instead of hearings, voluntary removal, consensual panel determination, and online registration. The holding of substantive meetings as well as hearings is factored into the three year projections. The other initiatives at this stage are not factored in at this stage or applied to reduce the level of reserves required to cover potential exposures, but will be monitored closely to ensure delivery of savings is expedited.

- 48 The re-assessment of the risks and their potential financial impact gives rise to a potential exposure in a range of between £20 million and £34 million. Using the previous methodology of covering between half the minimum and 75% of the maximum exposure, gives rise to a target available free reserves level in the range of £10 million to £25 million.

Recommendation: to agree the proposed amendments to the risks informing the reserves level, and agree the target range of reserves between £10 million and £25 million

Other fees

- 49 The NMC charges a number of 'subsidiary' registration fees for :
- 49.1 Overseas applications
 - 49.2 Overseas registrations
 - 49.3 EU applications
 - 49.4 Subsequent registrations
 - 49.5 Recorded qualifications
 - 49.6 Verifications
- 50 These fees (with the exception of verifications) are set out in our Fees Rules and require consultation and legislative amendment (of the Fees Rules) in order to effect any changes.
- 51 The combined income from these fees is approximately £0.8 million per annum.
- 52 These fee levels are based on recharging the cost to deliver the relevant service, including an appropriate apportionment of overhead. These fee levels were last reviewed in 2011, at which time the costs were in line with the current charge levels, and therefore no change was enacted.
- 53 Given the current changes in registrations, and in particular to the overseas applications process, it is proposed that the review of the costs to deliver these services take place in the summer once the

processes are mapped out and are being embedded.

- 54 It will be the most effective use of NMC and DH time and legal resource to review all these fees at the same time, and not individually from time to time.

Recommendation: to agree the scope of the review of subsidiary fee levels, and note that this review will take place in the summer 2013.

External environment

- 55 In reaching a decision in October 2012, Council acknowledged the significant challenges being faced by nurses and midwives, including ongoing pay and pension restraint and the impact of change.
- 56 In reviewing the fee level, Council may want to take a view on whether the external environment has changed substantially, either positively or negatively.
- 57 This includes the impact of inflationary pressures in the external environment, and on the NMC. The fee consultation addressed the question of whether the registration fee should be linked to inflation. The response was mixed, with 33 percent of individuals and 25 percent of organisations in favour of an inflationary rise.
- 58 Inflation has been taken into account where appropriate in considering the overall financial and funding position. The current outlook on inflation is that it will continue at present levels.
- 59 There would not appear to be any imperative at present to adjust fee levels in the light of inflationary pressures over and above those already factored in.
- 60 The outlook for interest rates is subdued, with recent Bank of England discussion around the possibility of negative interest rates. The deposit rates we are able to achieve have been reducing in recent months, but we have factored in a reasonable level of 2% (giving rise to total interest income of some £1.5 million per annum).

Stakeholder concerns

- 61 Respondents to the fee consultation raised two key issues which are considered below as part of this first review of fees:
- 61.1 varying levels of payment for different categories of nurses and midwives, and
- 61.2 the feasibility of payment by monthly direct debit.
- 62 Stakeholders raised the issue of varying levels of fees for types of registrants, such as part-time workers. With an absence of reliable

data on working patterns both within and beyond the NHS, moving directly to an options appraisal in this area is a significant challenge.

- 63 Council agreed in November that it would consider how other regulatory bodies and professional organisations approach this challenge. It was proposed that a review of evidence in this area be undertaken, and that Council would consider this matter in principle.
- 64 The review of evidence is set out in Annexe 3.
- 65 The review of evidence covers both varying fee levels, and payment by instalments.
- 66 The organisations principally considered included:
- 66.1 GMC
 - 66.2 HCPC
 - 66.3 GDC
 - 66.4 UNITE
 - 66.5 Unison
 - 66.6 RCN
 - 66.7 RCM
- 67 In summary, the practice varies considerably.
- 68 Organisations offering some sort of varying fee level within classes of fee are;
- 68.1 the GMC – 50% reduction level for registrants earning less than £30,000 in a year,
 - 68.2 the HCPC – graduates pay 50 % for the first two years
 - 68.3 UNITE – fee based on banded weekly hours
 - 68.4 Unison – based on salary bandings
 - 68.5 RCN – first year reduction of 50%
- 69 The GDC and RCM charge different fees for different professional categories, but not on the basis of earnings or experience.
- 70 In relation to payment by instalments, the following offer this facility:
- 70.1 GMC – annual retention fee may be paid annually, quarterly or over ten months

- 70.2 HCPC – fee may be paid in instalments every six months
 - 70.3 UNITE – monthly or quarterly instalments once members have belonged for a set period
 - 70.4 Unison – monthly direct debit
 - 70.5 RCN – monthly or annual payments
 - 70.6 RCM – monthly or quarterly payments
- 71 The GDC advised that only annual payments are permitted, and that a Section 60 amendment would have been necessary to permit payment by instalments.
- 72 We have sought our own legal advice on these issues, which is set out at Annexe 4.
- 73 In summary, our legal advice was as follows:
- 73.1 Article 7 of the Order gives enough latitude to allow rules to be drafted which provide for variability of the fees charged
 - 73.2 There is no bar in the Order to the NMC making arrangements through rules or through its operational arrangements in order to introduce payment by instalments, by way of direct debit
 - 73.3 Amendments to the Registration Rules are however likely to be required. In particular, the rules relating to renewal and retention fees provide that the registration will lapse unless the relevant fee is paid prior to a specified date (rules 11, 12A and 13). Therefore in order to introduce payment by instalments, amendments reflecting the operational arrangements, and ensuring that registration does not lapse in circumstances in which this option is adopted, will need to be made.
 - 73.4 Before making any changes to our policy and consequently any amendments to our rules, we must consult on the proposed changes.
- 74 It therefore appears that it would be possible to redraft the Registration Rules to navigate the previously identified issue in relation to our legislation creating a direct link between payment of fees and effective registration.
- 75 This would need to be done to avoid the significant administrative pressures both on employers who would need to identify whether registrants have lapsed each month instead of annually, and on the NMC due to the administration of increased numbers of lapsed

registrants.

- 76 The cost of regulation does not change however depending on the number of hours worked by the nurse or midwife. It should be noted that since the overall cost of regulation must be paid for primarily from registration fees, a lower registration fee for one group of nurses and midwives would have to be financed in effect by an increased fee for other nurses and midwives. This is unlikely to be popular therefore with a substantial number of registrants.
- 77 There will also be additional administrative costs in applying a multi-level model of fees in practice which will increase the overall funding and fee level required.
- 78 The only regulator to charge differential fees on the basis of earnings is the GMC. The method used to determine lower income registrants is by an application at the beginning of the registration period and a declaration of income at the end of the period. This is a time consuming and labour-intensive process. If the NMC were to adopt a similar model, there would be considerable issues given the relative sizes of the registers and the selection of an appropriate salary level at which to set the boundary.
- 79 Although it would appear possible to make the legislative changes required to facilitate varying levels of fees and/or payments by instalment, perhaps the most compelling point at this time is the time and investment required to enact such changes. The drafting of specific policies and rules in detail and subsequent translation into ICT code will absorb significant investment of time and money in our IT, finance and registrations systems.
- 80 At this point in time our organisational priority must be to focus on the delivery of our core regulatory functions, in particular given the issues we are currently dealing with in both Fitness to Practise and Registrations.
- 81 Our ICT priority is to deliver the agreed ICT strategy to timescale over the next three years, including the new integrated registration database.
- 82 In addition, WISER changes must be limited at present to those which have a public protection imperative.
- 83 Discussions with the ICT team and initial scoping of the work required to implement changes to payment options in terms of varying fee levels or payments by instalments have indicated that this would be a substantial piece of work, and development costs would be in the region of £0.5 million to £1 million.
- 84 The ICT team would be dependent on the registration staff developing the necessary policies and rules. At this point in time, it is

unlikely that we can accommodate the additional resource and cost, including management time, that these payment options would require for implementation.

- 85 That is not to say that these issues should not continue to be considered pending the appropriate opportunity.
- 86 It is proposed that as part of the design of the functionality of the new integrated registration database, that the finance aspects of the database are managed as a separate part, to allow the requisite flexibility to deal with varying levels of fee, and payments by instalment. This would allow relatively straightforward implementation subject to a future Council agreeing to pursue these options at a later date.
- 87 Given the issues highlighted above, we have not sought at this stage to engage further with registrants, representative organisations, or employers.
- 88 **Recommendation:** Agree that varying levels of fee for different categories of nurses and midwives should not be implemented at this stage.
- 89 **Recommendation:** Agree that the ability to offer increased frequency of payment via direct debit should not be implemented at this stage.
- 90 **Recommendation:** Agree to include the functionality to be able to offer varying fee levels and payments by instalments within the scope of the new integrated registration database which is being developed as part of the ICT strategy.

Public protection implications:

- 91 The annual review of fees enables the NMC to ensure it has sufficient resources to deliver continued public protection.

Resource implications:

- 92 Gathering information for the annual review of fees will require staff time. Costs may be incurred in scoping monthly direct debits, but these are expected to be minimal.

Equality and diversity implications:

- 93 An Equality Impact Assessment was considered by Council as part of the October 2012 decision to raise the fees. This EqIA will be reviewed as part of any proposed changes to fees.

Stakeholder engagement:

- 94 This review has taken stakeholders' views into account.

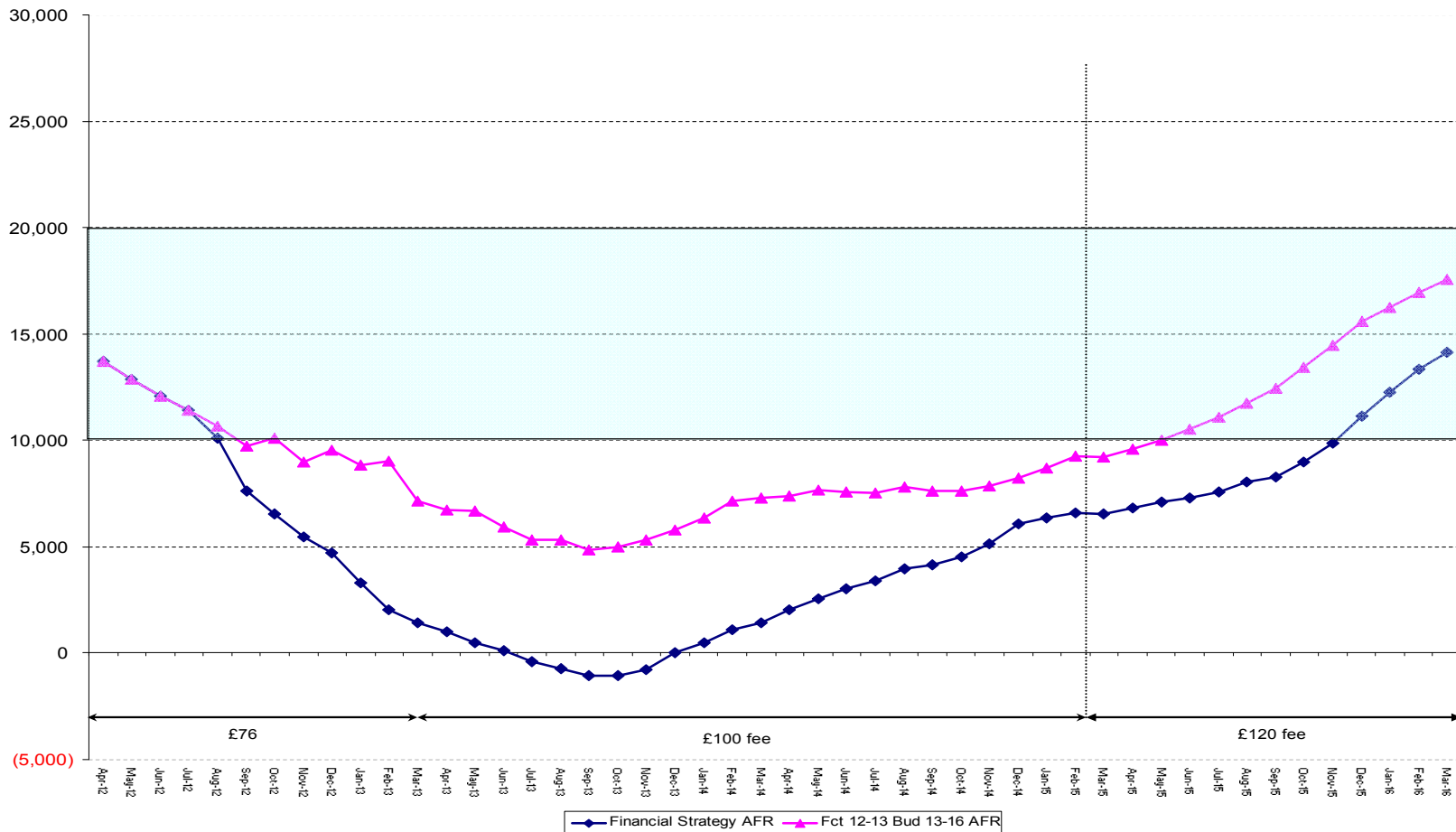
Risk implications:

- 95 An annual review of registration fees in itself mitigates the risk that

the NMC has insufficient resources to ensure public protection.

