

**Observer questions – Council meeting 28 July 2021**

Question 1 submitted by Mr Peter Bell, Member of the public	
<p>Dear NMC</p> <p>Could I please pose a couple of questions to the Council:</p> <p>a) Regarding my question at the last Council meeting on the forecast balance sheet and the investment of £30 million on the stockmarket</p> <p>The Council is forecasting / targeting a total return of CPI + 3% on its investment portfolio and has confirmed that any capital return will be retained in the investment portfolio</p> <p>This would mean that the £30 million should increase each year, but the forecast balance sheet shows this static at £30 million in each of the years ahead. Is this correct?</p>	<p><b>Response: Executive Director, Resources and Technology Services</b></p> <p>Dear Mr Bell, thank you for submitting the above question.</p> <p>The reason we have not budgeted for any gains is because we intend to leave those gains in the portfolio for the short to medium term, and we are not relying on any income or gains from the portfolio to fund our activities for the short to medium term. However, in the longer term, post five years, we may use the gains from the portfolio to fund expenditure and help keep the registrants' fee at £120, and if we do in future plan to use income and/or gains from the portfolio to fund our expenditure, then it would follow that we should include those income/gains in our budget at that stage.</p>

**Question 2 of several relating to Fitness to Practise submitted by Mr Peter Bell, Member of the public**

**Fitness to practise improvement programme update**

Can I encourage the Council to rethink the **reports on Fitness to Practise** that it asks the executive to bring to the Council?

1. Missing from this report is any metric relating to an assessment of the effectiveness of the whole Fitness to Practise regime – particularly on its contribution to patient safety, which is surely the underlying reason for having a Fitness to Practise regime in place at all.
2. There are no quantitative or qualitative measures reported about what happens to registrants who have been through the Fitness to Practise process – whether discharged at initial screening, investigation, case examiner or hearing stage – or whether the registrant progresses to some sanction.

**Response: Interim Executive Director, Professional Regulation**

Dear Mr Bell

Thank you for your questions, comments and suggestions. I(we) have endeavoured to respond to the individual points you raise in turn, please see below:

**Overall effectiveness of Fitness to Practise:**

The act sets out in some detail the Fitness to Practise process that we are required to operate. Our focus is to ensure that how we undertake this within the context of all our activity maximises our contribution to public safety and public confidence in the professions we regulate.

**Quantitative or qualitative measures reported on registrant outcomes:**

Our Annual Fitness to Practise report provides details of the outcomes of our processes where a final decision is taken [link]. For all registrants who are subject to conditions of practise orders or who have agreed undertakings in respect of their practise are monitored until they are able to return to practise without restriction or they are removed from the register.

Our Interim Order process enables us to act on the basis of the risk to patient and public safety or public confidence before any Fitness to Practise investigation is completed and this provides us with the means to proactively perform our role of public protection and engendering public confidence in the professions.

One of the outcomes must surely be an assessment of whether the Fitness to Practise regime assists registrants with any remediation, allowing them to return to practise as soon as practical or alternatively to remove from the profession any registrants where remediation is not possible and there is a danger to the public if they continue in the profession.

3. There also appears to be no financial assessment of the alternatives to taking so many registrants through the Fitness to Practise regime when compared with the costs of the Fitness to Practise procedures.
4. The statistics in the report appear to be framed to justify the continuance of the current system and rate of investment, rather than being a strategic overview of the options open to Council to consider.

**Financial assessment of the alternatives to taking registrants through Fitness to Practise:**

Under 5% of all concerns raised within Fitness to Practise are from NMC – in all other cases the referrer is exercising their right to require us to evaluate if the concern is appropriate for us to consider within our process and if so to investigate such that a final decision can be taken. We therefore cannot consider any alternatives on the basis of our choice regarding how to respond to a concern.

We do consider the efficacy of our approach on an on-going basis, both for those parties where the concern does engage our responsibilities and those many referrals where we are not able to deal with what is shared with us. We seek through partnership working, influencing, communication and creating additional support mechanisms to maximise our impact whilst fulfilling our statutory obligations.

**The statistics seem framed to justify the continuance of the current system:**

It is not within our gift to deviate from the current system nor to mandate that anyone raising a concern take their matter elsewhere rather than require us to consider it. We do regularly evaluate our efficiency and effectiveness of our approach and the efficacy of alternative complementary activities.

5. For example, there is no assessment of the financial impact of the Employer Link Service in reducing the number of new referrals to the FtP process. It looks as though increasing the spend on the ELS from 8 staff to 12 staff has considerably reduced the number of new cases. It would be helpful to see the financial savings which result from this activity in order to gauge whether additional monies should be invested in this initiative.

6. There also seems to be little discussion about the number of registrants referred to FtP who, having sat sometimes for 3 years or more awaiting their fate (often on suspension) are then discharged without any action being taken.

7. What is the financial impact on the registrants and on the profession as a whole