Legal implications: 96 Changes to fee levels and frequency of collection require changes to the Fees Rules and the Registration Rules.

Available free reserves for the period 2012-2016 versus approved financial strategy, with a fee rise to £120 reflected from March 2015



Annexe 2

Potential risks with serious financial impact, which should be covered by reserves

Potential risk	Sept 12	Proposed March 13
<ul style="list-style-type: none"> • Extraordinary reviews <ul style="list-style-type: none"> • Another Stepping Hill; Mid Staffs, etc. estimated costs for Mid Staffs £1m. If three were to happen at once then potential cost could be £3m. However legal costs for mid-Staffs was some £0.3m, and referral increases are factored in below so the suggested range has been revised downwards 	£3.0m	£1.5m to £2.0m
<ul style="list-style-type: none"> • Revalidation: If we had to increase scope/ sample size of revalidation then the cost could be 	£4.0m	£4.0m
<ul style="list-style-type: none"> • EU additional screening tests: mainly external consultancy and legal costs. Language testing is now more likely and we would incur set up costs 	£0.4m	£0.4m
<ul style="list-style-type: none"> • FtP caseload: if the level of referrals increases beyond the 8% that we have planned for necessitating a further fee rise; then this would need to be funded. This range caters for a further increase between 8% and 12% over the three year period. 	£6.6m	£4m to £6m
<ul style="list-style-type: none"> • FtP hearing duration- if the average length of a hearing increased beyond the planned 3.5 days to say 4 or 4.5 days, then we would need to fund the time lag between the identification of the increase and increasing the fee. The range caters for an increase of between 4 and 4.5 days. 	£3.3m to £9.9m	£3m to £6m
<ul style="list-style-type: none"> • FtP meeting targets – covering the risk of not achieving the projected meeting target. (maximum likely exposure at present is £9m - £11m over 2 years) 	--	£3m to £9m

<ul style="list-style-type: none"> Increased scope: if for example we are asked to regulate all Health Care Support workers, then there may be some set-up costs in advance of either a grant and/or registration fees. It is now proposed that this should not be factored into our current reserves considerations as it would require external agreement and funding. 	£3.0m	-
<ul style="list-style-type: none"> Fraud exposure: risk of a bogus registrant impersonating another - say £50k to investigate and resolve 	£0.05m	£0.05m
<ul style="list-style-type: none"> Income risk (PII): reduction in register (2% to 5%) resulting in loss of income. 	--	£1.3m to £3.3m
<ul style="list-style-type: none"> Overseas registrations – enhanced ID checking. This represents set up costs; the higher ongoing cost will be reflected in a higher fee going forward. 	--	£0.75m to £1.0m
<ul style="list-style-type: none"> Overseas registrations – validation. This would be a one off exercise so a range in unlikely 	--	£2.0m
Total – range of	£10m to £20m	£10m to £25m

Advice on amendments to approach to registration fees

- 1.1 Further to the recent consultation regarding raising the NMC's registration fee, we understand that the NMC is now investigating options for the payment of registration fees. In particular, the NMC are considering introducing:
- (a) A scale of variable registration fees, under which the fees paid by an individual registrant would depend upon inter alia, their level of income, their capacity to pay and the number of hours which they worked.
 - (b) Payment of registration fees by instalments, via Direct Debit in either monthly, quarterly or tri-annual instalments (rather than in the current form of a single annual payment).
- 1.2 Specific advice is sought on whether either or both of the above proposed amendments would necessitate any change to the Nursing and Midwifery Order 2001 ("the Order") through a Section 60 amendment and, if so, which sections of the Order would need changing. In addition, we have been asked which, if any, sections of the NMC (Education, Registration and Registration Appeals) Rules 2004 (as amended) ("the Registration Rules") would need changing as a result.
- 1.3 In providing our advice on these issues, we have not addressed the specific detail of the proposals or any draft amendments to the Nursing and Midwifery Council (Fees) Rules 2004 (as amended) ("the Fees Rules"), which would be required in order to achieve these changes, as these be dependent on the policy which is developed and agreed.
- 1.4 Please note that in preparing our advice we have interpreted the term "registration fees" to include not only initial registration fees, but those fees attaching to applications for renewal of registration, readmission or restoration and retention of registration (in accordance with the fees prescribed by the Fees Rules).

Relevant provisions

- 1.5 The NMC's power to make provision regarding the payment of fees derives from Article 7 of the Order, which states, at Article 7(1):
- "The Council shall make rules in connection with registration and the register, and as to the payment of fees."
- 1.6 Article 7(2)(c) provides that the rules shall, in particular, make provision as to:
- "The form and manner in which applications are to be made and the fee to be charged-
- (i) for registration, renewal of registration and readmission to the register,
 - (ii) for the making of any additional entry in the register, and
 - (iii) for registration to lapse.
- 1.7 Article 7(3) states that:
- "Before determining or varying any fees mentioned in paragraph (2)(c) the Council shall consult such of those persons mentioned in article 3(14) as it considers appropriate." (Article 3(14)



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provides for consultation with representatives of any group of persons the NMC considers appropriate, and refers specifically to certain groups including registrants and their employers.)

- 1.8 The relevant rules made under Article 7 are the Fees Rules, which set out the different fees to be paid in support of an application for initial registration, renewal of registration, readmission to the register, and for retention of registration.
- 1.9 The Registration Rules relate to applications for admission and restoration to the register and retention/renewal of registration. They therefore provide for the payment of relevant fees, as set out in the Fees Rules, to be paid in respect of such applications.
- 1.10 The relevant provisions of the Registration Rules which relate to payment of fees are as follows:
- (a) Rule 5(1)(d) provides that an application for admission to a part of the register shall be supported by payment of the appropriate fee prescribed in the Fees Rules;
 - (b) Rule 8(b) and (c) provides that:
 - (i) where an application for admission to the register is made under article 13(1)(b), (c), (d), (e) or (f) of the Order and is refused the applicant will not be entitled to any refund of the fee paid in accordance with rule 3(c) or (d) of the Fees Rules
 - (ii) the applicant may make a new application for registration after the period for an appeal set out in rule 20 has elapsed, and any such application must be accompanied by the relevant fee, as set out in rule 3(c) or (d) of the Fees Rules.
 - (c) Rule 10A provides that, prior to the date on which the registrant is due to pay a retention of registration fee, the Council shall send her a notice of the retention fee prescribed in Rule 3(i) of the Fees Rules and a notice warning her that unless the prescribed retention is received by the Council on or before the date specified in the notice, her registration shall lapse.
 - (d) Rule 11 provides that, prior to the last day of a registrant's registration period the Council shall send her notice of the renewal fee prescribed in Rule 3(e) of the Fees Rules and a notice warning her that unless the completed application form, accompanied by the prescribed renewal fee, is received by the Registrar on or before the date specified in the notice, her registration shall lapse.
 - (e) Rule 12A provides that, by no later than the date specified in the notice to retain her registration, the Council must have received payment of the fee for retention of registration prescribed in Rule 3(i) of the Fees Rules and a registrant's registration in a part of the register shall lapse on the day on which the fee for retention of registration is due unless the fee has been paid;
 - (f) Rule 13 provides that by no later than the date specified in the notice to renew her registration the Council must have received the fee for renewal prescribed in Rule 3(e) of the Fees Rules;
 - (g) Rule 14(4) provides that a registrant's registration shall not lapse under this Rule or Rule 12A or 13 where the person concerned is the subject of an allegation under Article 22(1) of the Order, or is treated under Article 22(6) of the Order as if she were the

subject of an allegation, or is the subject of any investigations or proceedings under Part V or VI of the Order, on the grounds only that she has not paid the prescribed fee in accordance with the Fees Rules or has failed to apply for renewal in the prescribed form or within the prescribed time;

- (h) Rule 14(5) provides that where there is a good reason for a registration not to lapse, the Registrar may decide, prior to the date on which the registration is due to lapse, to allow a further period not exceeding three months beginning with the date that a retention fee was due under Rule 12A or that renewal was due under Rule 13 for the registrant to pay the retention fee prescribed in Rule 3(i) of the Fees Rules; or satisfy the requirements of renewal specified in Rule 13.

Advice

- 1.11 The proposed changes involve introducing a scale of variable registration fees, with the applicable fee relating to (inter alia) the level of income, capacity to pay and the number of hours worked.
- 1.12 We note that the Order does not include an express power for rules to be made which provide for the charging of different fees in different cases, as appears in the governing legislation of some other regulators (see section 32(7) of the Medical Act 1983 (as amended)). This is unfortunate as such a provision would provide clear and unambiguous vires for the charging of different fees for different applicants or classes of applicant, as envisaged. Absent such wording the NMC's powers to do so turn on the construction of Article 7. This is drafted in very wide terms, referring to the NMC having the power to make rules as to the "payment of fees" (Article 7(2)) and in relation to the "fee to be charged" in respect of applications for registration, renewal and readmission to the register (Article 7(2)(c)). Whilst it does refer to "the" fee for each category of application, which may be taken to imply that there is one fixed fee for each, we are of the view that a robust and purposive interpretation would permit the NMC to rely on this provision to charge variable fees: Firstly, as a matter of statutory construction, the singular includes the plural (by virtue of section 6(c) of the Interpretation Act 1978) and further, this could be construed as requiring one fee only per individual application (and each applicant will under the new proposals face only one fee, albeit that the level of fee will depend on which category and class they fall within).
- 1.13 In summary, therefore, we advise that Article 7 gives enough latitude to allow rules to be drafted which provide for variability of the fees charged. In fact, we note that the NMC already prescribes different fees in respect of applications received from different types of applicant under Article 13 (depending on the route to registration), relying on these provisions to do so.
- 1.14 It is also proposed that payment could be made by instalments, by way of Direct Debit. There is no bar in the Order to the NMC making arrangements through rules or through its operational arrangements in order to introduce this payment option for registrants.
- 1.15 Amendments to the Registration Rules are however likely to be required for the following reasons. Firstly, the Rules as currently drafted cross-refer to the relevant provisions of the Fees Rules (see provisions of the Registration Rules outlined at paragraphs 1.10(a) to (h) above). It is therefore likely that the references to fees in the Registration Rules would need to be revised to make consequential amendments reflecting any changes to the Fees Rules which affect those cross references. More substantively, however the rules relating to renewal and retention fees provide that registration will lapse unless the relevant fee is paid prior to a specified date (see rules 11, 12A and 13). A three month extension may be applied (under rule 14(5)) but only where the Registrar has, on a case by case basis, identified a "good reason" to do so. Therefore,



in order to introduce payment by instalments, amendments reflecting the operational arrangements, and ensuring that registration does not lapse in circumstances in which this option is adopted, will need to be made.

- 1.16 Article 7(3) provides that, before determining or varying any fees, the NMC must carry out a consultation with relevant stakeholders. We are of the view that the proposed changes will have the effect of varying the fees under this provision, for some registrants, if not all. It is debateable whether the method of payment alone would require prior consultation under Article 7(3)). However, we would advise that, before making any changes to its policy and consequently any amendments to its rules, the NMC must consult on the proposed changes.
- 1.17 We trust that this answers the queries you raise at this stage. Should you wish to discuss anything arising out of the above advice or require assistance drafting amendments to legislation (once the exact nature of the policy has been agreed), we would be glad to be of assistance.

This advice is prepared solely for the NMC and should not be considered as providing advice to anyone but the NMC. Any publication of this advice is not to be taken as demonstrating either expressly or by implication an intention to waive privilege in respect of any other advice that we have given to the NMC on this matter. For the avoidance of doubt, such privilege is not waived.

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Item 13
 NMC/13/57
 14 March 2013
 Annexe 4

Review of evidence re. variable fee levels and payments by instalments

To	Assistant Director Finance
From	Research and Evidence Team
Date	January 2013
Regarding	Fee payment methods

Purpose of briefing

- 1 To collate evidence about the management of fee payments by registrants to assess the feasibility of introducing variable fee levels and/or tiered payments.

Background

- 2 At the meeting of the NMC Council on 22 November 2012, a scoping paper on the annual review of registration fees was discussed (TRIM 1907776). It was recommended that a review of evidence of how other regulators and professional organisations manage their fee payments be undertaken.
- 3 Whilst the NMC's administration processes are currently able to process the annual fee as a single payment via direct debit, it is not possible to pay the fee in instalments. In addition, the fee is not stratified in terms of part time or low income registrants
- 4 The research and evidence team were asked to undertake a search to find out what payment options were offered by other organisations and whether they offered differentiated fees.
- 5 A range of questions were formulated and agreed with the task group to form a framework for the research. A list of the questions are contained in Annexe 1.
- 6 The public facing websites of the larger healthcare regulators have been reviewed and their call centres contacted. Information was obtained regarding the operation of the nursing and midwifery professional bodies and two healthcare unions. In addition, the public facing websites of two non healthcare regulators were reviewed. The results are set out in the tables below.

Findings

GMC	
Is there differentiation	There is no differentiation between full and part time

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GMC	
between registrants working full or part time	<p>registrants in terms of registration fees. However, those registrants with a total income of less than £30,000 for the period 2012 to 2013 are entitled to claim a 50% discount in the fees.</p> <p>The registrant submits an application form to the GMC and then at the end of the period is asked to complete a declaration of their income for the period under review. In the event of the income being above the threshold then the balance of the fee would be payable.</p> <p>The registrant may be asked to provide documentary evidence and a false claim could result in being removed from the register.</p>
Do you differentiate fee charges using other criteria	The amount of the fee varies between full and provisional registration
Is payment managed through paper or online processes	Payment may be made by either method
Do you offer your members/ registrants the opportunity to pay in instalments?	Yes
What is the frequency of instalments and how is non payment managed	<p>The registration fee is a one off payment which must be paid in full when the doctor registers.</p> <p>The annual retention amount may be paid annually, quarterly or over 10 months.</p> <p>In the event of non payment three letters are sent to the registrant advising that payment is due. If at the end of the process the fee has not been paid the registrant would be removed from the register.</p> <p>The instalment options are covered in the GMC Registration Fees Regulations, which were approved by the GMC Council. Their legislation allows them to create regulations with respect to the charging of fees so they were able to act without changing their legislation.</p>
Do you allow others to make a payment on the member/ registrant's behalf? What are the	A third party could pay the fees by cheque or bank transfer on behalf of the registrant. In the event of not being able to collect the payment the process relating to non payment would be put in place

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GMC	
implications arising from this?	

HCPC	
Is there differentiation between registrants working full or part time	No
Do you differentiate fee charges using other criteria	Graduates pay 50 percent of the fee for the first two years
Is payment managed through paper or online processes	Payment may be made by either method
Do you offer your members/ registrants the opportunity to pay in instalments?	Yes
What is the frequency of instalments and how is non payment managed	<p>The HCPC has a 2 year membership cycle</p> <p>For new graduates the first year is paid in full but payment for the second year can be split into two instalments.</p> <p>For renewal of the 2 year period the fee may be split in 4 instalments paid every six months.</p> <p>In the event of non payment three letters are sent to the registrant if payment is still not made the registrant would be removed from the register</p>
Do you allow others to make a payment on the member/ registrant's behalf? What are the implications arising from this?	A third party could pay the fees on behalf of the registrant. In the event of not being able to collect the payment the process relating to non payment would be put in place

GDC	
Is there differentiation between registrants working full or part time	No

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GDC	
Do you differentiate fee charges using other criteria	Dentists and dental healthcare workers pay different amounts. A fee per specialism is also charged
Is payment managed through paper or online processes	Payment may be made by either method
Do you offer your members/ registrants the opportunity to pay in instalments?	No, payments are annual although they can be made via direct debit (to pay in advance). It would have been necessary for a S60 amendment to permit instalments
What is the frequency of instalments and how is non payment managed	Not applicable
Do you allow others to make a payment on the member/ registrant's behalf? What are the implications arising from this?	An employer may make payments on behalf of other registrants. In the event of non payment the standard processes would apply

UNITE	
Is there differentiation between registrants working full or part time	Yes, the fee is based on banded weekly hours for example more than 10 but less than 21 hours more than 21 hours per week
Do you differentiate fee charges using other criteria	Fees vary for different membership groups for example student, retired, full and part time members
Is payment managed through paper or online processes	Payment may be made by either method
Do you offer your members/ registrants the opportunity to pay in instalments?	Yes
What is the frequency of instalments and how is non payment managed	Monthly and quarterly instalments are available. Members have to have belonged to the union for a set period before they are entitled to any benefits
Do you allow others to	Information not available

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UNITE	
make a payment on the member/ registrant's behalf? What are the implications arising from this?	

- 7 A review of the Unison public facing website reveals that membership fees are based on salary bandings and that monthly direct debit is available.

RCN	
Is there differentiation between registrants working full or part time	No
Do you differentiate fee charges using other criteria	There are a range of membership plans available for example there is a Nurse first year discount of 50 percent available to nurse members who have registered for the first time with the NMC within the previous 12 months. A full nurse membership, a student membership and a health practitioner membership
Is payment managed through paper or online processes	A paper based Direct Debit mandate is used
Do you offer your members/ registrants the opportunity to pay in instalments?	Yes
What is the frequency of instalments and how is non payment managed	Monthly instalments are available or payments can be made annually. The member would be contacted to advise of non payment; in the event of continued non payment membership would be cancelled.
Do you allow others to make a payment on the member/ registrant's behalf? What are the implications arising from this?	A third party could make a payment for a new member joining online, or through providing payment information on a hard copy application form

RCM	
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RCM	
Is there differentiation between registrants working full or part time	No
Do you differentiate fee charges using other criteria	A number of categories of membership are available including students, maternity support workers and full members
Is payment managed through paper or online processes	Online payments are available
Do you offer your members/ registrants the opportunity to pay in instalments?	Yes
What is the frequency of instalments and how is non payment managed	Monthly and quarterly instalments are available. In the event of non payment the member would be contacted and the payment would be re-applied for. In the event of continued non payment the membership would lapse.
Do you allow others to make a payment on the member/ registrant's behalf? What are the implications arising from this?	Payment may be made on behalf of another person, for example a parent may pay on behalf of their son/daughter who is a student. In the event of non payment the usual reminder process would apply

8 A brief review of the public facing websites of two regulators not involved in healthcare was undertaken for comparison and the outcomes are set out below.

8.1 The Solicitors Regulatory Authority and the Architects Registration Board both offer postal and online facilities. However, neither organisation offers instalments or differentiates between full and part time members.

9 We are members of the Professional Associations Research Network (PARN) which enables us to post a member's enquiry as a small survey on their website. They are currently undergoing a refresh of their website and thus could not host our survey until April 2013. The option for posting this has been left open currently.

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Annexe 1

The questions identified by the Task Group are as follows:-

- 10 Do you differentiate across your membership/registrants re whether they are full or part time?
- 11 What proportion of your membership/registrants claim they are part time?
- 12 If you treat part timers differently:-
 - 12.1 How do you define part time?
 - 12.2 How do you verify that they are entitled to benefits of a part timer?
 - 12.3 Do you monitor changes in their status and if so how is this managed? What impact does it have on fee payment?
 - 12.4 Do you have a set fee for part timers?
 - 12.5 If you offer sliding scale of fees how were these decided?
 - 12.6 Do your members/registrants pay their fees in advance?
- 13 Do you differentiate fee charges using other criteria? If you do what criteria do you use ?
- 14 Is fee payment related to the registration process within your legislation?
- 15 Is payment managed through paper or online processes?
- 16 Do you offer your members/registrants the opportunity to pay in instalments? If so
 - 16.1 What is the frequency of payments (e.g. monthly periodic, annual)?
 - 16.2 How is non-payment managed?

Council

Amendments to the guidance on conditions of practice and conditions of practice library

Action: For decision

Issue: Following legal developments it has become necessary to amend the Council's guidance on conditions of practice and conditions of practice library.

Core regulatory function: Fitness to Practise

Corporate objectives: Corporate Objective 3: "We will take swift and fair action to deal with individuals whose integrity or ability to provide safe care is questioned, so that the public can have confidence in the quality and standards of care provided by nurses and midwives."

Decision required: The Council is recommended to:

- Approve the amended guidance on conditions of practice (paragraph 8).
- Approve the amended conditions of practice library (paragraph 11).
- Agree that any future amendments to the conditions of practice guidance and library do not need to be approved by Council if they are being made to reflect any legislative changes or case law developments (paragraph 15).

Annexes: The following annexes are attached to this paper:

- Annexe 1: Amended guidance on conditions of practice
- Annexe 2: Amended conditions of practice library

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 In May 2012, Council issued guidance to panels on conditions of practice, and approved a new conditions of practice library.
 - 2 Since then, there have been two legal developments that necessitate the amendment of the guidance.
 - 3 **The decision of the High Court in *Perry v NMC***

In December 2012, in the case of *Perry v NMC* [2012] EMHC 2275 (Admin), Mrs Justice Thirlwell provided useful guidance on the approach that should be taken to imposing conditions of practice when the registrant does not have an employer or third party available and willing to facilitate the conditions. She made it clear that a panel should consider whether it is possible to formulate conditions that adequately address the concerns, and if it is, the panel should impose those conditions. Thereafter, the onus is on the registrant to find an employer who is willing and able to provide the necessary support.
 - 4 **The introduction of the Midwives Rules and Standards**

In January 2013, the new Midwives Rules and Standards came into force. They implement revisions to the local supervisory arrangements for midwives. In particular, supported and supervised practice are no longer to be used. Instead, local action and practice programmes are available.
- Discussion and options appraisal:**
- 5 These developments may have significant impacts on panels considering whether to impose conditions of practice orders, and as such, it is necessary to update the guidance to provide panels with the necessary information and assistance on the approach to be taken.
 - 6 Accordingly, the guidance has been redrafted to include:
 - 6.1 New paragraphs 25 and 26, which set out the relevance of the decision in *Perry*.
 - 6.2 A new section on midwifery supervision (paragraphs 28 – 32), which deals with the impact of the new Midwives Rules and Standards.
 - 7 The alternative to revising the guidance would be to do nothing. This would leave the guidance incomplete and out of date, and would not provide panels with the necessary information and guidance.
 - 8 **Recommendation: approve the revised conditions of practice guidance (annexe 1).**
 - 9 The new Midwives Rules and Standards have also provided an

opportunity to add further conditions to the conditions of practice library, which specifically cover midwifery practice and which echo the language of the new rules.

- 10 The alternative to adding these conditions to the library would be to do nothing, which would leave panels with no standard conditions for use in cases involving midwifery supervision. This would be detrimental to the quality and consistency of panel decisions.
- 11 Recommendation: approve the revised conditions of practice library (annexe 2).**
- 12 The recommended changes to the guidance and library have been necessitated by legislative and case law developments. As noted above, the only alternative option to making the recommended changes would be to do nothing, which would leave the guidance available to panels incomplete, and would risk incorrect and inconsistent decision making.
- 13 Developments in case law in particular can occur quickly and without any warning. It is important that the NMC is able to respond quickly to developments, to ensure that its guidance always reflects the full and current state of the law. If it does not, there is a significant risk that panels will make decisions that fall foul of the law, or the NMC's outdated guidance will be the subject of a successful judicial review.
- 14 Given this, it is proposed that any future amendments to the conditions of practice and library that result from legislative or case law developments should not require the approval of Council before they can be made.
- 15 Recommendation: agree that any future amendments to the conditions of practice guidance and library do not need to be approved by Council if they are being made to reflect any legislative changes or case law developments.**

Public protection implications:

- 16 The proposed revisions will improve the consistency and quality of panel decisions, resulting in greater public protection and public confidence. The recommendation that any future such revisions should not have to be approved by Council will reduce the time it takes the NMC to implement legislative and case law developments, thus enabling any public protection benefits to be felt sooner.

Resource implications:

- 17 None

Equality and diversity implications:

- 18 Initial assessment suggests that there are no adverse equality and diversity implications.

- Stakeholder engagement:** 19 The proposed amendments have been circulated to a wide variety of stakeholders, including PSA, patient groups, representative bodies, LSA midwifery officers, other regulators, panel members and legal assessors, and all have been given the opportunity to comment. No adverse comments have been received.
- Risk implications:** 20 The risk of not making the proposed amendments is that panels will not uniformly understand the impact of these developments in the law and will therefore make poor quality and/or inconsistent decisions. The proposed amendments are intended to address that risk.
- Legal implications:** 21 The proposed amendments reflect and give effect to changes in case law and NMC rules.

Annexe 1

Guidance to panels on conditions of practice orders

Introduction

- 1 This guidance applies to panels considering making:
 - 1.1 an interim conditions of practice order, either before or after a finding of impairment of fitness to practise has been made
 - 1.2 a conditions of practice order following a finding of impairment of fitness to practise
 - 1.3 a conditions of practice order when reviewing an order imposed by a previous panel following a finding of impairment of fitness to practise.
- 2 A panel may impose an interim conditions of practice order for a period of up to 18 months.¹
- 3 A conditions of practice order made following a finding of impairment of fitness to practise may be for a specified period not exceeding three years.² Such an order must be reviewed before it expires, and at a review, the panel may extend the order or make any other order.³ It may also allow the order to lapse. Such an order can also be reviewed at any time that it is in force, and the panel can confirm or revoke the order, extend or reduce the period of the order, replace it with another order, or vary any condition of the order.⁴

Human rights, equality and diversity

- 4 The NMC is a public authority for the purposes of the Human Rights Act 1998 (the act). The NMC will seek to uphold and promote the principles of the European Convention on Human Rights (the convention) in accordance with the act. Panels must comply with the convention and the act at all times.
- 5 The NMC is fully and wholly committed to promoting equality, diversity and inclusion in carrying out all its functions. It values and embraces difference and individuality in its staff, nurses and midwives, Council and partner members, those who work on its behalf and the public it serves. Its aim is to ensure that all of its stakeholders receive a high level of service and everyone is treated fairly. Panel members are expected to demonstrate these values and work towards this aim at all times.

¹ Nursing and Midwifery Order 2001 article 31(2)

² Nursing and Midwifery Order 2001 article 29(5)(c)

³ Nursing and Midwifery Order 2001 article 30(1)

⁴ Nursing and Midwifery Order 2001 article 30(2) and (4)

Purpose of conditions

- 6 The purpose of a conditions of practice order is threefold:
- 6.1 to satisfy the public interest, that is the protection of members of the public, the maintenance of public confidence in the professions and the NMC, and declaring and upholding proper standards of conduct and performance
 - 6.2 to address the matters giving rise to the finding of impairment of fitness to practise or, in the case of an interim conditions of practice order, to address the risks to the public, the public interest and the registrant's own interests raised by the allegations
 - 6.3 to enable the nurse or midwife to continue to practise.

Effect of conditions

- 7 Throughout the period that the conditions are in force, the nurse or midwife must comply with them. Failure to do so may result in the conditions of practice order being replaced with a more serious sanction. It may also amount to misconduct.
- 8 Each nurse or midwife has a single registration, although he or she may have entries in more than one part of the register. All conditions will apply to all parts of the nurse or midwife's practice, unless the conditions of practice order states otherwise.
- 9 There is no power to impose a suspension order suspending part of a nurse or midwife's registration. If a panel wants to prevent a person who is registered as a nurse and a midwife from practising in one of those professions, it must do so by way of a conditions of practice order.
- 10 Conditions are published, and details of any conditions of practice order are made available to anyone enquiring about a nurse or midwife's registration. Accordingly, it is important that panels specify any conditions that must not be published generally, for example, those relating to the nurse or midwife's health.

General principles

- 11 Conditions of practice should be **relevant, proportionate, workable** and **measurable**.
- 12 **Relevant** means that the conditions should relate to and address the matters giving rise to the finding of impairment of fitness to practise or, in the case of an interim conditions of practice order, to address the risks to the public, the public interest, and the registrant's own interests raised by the allegations.
- 13 **Proportionate** means that the conditions must be no more than necessary to achieve the legitimate aims of protecting the public and upholding confidence in the profession. They must strike a fair balance between the interests of the registrant and the public interest, which includes public protection and public

confidence. There is also a public interest in nurses and midwives being allowed to practice their profession in a safe manner.

- 14 **Workable** means that it must be possible for the nurse or midwife to comply with the conditions. Any conditions imposed should not be wholly impracticable, or have the effect of amounting to a complete restriction on the nurse or midwife's ability to practise. It is inevitable that conditions may have the effect of making it more difficult to obtain employment, but this does not mean that the conditions are unworkable.⁵
- 15 **Measurable** means that it must be possible to assess objectively whether or not the nurse or midwife has complied with each condition. The condition must be clear and unambiguous. The question of whether the nurse or midwife has complied with the condition should be capable of being answered 'yes' or 'no'. If the question is capable of being answered 'It depends...', the condition is not measurable because it is not sufficiently specific. The conditions should also ensure that, where necessary, the nurse or midwife is under an obligation to provide the NMC with sufficient information, in sufficient time, to enable the panel at a review hearing to assess whether the nurse or midwife has complied with the condition.

Language

- 16 A conditions of practice order should be capable of being read and understood as a stand-alone document, without reference to any other document. Accordingly, the NMC does not produce a glossary of terms. Instead each panel should define exactly what it requires on a case by case basis.
- 17 When drafting conditions, panels should:
- 17.1 **Use plain English:** Avoid complicated words when simple ones are available. For example, use 'before', not 'prior to', 'start', not 'commence'.
- 17.2 **Avoid jargon or technical terms:** If it is necessary to use clinical terms, these should be defined clearly in a way that can be understood by a lay person.
- 17.3 **Use unambiguous language:** If a term is used that is capable of being interpreted in different ways by different panels, the panel must provide a clear definition of what it means by that term. For example, 'supervision' is a term that is capable of being interpreted differently by different people. Among other things, it could mean:
- 17.3.1 having regular meetings with a supervisor to discuss clinical issues
- 17.3.2 working with a supervisor at the other end of a telephone if required

⁵ *Daraghmeah v General Medical Council* [2011] EWHC 2080 (Admin)

17.3.3 working with a supervisor who is physically present some, but not all of the time

17.3.4 being observed at all times by a supervisor.

Accordingly, if a panel considers that there should be a degree of supervision or oversight of the nurse or midwife's work, it must specify precisely the extent of that oversight. Examples are included in the conditions library (see below).

17.4 **Be consistent:** A conditions of practice library has been prepared to help panels to achieve consistency in the conditions of practice that are imposed. Where the wording of a library condition meets the requirements of the panel, that wording should be used. Where there is no condition in the library that meets the requirements of the panel, the panel must create its own condition. To help panels to ensure that no conditions are published that should not be, the conditions in the library are divided into public and confidential conditions.

Timing

18 It is important that panels understand when conditions take effect, and that this is reflected in the order:

18.1 Interim conditions of practice orders take effect immediately.

18.2 Conditions of practice made after a finding of impairment of fitness to practise take effect on the expiry of the period the nurse or midwife has to appeal against the order (28 days after service of the decision notice) or where an appeal is made, when the appeal is withdrawn or otherwise finally disposed of.

18.3 Conditions of practice made on an automatic review prior to the expiry of an order⁶ take effect immediately on the expiry of the original order.

18.4 Conditions of practice made on a review at the request of one of the parties during the life of an order⁷ take effect either:

18.4.1 on the date that the review takes place, if it is a decision to replace the original order with a conditions of practice order, or

18.4.2 if it is a decision to extend a conditions of practice order, from the expiry date of the original order.

19 Times and periods in the order must be specified, for example:

19.1 'weekly', 'on the first day of each month', 'once every three months' instead of 'regularly'

⁶ Nursing and Midwifery Order 2001 article 30(1)

⁷ Nursing and Midwifery Order 2001 article 30(2) and (4)

19.2 'within x days' instead of 'promptly'.

Registrant and third party engagement

- 20 There is no requirement for the nurse or midwife, or any third party affected by the conditions of practice order, to give express consent to the terms of the order.⁸ However, panels need to satisfy themselves that conditions are workable. If a nurse or midwife refuses to comply with conditions, such an order will not be workable.
- 21 In some circumstances, conditions will be workable even where there is no current or prospective employer. For instance, a condition requiring a nurse or midwife not to work in a particular environment or role, or not to carry out a particular procedure, is workable, even where there is no known employer, because it does not require support or any other input from a third party. In these circumstances, it is not necessary to give anyone an opportunity to comment before the order is made.
- 22 In other circumstances, where the panel considers that a particular level or type of support or input from a third party is necessary in order to protect the public interest, the panel should give the parties, and any third party affected by the order, an opportunity to comment on the workability of the proposed conditions of practice. This will enable panels to make decisions from an informed position, and will avoid the need for early reviews. Where possible, the NMC will seek to arrange for any such third party to be available to comment before any order is made. Where this has not been possible (for example, because the identity of the third party was not known to the NMC before the hearing) the panel may put the case back for a limited period (ordinarily no more than one hour) to enable contact to be made and comments sought.
- 23 Where the panel considers that support or other input from a third party is necessary in order to protect the public, it may conclude that, in the absence of evidence showing that there exists a third party who is available and willing to provide the necessary support, a conditions of practice order is unworkable. In these circumstances, the panel will need to move on to consider suspension. If it does so, it should set out in its decision the nature and extent of support or other input it considered necessary to protect the public, and why it considered a conditions of practice order to that effect to be unworkable on the evidence before it. This will enable the nurse or midwife to understand what is required before a conditions of practice order can be imposed, and will enable him or her to gather the necessary evidence before a review hearing.
- 24 A case where the panel considers an order is required should never be adjourned to another day simply because it has not been possible to obtain the comments of a third party. This would leave the public unprotected in the meantime. Instead, the panel must make an order that is relevant, proportionate, workable and measurable based on the evidence it has. Either party can seek an early review of the order should further evidence become available.

⁸ *Whitehead v General Medical Council* [2003] HRLR 9

- 25 Where the panel is satisfied that it is possible to formulate conditions requiring the support of a third party that do ensure public protection, notwithstanding the absence of evidence showing that there currently exists a third party who is available and willing to provide the necessary support, it may impose such conditions. The practical effect of this will be that the nurse or midwife is unable to practice until finding a third party willing to support them. In the case of *Perry v Nursing and Midwifery Council* [2012] EWHC 2275 (Admin), Mrs Justice Thirlwell DBE said:

“Plainly if no one is prepared to employ the [nurse or midwife] on such conditions the applicant will not be able to practise. There will be no risk to the public. If an employer is prepared to take him on those terms then he and the public have the benefit of a nurse in practice, albeit strictly circumscribed.”

- 26 It should be noted from this that an employer or other third party cannot be placed under an obligation to support the conditions.
- 27 Conditions should always put the obligation on the nurse or midwife, not a third party. For instance, instead of saying ‘Your GP must provide a report to the NMC...’ the condition should say ‘You must provide the NMC with a report from your GP...’.

Midwifery supervision

- 28 Where a panel is considering imposing conditions of practice on a midwife because of concern about her midwifery practice, it should have regard to the system of supervision for midwives set out in the *Midwives Rules and Standards 2012*.
- 29 Local Supervising Authorities are responsible, through the appointed Midwifery Officer, for developing a system with employers of midwives and self-employed midwives to ensure that they are notified of all adverse incidents, complaints or concerns relating to midwifery practice or allegations of impairment fitness to practise against a midwife. They are required to investigate such reports, complaints or allegations in accordance with their procedures, which they must publish. These procedures must include a process for appealing against the outcome of the investigation.
- 30 Following an investigation, the Local Supervising Authority may recommend no action, local action under the supervision of a named supervisor of midwives, a local supervising authority practice programme, or referral to the NMC. Guidance to the rules and standards states that:
- 30.1 Local action may be appropriate to deal with minor mistakes where there is little or no risk of repetition.
- 30.2 A practice programme should be used where development and assessment of a midwife’s practice is required.
- 30.3 Referral to the NMC is required if the investigation, or subsequently the practice programme, identifies that the midwife’s fitness to practise may be

impaired. In some circumstances the local supervising authority may decide that it would also be appropriate to suspend a midwife from practice.

- 31 A practice programme should be:
- 31.1 Planned jointly between the investigating supervisor of midwives, the midwife and her named supervisor of midwives, with involvement of a midwife educator as appropriate.
 - 31.2 Structured to include objectives and learning outcomes that are tailored to the individual midwife concerned.
 - 31.3 Based on the competencies and essential skills clusters set out in the *Standards for preregistration midwifery education (2009)* directly relevant to the midwife's scope of practice and the findings of the investigation.
 - 31.4 Completed within a minimum of 150 hours and a maximum of 450 hours, with one extension of 150 hours permitted where appropriate. The local supervising authority should allow for protected time for the midwife to undertake the programme.
- 32 Before imposing conditions requiring a midwife to complete local action or a practice programme, a panel should consider whether the midwife has previously had the opportunity to complete local action or a practice programme, and if so, what the outcome was. Given that any such programme would require the support of the Local Supervising Authority Midwifery Officer, the panel should follow the guidance set out in the paragraphs above under the heading "Registrant and third party engagement".

Return to practice programmes

- 33 Return to practice (RtP) programmes are designed to enable nurses and midwives who have not complied with the practice standard as set out by the NMC in the Prep handbook to bring their skills up to date. They apply to individuals who have either not practised for the required number of hours within the last three-year period, or have failed to undertake the necessary 35 hours of continuing professional development and keep a personal profile of their learning activity.
- 34 If the nurse or midwife under consideration by a panel falls into this category, and has to complete an RtP programme before they can renew registration, the panel should bear the following in mind:
- 34.1 RtP programmes are not designed to remedy matters giving rise to impairment of fitness to practise or to address specific concerns about a person's practice.
 - 34.2 Most, but not all, RtP courses include a practice placement, during which the candidate's status is the same as that of a pre-registration nursing student.

- 34.3 The minimum length of an RtP programme is five days. There is no minimum requirement for the theory or practical element of the course.
- 34.4 RtP programmes are not standardised, but can be tailored to meet the candidate's individual needs, that is proposed field of practice and the length of time out of practice. Ordinarily, this would be done by the candidate, the educational institution, and any prospective employer.
- 35 Given this, in most cases where this situation arises it will be inappropriate for a panel to rely on an RtP programme in place of a conditions of practice order. Instead, the panel should make a conditions of practice order (if it is satisfied that this is the correct type of order, bearing in mind the indicative sanctions guidance and this guidance) setting out the minimum requirements of the RtP programme and requiring the nurse or midwife to disclose the conditions to the educational institution providing the programme.
- 36 Nurses and midwives who have been suspended or struck off from the register should not be allowed to undertake an RtP programme, as it would involve them coming into contact with patients.

Medical monitoring

- 37 Should a panel consider it necessary for a nurse or midwife to undergo medical monitoring by way of chemical testing as part of a conditions of practice order, this should be carried out in accordance with the NMC's *Guidance to practice committees on the use of chemical testing*.

Review of conditions of practice orders

- 38 At the review of an interim conditions of practice order, the panel should apply the NMC's *Guidance to panels considering whether to make an interim order*.
- 39 At the review of a conditions of practice order made following a finding of impairment of fitness to practise, the panel should first consider whether the nurse or midwife's fitness to practise is still impaired before going on to consider what further action, if any, to take.
- 40 At all review hearings, the panel should consider the extent to which the nurse or midwife has complied with the conditions. If it concludes that he or she has failed to comply with the conditions, it should consider, among other things:
- 40.1 the extent of the failure
 - 40.2 the extent to which the failure to comply with the conditions has left the matters giving rise to the finding of impairment of fitness to practise unaddressed
 - 40.3 the extent to which any alternative action taken by the nurse or midwife in an attempt to address the issue that the condition was intended to address has been effective (for example attendance on an alternative course to that which was specified in the conditions)

40.4 the nurse or midwife's culpability

40.5 the nurse or midwife's insight into the significance of their failure to comply with the condition.

- 41 Failure to comply with a conditions of practice order may result in the order being replaced with a more severe sanction.⁹
- 42 Full compliance with a conditions of practice order may demonstrate insight, and, depending on the nurse or midwife's performance under conditions, may demonstrate that they are safe to continue to practise subject to the same conditions, less onerous conditions, or no conditions at all.

Approved by Council

xx March 2013

DRAFT

⁹ *Pattar v General Medical Council* [2010] EWHC 3078

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Annexe 2 - Conditions of practice library

		Public (P) Confidential (C)	Notes
			<p>Panels are referred to the NMC's <i>Guidance to panels on conditions of practice orders</i>.</p> <p>Conditions should normally follow the format set out in this <i>Conditions of practice library</i>. However, panels must always ensure that conditions are suitable for the particular circumstances of the case, and where necessary, should tailor the conditions to meet those circumstances.</p> <p>This library is split into separate sections to help panels to choose appropriate conditions. Further explanation and assistance is provided in this column.</p>
A	Standard conditions		These conditions should always be part of a conditions of practice order.
1	You must notify the NMC within [x] days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.	P	Panel to insert the appropriate time.

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2	<p>You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to [x] above, to them:</p> <ol style="list-style-type: none"> 1 Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work 2 Any agency you are registered with or apply to be registered with (at the time of application) 3 Any prospective employer (at the time of application) 4 Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application) 	P	Always the last condition. All public conditions should be listed in the brackets.
3	<p>You must inform the NMC of any criminal or professional investigation started against you and any criminal or professional disciplinary proceedings taken against you within [x] days of you receiving notice of them.</p>	P	Panel to insert the appropriate time.
B	Performance conditions - general		Performance conditions should be included in cases involving performance issues. It is only appropriate to impose them in cases where the nurse or midwife has engaged with the process.

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			<p>It is preferable for the nurse or midwife to have the support of an employer or equivalent third party, but this is not essential, The support required should not involve the input of the NMC. If the nurse or midwife has not engaged with the process or is not fully supported and in light of that, the panel cannot be satisfied as to public protection, the panel should refer back to the <i>Indicative sanctions guidance</i> and the NMC's <i>Guidance on conditions of practice</i> and reconsider whether a conditions of practice order is workable.</p>
4	<p>At any time that you are employed or otherwise providing nursing or midwifery services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:</p> <p>1 [List]</p>	P	<p>Panel to define level and nature of supervision for example:</p> <p>“working at all times under the direct observation of a registered nurse of band 6 or above”</p> <p>“working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse of band 6 or above who is physically present in or on the same ward, unit, floor or home that you are working in or on”</p> <p>“weekly meetings to discuss your clinical caseload”</p> <p>This list is not exhaustive.</p>

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C	Performance conditions - nursing		
5	<p>You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in the following areas of your practice:</p> <p>1 [List]</p>	P	Panel to list the areas which it has determined to be of concern, or areas in which the nurse or midwife needs development.
6	<p>You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every [x days, weeks or months] to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.</p>	P	Panel to set out the minimum frequency of meetings.
7	<p>You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.</p>	P	
8	<p>You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan to the NMC [every x months and] at least 14 days before any NMC review hearing or meeting.</p>	P	If the panel considers it necessary for the nurse or midwife to submit such reports to the NMC regularly throughout the life of the order, it should say so and set out the frequency with which such reports are required. A report should always be required in advance of a review hearing or meeting.
9	<p>You must allow the NMC to exchange, as necessary,</p>	P	

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	information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.		
10	You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.	P	
D	Performance conditions - midwifery		Performance conditions in midwifery cases should reflect the system of midwifery supervision as set out in the <i>Midwives Rules and Standards 2012</i> .
11	a) You must successfully complete a local action plan devised by your supervisor of midwives; and b) You must provide the NMC with a report from your supervisor of midwives within 14 days of the successful completion of your local action plan or at	P	Under the guidance set out in the <i>Midwives Rules and Standards 2012</i> ., a local action plan may be appropriate to address “minor mistakes, of which there is little or no risk of recurrence.”

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	<p>least 14 days before any review of this order.</p> <p>OR</p> <p>a) You must successfully complete a practice programme approved and overseen by your Local Supervising Authority Midwifery Officer; and</p> <p>b) You must forward to the NMC a copy of your practice programme within 14 days of the date on which these conditions become effective or the date on which the practice programme is approved by the Local Supervising Authority Midwifery Officer, whichever is sooner; and</p> <p>c) You must provide the NMC with a report from your supervisor of midwives about your progress on the practice programme every (specify period), within 14 days of completion of the practice programme, and/or at least 14 days before any review of this order.</p>		<p>The same guidance states that a local supervising authority practice programme should be used when development and assessment of a midwife's practice is required.</p> <p>See the <i>Guidance on conditions of practice</i> for further details.</p>
12	<p>You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the objectives set out in your [local action plan/practice programme – <i>delete as applicable</i>] with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.</p>	P	

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E	Practice restrictions		
13	You must not practise as a [nurse or midwife].	P	Delete as applicable – dual registered nurses or midwives only.
14	You must confine your nursing or midwifery practice to [x].	P	Panel to specify a particular hospital or ward within the hospital, or more generally such as non-acute areas, day duties, research posts, National Health Service posts.
15	You must not undertake any nursing or midwifery practice which involves you directly or indirectly in the clinical care of individual patients.	P	
16	You must not carry out [x].	P	Panel to specify the particular procedure(s).
17	<p>1 You must not carry out [x] unless supervised by [x], such supervision to consist of:</p> <p>1.1 [List]</p> <p>2 You must keep a personal development log recording every time you have undertaken [name of procedure], which must be signed by the person who supervised you, and contain that person's comments on how you carried out the procedure(s)</p> <p>3 You must provide a copy of this personal development log, or confirmation that you have not carried out [name of procedure] to the NMC [every x months and] at least 14 days before any</p>	P	<p>Panel to specify the particular procedure, the name and rank of the person who can supervise (for example your line manager, mentor, supervisor, a registered nurse of band 6 or above such as Sister Jane Smith), and the extent of the supervision (for example being observed while carrying out the procedure).</p> <p>If the panel considers it necessary for the nurse or midwife to submit such reports to the NMC regularly throughout the life of the order, it should say so and set out the frequency with which such reports are required. A report should always be required in advance of a review hearing or meeting.</p>

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	NMC review hearing or meeting			
18	<ol style="list-style-type: none"> 1 Except in life threatening emergencies, you must not be involved in any aspect of care of [for example male patients or clients, female patients or clients, or patients or clients under the age of x] without a chaperone present. The chaperone must be a [x]. 2 You must maintain a reflective practice profile detailing every case where you have been involved in the care of such a patient, which must set out the nature of the care given, be signed by the chaperone, and contain their comments on how you gave the care. 3 You must provide a copy of this reflective practice profile or confirmation that you have not been involved in the care of [x] to the NMC [every x months and] at least 14 days before any NMC review hearing or meeting 	P	<p>Panel to specify the restriction and any qualifications for the chaperone, for example a man or woman, registered nurse or midwife or registered medical practitioner.</p> <p>If the panel considers it necessary for the nurse or midwife to submit such reports to the NMC regularly throughout the life of the order, it should say so and set out the frequency with which such reports are required. A report should always be required in advance of a review hearing or meeting.</p>	
F	Specified training courses and examinations			<p>Panels should consider very carefully whether it would be appropriate to impose a condition requiring a nurse or midwife to complete a particular course, for example in drug administration, on an interim basis where the nurse or midwife denies the allegations. If the nurse or midwife does not accept that there are deficiencies in his or her practice, some form of restriction on their practice may be more</p>

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			appropriate.
19	Before you return to practice you must successfully undertake and pass [x] within [x] months of the date on which these conditions become effective, and send a copy of your results to the NMC within [x] days of you receiving them.	P	Panel to specify the course, which must be assessed, not simply completed through attendance. Panel to specify the time periods.
20	Before you return to practice you must successfully complete and pass an NMC-approved return to practice programme complying with the requirements set out below: 1 The length of the return to practice programme shall be a minimum of [x]. 2 The length of the practice element of the programme shall be a minimum of [x]. 3 The areas that the programme should focus on are [x]. 4 The specific outcomes expected from the programme are [x].	P	Panel to specify the periods, areas, and outcomes required.
G	Nurses and midwives working independently		
21	You must immediately inform [x] that you are subject to a conditions of practice order under the NMC fitness to practise procedures, and disclose these conditions to them.	P	Panel to specify who needs to be informed, for example local supervising authority midwifery officer, all patients and clients, all prospective patients and clients.

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H	Health conditions		These conditions should be included in cases involving health issues. It is only appropriate to impose them in cases where the nurse or midwife has engaged with the process and has access to the support required. The support required should not involve the input of the NMC. If the nurse or midwife has not engaged with the process or does not have access to the support required, the panel should refer back to the Indicative Sanctions Guidance and the NMC's <i>Guidance on conditions of practice</i> and reconsider whether a conditions of practice order is workable.
22	You must place yourself and remain under the care of [specify], attend upon them as required by them, and follow their advice and recommendations.	C	Panel to specify the name or nature of the healthcare professionals required, for example general practitioner, consultant psychiatrist or occupational health practitioner. This list is not exhaustive.
23	<p>You must inform: [delete as applicable]</p> <ol style="list-style-type: none"> 1 your general practitioner 2 your consultant psychiatrist 3 your occupational health practitioner(s) 4 any other registered medical practitioner or therapist responsible for your care <p>that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and</p>	C	

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	disclose these conditions to them.		
24	<p>You must allow: [delete as applicable]</p> <ol style="list-style-type: none"> 1 your general practitioner 2 your consultant psychiatrist 3 your occupational health practitioner(s) 4 any other registered medical practitioner or therapist responsible for your care <p>to exchange information about your health, treatment, and compliance with this conditions of practice order with each other and with the NMC.</p>	C	
25	<p>You must send a report from your [specify] about your health, treatment, and compliance with this conditions of practice order to the NMC [every x months and] at least 14 days before any NMC review hearing or meeting.</p>	C	<p>Panel to specify the name or nature of the healthcare professional(s) from whom a report is required, for example general practitioner, consultant psychiatrist, occupational health practitioner (this list is not exhaustive). If the panel considers it necessary for the nurse or midwife to submit such reports to the NMC regularly throughout the life of the order, it should say so and set out the frequency with which such reports are required. A report should always be required in advance of a review hearing or meeting.</p>
26	<p>You must keep your nursing or midwifery commitments under review and immediately limit your practice or</p>	C	

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	stop practising in accordance with advice from your [delete as applicable] general practitioner, consultant psychiatrist, occupational health practitioner(s), or any other registered medical practitioner or therapist responsible for your care.		
27	<p>You must comply with arrangements made by the NMC for the following tests to be carried out on you [every x months] and not more than 6 weeks' before any NMC review hearing or meeting.</p> <p>1 [List]</p>	C	Panel to specify which tests it requires, for example liver function test, carbon deficient transfer test. If it considers it necessary for the tests to be carried out regularly throughout the life of the order, it must specify the period. A test should always be required in advance of a review hearing or meeting. Arrangements for tests will be made in accordance with the NMC's <i>Guidance for practice committees on the use of medical testing</i> .
28	You must abstain from the consumption of [x]	C	Panel to specify, for example alcohol, opiates

Approved by Council

18 May 2012

Revisions approved by Council

[Date]

Council

Revisions to the guidance to panels on interim orders

Action: For decision

Issue: Following consultation and in light of a number of drivers for change, including legal developments, it is necessary to make some changes to the approach to interim orders and reviews

Core regulatory function: Fitness to Practise

Corporate objectives: **Corporate objective 3:** We will take swift and fair action to deal with individuals whose integrity or ability to provide safe care is questioned, so that the public can have confidence in the quality and standards of care provided by nurses and midwives.

Decision required: The Council is recommended to:

- Approve the proposed new approach to the imposition and review of interim orders (paragraph 18)
- Approve the insertion of a paragraph into the interim order guidance to reflect a case law development (paragraph 21).
- Agree that any future amendments to the interim order guidance do not need to be approved by Council if they are being made to reflect any legislative changes or case law developments (paragraph 25)

Annexes: Annexe 1: amended guidance on interim orders (draft for Council consideration)

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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Context:

1. In July 2012 Council approved further work and consultations with key stakeholders in relation to two proposed changes in relation to interim orders hearings:
 - 1.1. Changes to the policy on panel composition to remove the current requirement that there must be a registrant panel member from the same part of the register as the registrant under investigation on interim order applications.
 - 1.2. Introducing guidance for panels on reasonable notice for interim order hearings
2. We held a listening event in November 2012 with key internal and external stakeholders. In addition to the two issues outlined above, we also consulted on proposed changes to the guidance for panels on the approach to an interim order review.
3. There was a strong consensus in favour of the proposed changes to the policy on panel composition, and these were approved by Council in February 2013.
4. However, the consultation demonstrated a wide divergence of views from key stakeholders about our proposals around reasonable notice and the approach to reviews. We therefore gave extremely careful consideration to the opinions expressed, and developed a set of proposals to address them.

Discussion and options appraisal:

5. The NMC consulted on a proposal that the guidance should suggest that seven days would normally be reasonable notice of an interim order hearing, subject to shorter notice in cases of exceptional urgency.

Stakeholder concerns

6. There was no consensus among our stakeholders in relation to this proposal, and it was clear that a consensus could not be reached. One respondent suggested that 48 hours' notice would be reasonable, another suggested 21 days, and there was a wide range of other views in between.
7. Stakeholders also raised concerns about the effect of the rule of deemed service, which require panels to deem that service has been affected on the day after a notice has been posted, regardless of when notice was actually received.
8. It was clear that in the absence of consensus, any period given in guidance would be the subject of continual challenge, which would lead to instability and inconsistency. Further, it would divert focus and resources away from the key issue of whether an interim order is necessary to protect the public.

9. In addition to expressing widely differing views about what constitutes reasonable notice, stakeholders raised broader concerns about our current interim order arrangements in the context of guidance being given about a reasonable notice period. In particular, they raised concerns about the absence of transcripts at review hearings and the system for holding interim order reviews at administrative meetings. Their concerns were that a nurse or midwife could be made the subject of an interim order without being ready to respond due to inadequate notice, and thereafter be unable to have the decision reviewed properly.
10. This concern led to a broader review of the wider process, as it became clear that merely issuing guidance on a reasonable notice period would not resolve the issues.

Drivers for change

11. The ongoing drivers for change are as follows:
 - 11.1. The need to ensure that interim orders are only made and continued where there are serious public protection issues, or in a very limited number of cases, on other public interest grounds.
 - 11.2. The need for our guidance to reflect recent High Court decisions in relation to interim orders sought solely on public confidence grounds.
 - 11.3. The need to improve the efficiency and effectiveness of our current interim order procedures in order to ensure that we are protecting the public.
 - 11.4. The ongoing need to reduce the number of first interim order hearings that are adjourned or postponed to allow registrants to attend, or seek or prepare representation.

Proposed approach

12. To address these drivers, it is proposed that a system of an initial hearing, followed by an early review if necessary, should be introduced. Full details of the proposed approach are as follows:
 - 12.1. The NMC will not issue guidance on what will amount to reasonable notice. Instead, everyone will be informed that the NMC will ordinarily give at least seven days' notice of an interim order hearing, but that the period of notice given may be shorter in some cases (and the reasons for giving shorter notice will be made clear).
 - 12.2. The panel will decide whether that notice is reasonable in all the circumstances, taking into account:

- 12.2.1. The nature of the allegation and the risk presented by it.
- 12.2.2. The primary objective of public protection.
- 12.2.3. The fairness of the entire new interim order procedure outlined below.
- 12.3. An initial interim order hearing will be listed after seven days' notice. If the registrant is present and ready to proceed (with or without representation) or has not engaged with the NMC at all following service of the notice the panel will hold a full first interim order hearing in the usual way and any interim order made will be subject to review in the normal way.
- 12.4. If the registrant or a representative indicates in writing or in person that they are not ready to proceed to a full hearing and requests more time to secure or prepare representations, the panel will be invited to make an immediate interim order at the first hearing if it is necessary for the protection of the public or on any of the other limited public interest grounds.
- 12.5. If it makes an interim order on that basis:
 - 12.5.1. The panel will direct that there should be an early review on or about a date 14 days later.
 - 12.5.2. The decision letter will contain the notice of hearing for the early review date.
- 12.6. If the panel does not feel that an interim order is necessary no order will be made and there will be no need for a review hearing. Any further application for an interim order will then be made by the NMC following a further risk assessment.
- 12.7. At an early review hearing, the panel will hear full representations and will undertake a full reconsideration of the grounds for an order and ensure that all relevant matters are taken into account. If the interim order is confirmed, varied or replaced, thereafter it will be subject to review in the normal way.
- 12.8. A transcript of the first full interim order hearing at which the registrant made representations will be made available to panels sitting on later review hearings so that they have a full picture of the evidence adduced and/or representations made by the registrant. If the registrant has never attended in person or via a representative and made representations, future panels will not need a transcript - the decision notice will suffice.

Benefits

13. The potential benefits of the above approach are as follows:

- 13.1. It focuses the panel on the reasonableness of the initial notice period in the light of the whole process rather than the first hearing, and will allow them to proceed in absence with more confidence.
- 13.2. It will help panels to protect the public more quickly as the panel should always make a decision at the first hearing.
- 13.3. It ensures that the panel is focused on whether an order is really necessary rather than desirable as they are effectively obliged to consider whether the public need to be protected from the date of the first hearing. This should reduce the number of over-cautious interim orders.
- 13.4. It will mitigate any concerns about the effect of the deemed service rule (which cannot be changed without a rule change) as any nurse or midwife will have a full hearing within three weeks of receiving the initial notice, which should allow ample time for proper representation (and any supporting evidence) to be secured.
- 13.5. It means that it is not necessary to find a consensus about what is a reasonable notice period whilst ensuring public protection.
- 13.6. It addresses concern raised about the absence of transcripts at later review hearings without reintroducing the need for transcripts from every hearing.
- 13.7. It addresses the concern raised about the ability of a nurse or midwife to have an order reviewed properly when they have been made subject to an interim order without being ready to make full submissions.
- 13.8. It strikes an appropriate balance between the need to protect the public and the rights of registrant in a similar way to the injunctive jurisdiction of the civil courts.
- 13.9. It will allow for more informed scheduling of interim order hearings. The NMC schedulers will know that the early review hearings will be contested and will require more time.
- 13.10. It will help the representative bodies to prioritise their work appropriately and advise their members accordingly.
14. This proposed approach received universal support from our diverse group of stakeholders. All were in favour of it, and all agreed with the likely benefits.
15. We also consulted on amending the guidance to the approach to be adopted on a review, and secured consensus to changing the guidance to include the following:

The review process must involve a comprehensive reconsideration of the initial order in the light of all the circumstances which are before the panel at the review hearing. These will include the circumstances at the time the order was made, as summarised in the decision of the panel and any other relevant documentation and any change of circumstances since then.

16. One alternative to adopting this revised approach would be to do nothing other than issue guidance on reasonable notice period. As noted above, this would not address all of the issues identified and would lead to instability and inconsistency. It would also divert focus away from public protection, and would not have the support of our stakeholders.
17. Another alternative would be to do nothing at all, but this would not address the drivers for change.
- 18. Recommendation: approve the proposed new approach to the imposition and review of interim orders, as summarised in paragraph 12 above.**

Case law developments

19. There have also been recent developments in case law that have rendered it necessary to add the following paragraph to the interim order guidance:

*In a public interest case where there is no risk of harm to patients or the public, the panel should consider whether there would be serious damage to the reputation of the professions if a registrant was not suspended pending the final outcome. Although necessity is not a statutory requirement, it is an appropriate yardstick. It should ask itself if the public would consider it wrong to have allowed the registrant to continue working even where at the end the allegations were found to be proved. In giving its decision, it must specify the nature and seriousness of the damage to the reputation of the professions that would result if no order was made (*Houshian v General Medical Council* [2012] EWHC 3458 QB, *Patel v General Medical Council* [2012] 3688 Admin).*

20. The alternative to revising the guidance would be to do nothing. This would leave the guidance incomplete and out of date, and would not provide panels with the necessary information and guidance.
- 21. Recommendation: approve the insertion of a paragraph into the interim order guidance to reflect a case law development.**
22. The recommended insertion to the guidance has been necessitated by case law developments. As noted above, the only alternative option to making the recommended change would be to do nothing, which would leave the guidance available to panels incomplete, and would

risk incorrect and inconsistent decision making.

23. Developments in case law in particular can occur quickly and without any warning. It is important that the NMC is able to respond quickly to developments, to ensure that its guidance always reflects the full and current state of the law. If it does not, there is a significant risk that panels will make decisions that fall foul of the law, or the NMC's outdated guidance will be the subject of a successful judicial review.
24. Given this, it is proposed that any future amendments to the guidance that result from legislative or case law developments should not require the approval of Council before they can be made.
- 25. Recommendation: agree that any future amendments to the interim order guidance do not need to be approved by Council if they are being made to reflect any legislative changes or case law developments.**

Public protection implications:

26. For the reasons outlined above, it is considered that the proposals above will result in increased public protection by ensuring that panels are focused on whether it is necessary to make an interim order to protect the public, and that they do so as early as possible when it is necessary.

Resource implications:

27. An issue was raised as to whether the proposed approach of an initial hearing followed by an early review would result in more interim order hearings, which would have resource implications. It was felt that this was unlikely, as cases that are currently adjourned in order for the nurse or midwife to obtain representation are then re-listed in any event.
28. It may even result in fewer hearings in the longer term as panels may decide not to make orders at all in more cases at the initial hearing rather than adjourning to allow attendance/representation where the evidence of necessity is not strong.
29. In order to mitigate any adverse resource implications, it is still necessary to encourage full engagement at the first hearing.

Equality and diversity implications:

30. During the consultation, stakeholder views were sought on equality and diversity issues arising from the proposals. The consensus was that there would be no adverse equality and diversity implications, and this is consistent with our assessment.

Stakeholder engagement:

31. The stakeholder engagement during consultation has been outlined in full above. There has been extremely positive stakeholder engagement in this instance, as it has enabled the NMC to really listen to the concerns of stakeholders and find a solution that addresses all

of their diverse needs and concerns.

32. If the recommendations are followed there will be further stakeholder engagement around implementation, including liaison with the representative bodies, and communication and training for panel members, legal assessors, and staff.

**Risk
implications:**

33. The risks of not accepting the recommendations are set out above.

**Legal
implications:**

34. The recommendations are consistent with (recommendation two is driven by) the current law relating to interim order hearings.

Annexe 1 - Guidance to panels considering whether to make an interim order

Introduction

- 1 This guidance applies:
 - 1.1 When a panel of the Investigating Committee, Conduct and Competence Committee or Health Committee is considering whether to impose an interim order in a case of alleged impairment of fitness to practise.
 - 1.2 When a panel of the Investigating Committee is considering whether to impose an interim order in a case where it is alleged that an entry in the register has been fraudulently procured or incorrectly made.
- 2 Article 31 of the Nursing and Midwifery Order 2001 provides that the Investigating Committee, Conduct and Competence Committee or Health Committee may make an interim order directing the Registrar to suspend the registrant's registration, or imposing conditions on registration, for a period not exceeding 18 months. Any interim order made must be reviewed within six months and further reviewed every three months. An interim order may also be reviewed if new evidence relevant to the order becomes available. An interim order cannot be made unless the registrant has been afforded an opportunity of appearing before the committee and being heard on the question of whether or not such an order should be made. Notice that an interim order will be considered must be served on the registrant in such time in advance of the hearing as may be reasonable in all the circumstances of the case. If it becomes necessary to extend an interim order, the NMC may apply to the High Court (or Court of Session, or High Court of Justice in Northern Ireland, where appropriate) for an extension.

Investigating Committee power to impose an interim order

- 3 The Investigating Committee may impose an interim order where an allegation of impaired fitness to practise has been referred to it, but the committee has not reached a decision on the matter. The Investigating Committee cannot make an interim order after it has referred the allegation to the Conduct and Competence Committee or the Health Committee. If the Investigating Committee imposes an order and the case is referred to the Conduct and Competence Committee or the Health Committee, it will be for that committee to review the order at the required intervals, or if new evidence relevant to the order becomes available.

- 4 In relation to an allegation that an entry in the register has been fraudulently procured or incorrectly made, the Investigating Committee may impose an interim order in two circumstances:
- 4.1 where an allegation has been referred to it that an entry in the register has been fraudulently procured or incorrectly made, but the committee has not reached a decision on the matter.
- 4.2 where the committee makes an order that the Registrar remove or amend the entry in the register.
- 5 Where an interim order is imposed in situation 4.1, the interim order will cease to have effect when the committee reaches a decision in respect of the allegation. In situation 4.2, if there is no appeal against the order the interim order will cease to have effect when the period for appealing expires (that is, after 28 days). If there is an appeal, the interim order will cease to have effect when the appeal is withdrawn or otherwise finally disposed of.

Power of Conduct and Competence Committee and Health Committee to impose an interim order

- 6 The Conduct and Competence Committee or the Health Committee can impose an interim order in two circumstances:
- 6.1 where an allegation of impaired fitness to practise has been referred to the Committee, but the committee has not reached a decision on the matter.
- 6.2 where the committee has made a striking-off order, a suspension order or a conditions of practice order.
- 7 Where an interim order is imposed in situation 6.1, the interim order will cease to have effect when the committee reaches a decision in respect of the allegation. In situation 6.2, if there is no appeal against the striking-off, suspension or conditions of practice order the interim order will cease to have effect when the period for appealing expires (that is, after 28 days). If there is an appeal, the interim order will cease to have effect when the appeal is withdrawn or otherwise finally disposed of.

The test to be applied

- 8 An interim order may not be imposed unless the panel considering the case is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the registrant, for the registration of that person to be suspended or to be made subject to conditions. In addition to protection of the public, the public interest includes maintaining public confidence in the profession, and maintaining proper standards of conduct and performance.

Proceeding in the absence of the registrant

- 9 Article 31(15) of the Nursing and Midwifery Order 2001 requires the registrant to have been afforded an opportunity of appearing before the panel and being heard

on the question whether an interim order should be made. The registrant is also entitled to be represented, whether by a legally qualified person or otherwise (article 31(16)). The panel may, however, impose an interim order in the absence of the registrant if it is satisfied that all reasonable efforts have been made, in accordance with the procedure rules, to serve the registrant with the relevant notice; or the registrant has informed the NMC that they do not wish to attend the hearing. In the context of a fitness to practise hearing, or a hearing by a panel of the Investigating Committee that an entry in the register has been fraudulently procured or incorrectly made, the notice of hearing will have informed the registrant of the panel's power to make an interim order. Before imposing an interim order in the absence of the registrant, the panel should have regard to rule 8 of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) and seek advice from the legal assessor.

- 10 Rule 8 requires the Council to give such notice of an interim order hearing as is reasonable in all the circumstances. There is no definition of what amounts to reasonable notice. The Council will normally seek to give seven days notice of an interim order hearing. However, shorter notice may be given where this appears to the Council to be reasonable in all the circumstances of the case. It will then be a matter for the panel to decide whether the notice given was reasonable, taking into account factors including the nature of the allegation, the primary objective of public protection, and the fairness of the interim order procedure as a whole.
- 11 If the registrant or a representative indicates in writing or in person that they are not ready to proceed to a full hearing and requests more time to secure or prepare representations, the panel will be invited to consider making an immediate interim order at the first hearing in the absence of the registrant and/or full representations on the grounds that an interim order is necessary for the protection of members of the public or is otherwise in the public interest or the registrant's own interests.
- 12 If the panel does not feel that an interim order is necessary, no order will be made and there will be no need for a further hearing. Any further application for an interim order will then be made by the NMC following a further risk assessment.
- 13 If the panel does consider that an interim order is necessary in circumstances where the registrant has asked for more time, it should make the order and direct that a full early review hearing should take place on or about a date 14 days later. The decision letter will contain the notice of hearing for the early review date.
- 14 At the early review hearing, the panel will hear full representations and will undertake a full reconsideration of the grounds for an order and ensure that all relevant matters are taken into account.
- 15 This approach will achieve a proportionate balance between the public interest and the interests of the registrant, taking account of the emergency nature of the jurisdiction and the fairness of the whole process.

Matters which should be taken into account when considering whether to impose an interim order

- 16 A panel considering whether or not to impose an interim order should take the following into account:

- 16.1 The panel may only impose an interim order:
- 16.1.1 if it is satisfied that such an order is necessary for the protection of members of the public
 - 16.1.2 if it is satisfied that such an order is otherwise in the public interest
 - 16.1.3 if it is satisfied that such an order is in the interests of the registrant.
- 16.2 For an order to be necessary for the protection of the public the panel must be satisfied that there is a real risk to patients, colleagues or other members of the public if an order is not made. It is not enough for the panel to consider that an order is merely desirable.
- 16.3 The panel should consider the seriousness of the risk to members of the public if the registrant were allowed to continue practising without restriction. This includes consideration of the seriousness of the allegation, the nature of the evidence and (in the case of an allegation of impaired fitness to practise) the likelihood of the alleged conduct being repeated if an interim order were not imposed.
- 16.4 The panel should bear in mind that the primary purpose of an interim order is to protect members of the public. It will be relatively rare for an interim order to be made only on the ground that it is in the public interest (for example, to maintain public confidence in the profession) (see *R (Shiekh) v General Dental Council* [2007] EWHC 2972).
- 16.5 In a public interest case where there is no risk of harm to patients or the public, the panel should consider whether there would be serious damage to the reputation of the professions if a registrant was not suspended pending the final outcome. Although necessity is not a statutory requirement, it is an appropriate yardstick. It should ask itself if the public would consider it wrong to have allowed the registrant to continue working even where at the end the allegations were found to be proved. In giving its decision, it must specify the nature and seriousness of the damage to the reputation of the professions that would result if no order was made (*Houshian v General Medical Council* [2012] EWHC 3458 QB, *Patel v General Medical Council* [2012] 3688 Admin).
- 16.6 The panel must take into account the impact which an order may have on the registrant: an order will impact upon the registrant's right to practise their profession and may also impact financially and on the registrant's reputation. The panel must balance the need for an interim order against the consequences for the registrant and satisfy themselves that the consequences of the order are not disproportionate to the risk from which the panel is seeking to protect the public (*Madan v General Medical Council* [2001] EWHC 577).
- 16.7 When considering an interim order, the panel is not making findings of fact nor making findings as to whether the allegations are or are not established. It is sufficient for the panel to act, if they take the view that there is a prima

facie case and that the prima facie case, having regard to such material as is put before them by the registrant, requires that the public be protected by an interim order (*R (George) v General Medical Council [2003] EWHC 1124* paragraph 42).

- 16.8 As regards the amount of evidence before the panel, the High Court has indicated that it would expect the allegation to have been made or confirmed in writing, whether or not it has yet been reduced to a formal witness statement. The panel will need to consider the source of the allegation and its potential seriousness. An allegation that is trivial or clearly misconceived should not be given weight (*General Medical Council v Sheill [2006] EWHC 3025*). The High Court has also indicated that, where a registrant has been charged with a criminal offence, the panel will not always be obliged to hear evidence or submissions as to any alleged weaknesses in the criminal case. The panel can proceed on the basis that the Crown Prosecution Service has concluded there was sufficient substance in the matter to justify charges being brought (*Fallon v Horse Racing Regulatory Authority [2006] EWHC 2030*).
- 16.9 Any interim order will attach to the person's registration. Accordingly, when considering interim orders, the panel should take account of all relevant matters. It is not confined to a consideration only of a particular allegation that is currently before the practice committee. Where a registrant is the subject of two or more separate referrals, the panel considering an interim order must consider information about all referrals,
- 16.10 If the panel decides that an interim order is necessary, it should not automatically impose an interim suspension, but should first consider whether an interim conditions of practice order would be sufficient and proportionate.
- 16.11 If the panel imposes an interim order, it must specify the length of the order. The panel should not automatically impose the maximum period of 18 months, but should consider what period is appropriate and proportionate in the circumstances. The panel should take into account the amount of time which is likely to be needed to complete any investigation into the allegations and for the case to be listed for hearing. Once a period has been chosen, it can only be extended by the NMC applying to the High Court (or Court of Session, or High Court of Justice in Northern Ireland, where appropriate).
- 16.12 The panel must give clear and adequate reasons for its decision. Such reasons must be given whether or not an order is imposed. Reasons should include:
- 16.12.1 the ground(s) on which the panel has made its decision (that is, whether necessary for the protection of members of the public, or otherwise in the public interest, or in the interests of the registrant)
 - 16.12.2 what impact an interim order might have on the registrant, and how the panel has balanced that impact against the need for an interim order

- 16.12.3 why an interim order is (or is not) proportionate to any risks the panel has identified and proportionate (or not) to the consequences for the registrant
- 16.12.4 if an order is imposed, why the panel has chosen the period of time for which the order should be imposed.

Interim order reviews

- 17 When a panel reviews an interim order, it may:
 - 17.1 revoke the order or revoke any condition imposed by the order
 - 17.2 confirm the order
 - 17.3 vary any condition imposed by the order
 - 17.4 replace an interim conditions of practice order with an interim suspension order for the remainder of the duration of the order
 - 17.5 replace an interim suspension order with an interim conditions of practice order for the remainder of the duration of the order.
- 18 The review process must involve a comprehensive reconsideration of the initial order in the light of all the circumstances which are before the panel at the review hearing. These will include the circumstances at the time the order was made, as summarised in the decision of the panel and any other relevant documentation and any change of circumstances since then.
- 19 When reviewing an interim order, the panel should apply the same test and take account of the same matters set out in paragraph 8 above.
- 20 A transcript of the first full interim order hearing at which the registrant made representations will be made available to panels sitting on later review hearings so that they have a full picture of the evidence submitted and/or representations made by the registrant. If the registrant has never attended in person or via a representative and made representations, future panels will not need a transcript, and the previous decision notice will suffice.
- 21 Article 31(15) of the Nursing and Midwifery Order 2001 allows a panel to confirm or revoke an interim order at an interim order review meeting. Interim suspension orders will usually be reviewed at meetings unless there has been a material change or circumstances or unless the registrant requests a review hearing. Interim conditions of practice orders will usually be reviewed at hearings unless a risk assessment undertaken by the NMC suggests that the order can be confirmed at a review meeting.

Interim orders in the context of a hearing

- 22 The Conduct and Competence Committee and the Health Committee (and in a case where it is alleged that an entry in the register has been fraudulently procured or incorrectly made, the Investigating Committee) has power to impose

an interim order when an allegation has been referred to it, but the committee has not reached a decision on the matter. The panel of such a committee may wish to exercise that power if, for example, a hearing is underway, but is adjourned part heard. The panel may wish to consider imposing an interim order pending the reconvening of the hearing and its conclusion.

- 23 Another scenario where it may be necessary for a panel to consider imposing an interim order in the context of a hearing is:
- 23.1 in the context of a fitness to practise hearing, where a panel of the Conduct and Competence Committee or Health Committee has made a striking-off order, suspension order or conditions of practice order
 - 23.2 in the context of a hearing of an allegation that an entry in the register has been fraudulently procured or incorrectly made, where a panel of the Investigating Committee makes an order that the registrar remove or amend the entry in the register.
- 24 Such orders will not take effect for at least 28 days or, if the registrant appeals, until the appeal is withdrawn or otherwise finally disposed of. The panel may consider it necessary to impose an interim order for the protection of the public, or otherwise in the public interest, or in the interests of the registrant, to cover the intervening period until the order takes effect.
- 25 In this circumstance, the panel should hear representations from both parties (where present) on whether or not an interim order should be made. The panel should follow the procedure set out in rule 24(14) of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended). The panel should apply the same test and take into account the same matters set out above.

Adopted by Council in xx March 2013

Council

Principles of Council engagement with Midwifery Committee

Action: For decision

Issue: This paper outlines the principles for Council engagement with the Midwifery Committee

Core regulatory function: Supporting functions.

Corporate objectives: **Corporate Objective 7:** Our staff will have the skills, knowledge and supporting systems needed to help us provide excellent services to the people that we regulate.

Decision required: The Council is recommended to adopt the principles outlined in paragraphs 3.1-3.4.

Annexes: None

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 Part VIII of the Nursing and Midwifery Order 2001¹ (the Order) makes provision for the Midwifery Committee and under Article 41 states that:
 - (1) The role of the Midwifery Committee shall be to advise Council, at the Council's request or otherwise, on any matters, affecting midwifery.
 - (2) The Council shall consult the Midwifery Committee on the exercise of its function in so far as it affects midwifery including any proposal to make rules under article 42.
 - 2 Membership of the Midwifery Committee is constituted in accordance with the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008².
- Discussion and options appraisal:**
- 3 The intention of the following key principles is aimed at securing positive engagement between Midwifery Committee and Council:
 - 3.1 Council to have awareness and knowledge of the regulation of midwives as distinct from nurses
 - 3.2 Council to seek proactively the advice of the Midwifery Committee in the development of policy and overarching decision-making where this will likely impact on the regulation of midwives
 - 3.3 Midwifery Committee to alert proactively Council to areas affecting midwifery regulation that require Council's attention
 - 3.4 Midwifery Committee to secure proactively added value from the totality of the organisation's work and take ownership of areas that affect and relate to midwifery regulation including evidence, policy and registration, Fitness to Practise (FtP), standards development and the quality assurance of midwifery education and the local supervising authorities (LSAs).
 - 4 **Recommendation: Council is recommended to adopt the principles outlined in paragraphs 3.1-3.4.**
- Public protection implications:**
- 5 Improving communication between the Council and the Midwifery Committee supports the achievement of our corporate objectives and will enable us to deliver on our core regulatory purpose with regard to midwifery regulation. It will help reinforce the protection of women and their babies and will increase confidence in the NMC.

¹ SI 2002/253

² SI 2008/3148

Resource implications:	6	No additional resources will be required to support the recommendation in this paper. Staff from the Registration and Standards Directorate will work closely with Council Services to facilitate good communication networks between Council and Midwifery Committee to ensure that principles of engagement can be achieved.
Equality and diversity implications:	7	None applicable to this activity.
Stakeholder engagement:	8	The Midwifery Committee, Members of the Executive and a representative of the Royal College of Midwives were involved in the development of these principles.
Risk implications:	9	The risk that lack of effective engagement between Council and the Midwifery Committee will impact on the practice of midwives and the role and function of the LSAs in protecting the public through the supervision of midwives.
Legal implications:	10	Council are required under the Order to consult the Midwifery Committee on all matters affecting midwifery.

Council

Standards for the five year rule

Action: For decision

Issue: Standards for UK trained nurses and midwives who apply to register an approved qualification more than five years after its award.

Core regulatory function: Registration / Education / Setting standards

Corporate objectives: Corporate objective 2: "We will set appropriate standards of education and practice and assure the quality of education programmes and the supervision of midwives, so that we can be sure that all those on our register are fit to practise as nurses and midwives."

Decision required: The Council is recommended to:

- 1 Approve that for any person who first applies for registration more than five years after being awarded an approved qualification, the standard required is that the person must be able to demonstrate at the point of registering the qualification that he or she meets the NMC standards that currently apply to the qualification (paragraph 5).
- 2 The Council is recommended to approve the development of guidance on ways to meet the standards. This work will be overseen by the Directors and Education Committee (paragraph 8).

Annexes:

- **Annexe 1** - Relevant sections of the *Nursing and Midwifery Order 2001* and the *Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004*
- **Annexe 2** - The standards to be met by nurses and midwives who wish to register an approved qualification more than five years after being awarded that qualification

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 Our Order and Rules, as outlined in Annexe 1, specify that an applicant seeking to register a qualification must apply within five years of being awarded that qualification.
 - 2 The NMC has received legal advice confirming it was clearly the intention of those who drafted the legislation that Council would set standards to cover individuals who applied to register qualifications awarded more than five years previously.
- Discussion**
- 3 A solution can be delivered through Council specifying the relevant standards that need to be met both for those who seek initial registration (eg. registered nurse) and those who seek post-initial registration for a recordable qualification (eg. prescribing).
 - 4 Council has approved standards that students must meet:
 - 4.1 At the point of initial registration contained within the *Standards for pre-registration nursing education* (NMC,2010), the *Standards for pre-registration midwifery education* (NMC,2009) and as a subsequent qualification the *Standards for specialist community public health nursing* (2004).
 - 4.2 For the post-initial registration of a recordable qualification; these are specified in Annexe 2.
 - 5 **Recommendation:** The Council is recommended to approve that for any person who first applies for registration more than five years after being awarded an approved qualification, the standard required is that the person must be able to demonstrate at the point of registering the qualification that he or she meets the NMC standards that currently apply to the qualification.

How to meet the standards

- 6 The relevant standards applying to those who obtained an approved qualification more than five years ago may have changed. For example, applicants awarded an approved qualification which met the *Standards of proficiency for pre-registration midwifery education* (NMC, 2004) would now have to demonstrate at point of registration that they met the *Standards for pre-registration midwifery education* (NMC, 2009).
- 7 We have identified two possible ways, which could be explored and developed by which such an applicant could demonstrate that he or she meets the current standards.
 - 7.1 The first one is retraining. This is the current 'default' stance. It is spelt out because for five year applicants who have not practised in the intervening period, it may be the best option in the interests of public protection. In cases such as nurse

prescribing, retraining is the only recommended option.

7.2 The second one is aptitude testing. Three tests have been developed with an approved education institute (AEI) that could apply to five year applicants who wish to register as nurse (adult and child only) or midwife. The current tests for nurses would need to be modified to align them with the current pre-registration education standards.

8 **Recommendation:** The Council is recommended to approve the development of guidance on ways to meet the standards. This work will be overseen by the Directors and Education Committee.

Public protection implications

9 Nurses or midwives who have not registered a qualification and who may not have practised, since qualification or for a long period, would be able to demonstrate that they had the current knowledge and skills to enter the register.

Resource implications:

10 Guidance setting out the ways by which the standards can be met will be developed over the next six months. The staff resource has been identified and financial cost included in this year's budget.

11 Development costs would include stakeholder engagement and a communication plan. These have been incorporated in budget proposals for 2013/14.

Equality and diversity implications:

12 An Equality Impact Assessment (EqIA) will be an integral deliverable in the project scoping process. There will be a particular focus on equality issues that may have contributed to the situation of five-year applicants.

Stakeholder engagement:

13 We will engage in particular with educators, professional organisations and registrants.

Risk implications:

14 The NMC is vulnerable due to our failure to set a standard addressing five year rule issues. It is imperative that we develop options for five year applicants to demonstrate that they meet current NMC standards prior to entering the register.

15 We will undertake a full risk assessment early in the project.

Legal implications:

16 The Order and Rules clearly envisage that we specify a process wherein individuals affected by the five year rule can demonstrate competence to practise by further study or assessment. Establishing a standard will meet this requirement.

Annexe 1

Relevant sections of the *Nursing and Midwifery Order 2001* and the *Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004*

Article 9 of the Nursing and Midwifery Order 2001 (the Order) sets out the requirements governing applications for admission to the register. Article 9(2)(a) requires that the applicant:

satisfies the Registrar that he holds an approved qualification awarded –

within such a period, not exceeding five years ending with the date of the application, as may be prescribed, or

before the prescribed period mentioned in head (i), and he has met such requirements as to additional education, training and experience as the Council may specify under article 19(3) and which apply to him;

Rule 7 of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 (the Rules) specifies that:

The prescribed period between the award of an approved qualification and application for registration, for the purposes of article 9(2)(a)(i) is five years.

Article 19(3) of the Order says:

The Council may by rules require persons who have not practised or who have not practised for or during a prescribed period, to undertake such education or training or to gain such experience as it shall specify in standards.

Rule 3(4) requires that:

A person applying for registration, renewal or readmission:

who first applies for registration more than five years after being awarded an approved qualification;

shall undertake such education and training or gain such experience as the Council specifies in accordance with article 19(3) of the Order.

The NMC's legislation thus envisages a situation where a nurse or midwife applying for registration for a qualification awarded more than five years before the date of application (a 'five year applicant') is able to undertake further education, training or experience to demonstrate competence to enter the register.

The five year rule applies both to qualifications from pre-registration education programmes and recordable qualifications from post-initial registration programmes.

Annexe 2

The Standards to be met by nurses and midwives who wish to register an approved qualification more than five years after being awarded that qualification

Initial registration

Standards for pre-registration nursing education (NMC,2010) – Standards for Competence

Standards for pre-registration midwifery education (NMC,2009) - Standard 17–

Post-initial registration

Standards of proficiency for specialist community public health nurses (NMC,2004) and related circulars – Standards of proficiency for entry to the register

Recordable qualifications

Standards of proficiency for nurse and midwife prescribers (NMC,2006) - Standard 10 (community practitioner (SPQ/SCPHN) nurse prescribers). Standard 11 (nurse independent/supplementary prescribers)

Standards to support learning and assessment in practice (NMC,2008) – NMC teacher standard

Standards for specialist education and practice (NMC,2001)- Standards for entry

Council

Report of the House of Commons Health Committee accountability hearing with the Nursing and Midwifery Council

Action: For discussion.

Issue: This paper provides a brief summary of the recommendations made in the House of Commons Health Committee's report of the 2012 accountability hearing with the Nursing and Midwifery Council.

Core regulatory function: Fitness to Practise/Registrations/Education/Setting standards/Supporting functions.

Corporate objectives: Objectives 1, 2, 3, 5, 6

Decision required: None

Annexes: The following annexe is attached to this paper:

Annexe 1: House of Commons Health Committee Ninth Report of Session 2012-13

Further information: If you require clarification about any point in the paper or would like further information please contact the author or the director named below.

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- Context:**
- 1 Our second accountability hearing with the Health Select Committee took place in October 2012. During the session the committee took particular interest in our work to address the recommendations of the CHRE strategic review, the (then) proposed fee rise and revalidation.
 - 2 The report does not take into account the recommendations it made in the report of the Francis Inquiry relevant to the NMC. The committee has said that they will report separately on these recommendations.
 - 3 Though the report rehearses a number of criticisms of the NMC – notably on the progression of FtP cases and the fee rise – it also contains more welcome statements.
 - 4 Significantly it represents the first independent recognition of our improved performance to be placed on record.
 - 5 It also makes recommendations for the Department of Health to expedite changes to our legislative framework and to work with us on finding a means of ensuring the language competence of applicants to our register from the EEA.

- Discussion**
- 6 We will need to consider the report carefully and respond in due course. The report makes a total of 22 conclusions and recommendations which are summarised below.

Summary of conclusions

- 7 The committee is satisfied that the NMC understands it must concentrate its efforts on FtP and revalidation (paragraph 26).
- 8 They acknowledge that we will have to compromise our additional functions in order to address our core functions (paragraph 28).
- 9 They welcome the NMC's commitment to improvement as demonstrated through our KPIs (paragraph 51), and note in particular the progress we have made in meeting our KPI for timely disposal of referrals (paragraph 35) and the fact that we have had no s29 referrals since September 2010 (paragraph 39).
- 10 They call on the Department of Health to bring our powers of review into line with the GMC (paragraph 43), to support the Council to ensure consistency of management (paragraph 69) and to support us in developing a means of ensuring language competence of applicants from the EEA (paragraph 87).
- 11 They register their concern at the under investment in FtP (paragraph 54).
- 12 They ask for updates on the following issues at the next

accountability hearing:

- 12.1 The outcomes of dispensing with external investigators (paragraph 45).
- 12.2 Progress in improving our IT systems (paragraph 63).
- 12.3 Financial planning (paragraph 55).
- 12.4 Quality of information provided for Council and committee scrutiny (paragraph 57).
- 12.5 Progress on improving staff culture and morale (paragraph 66).
- 12.6 A plan for the roll-out of revalidation (paragraph 82).

Summary of recommendations

- 13 The committee feel our KPI for resolution of a referral should be set at 9 months (paragraph 30) and that the maximum acceptable time should be 12 months (paragraph 31).
- 14 They urge us to clear the historic caseload entirely by 30 June 2013 (paragraph 33).
- 15 They recommend that our business model is flexible enough to accommodate fluctuations in FtP referrals. (Paragraph 48)
- 16 They urge us to move quickly to address our IT issues (paragraph 62) and to ensure that our systems are ready for revalidation (paragraph 81).
- 17 They do not see that a further increase in fees can be justified and urge us to consider introducing a phased payment scheme for registrants (paragraph 77).

Public protection implications:

- 18 This paper is for information only and relates to our role in protecting the public.

Resource implications:

- 19 Once initial decisions have been made about the possible actions the NMC wishes to take in response to these recommendations, then actual or estimated costs can be provided.

Equality and diversity implications:

- 20 Once initial decisions have been made by the Council about the possible actions the NMC wishes to take in response to these recommendations, equality impact assessments can be undertaken before any final decisions are reached.

Stakeholder engagement:	21	None at this stage.
Risk implications:	22	The risk of the NMC not responding to and addressing the issues raised in the report is that our profile with the Health Select Committee will not give them confidence in our ability to protect the public.
Legal implications:	23	None.

Meeting of the NMC Council

to be held at 9.30am on Thursday 25 April 2013 in the Council Chamber at 23 Portland Place, London W1B 1PZ

Agenda

Mark Addison CB
Chair of the NMC

Matthew McClelland,
Assistant Director,
Governance and Planning
(Secretary to the Council)

- | | | |
|---|---|-----------|
| 1 | Welcome from the Chair | |
| 2 | Apologies for absence | |
| 3 | Declarations of interest | |
| 4 | Minutes of previous meetings | NMC/13/xx |
| | Minutes of the public session of the Council held on 21 March 2013 | |
| 5 | Summary of actions | NMC/13/xx |
| | An action list detailing matters arising from the minutes of the public session of the Council held on 21 March 2013 and outstanding actions from previous meetings | |
| 6 | Report of decisions taken by the Chair since the last Council meeting | NMC/13/xx |

Corporate reporting

- | | | |
|---|----------------------------------|------------------------------------|
| 7 | Francis Report Update | NMC/13/xx |
| | Chief Executive and Registrar | |
| 8 | Risk Register | NMC/13/xx |
| | Director of Corporate Governance | TO FOLLOW IN 48-hour PAPERS |
| 9 | Chief Executive report | NMC/13/xx |
| | Chief Executive and Registrar | |

- 10 **FtP performance report / Report from Fitness to Practise Committee** NMC/13/xx
 Director of Fitness to Practise / Chair of Fitness to Practise Committee
 TO FOLLOW IN 48-hour PAPERS
- 11 **Monthly financial monitoring** NMC/13/xx
 Director of Corporate Services
 TO FOLLOW IN 48-hour PAPERS

Matters for decision

- 12 **Equality and Diversity objectives and action plan** NMC/13/xx
 Director of Corporate Governance
- 13 **Professional Indemnity Insurance** NMC/13/xx
 Director of Registrations
- 14 **Revised corporate complaints processes** NMC/13/xx
 Chief Executive and Registrar
- 15 **Unreasonable behaviour policy** NMC/13/xx
 Chief Executive and Registrar
- 16 **Quality assurance framework for education and LSAs** NMC/13/xx
 Director of Continued Practice
- 17 **NMC engagement plan** NMC/13/xx
 Director of Corporate Governance

Matters for discussion

- 18 **Draft annual governance statement** NMC/13/xx
 Director of Corporate Governance
- 19 **Reports from committees to Council on their effectiveness** NMC/13/xx
 Director of Corporate Governance

20 **Questions from observers** NMC/13/xx

LUNCH: (12.45 – 13.30)

21 **Feedback from committee chairs of meetings held since last Council:** NMC/13/xx

Audit Committee
Chair of Audit Committee

Education Committee
Chair of Education Committee

Midwifery Committee
Chair of Midwifery Committee

22 **Draft agenda for the Council meeting on 23 May 2013** NMC/13/xx

Director of Corporate Governance

The next public session of the Nursing and Midwifery Council is currently scheduled to be held on Thursday 25 May 2013 at 9.30am at the Nursing and Midwifery Council, 23 Portland Place, London W1B 1PZ.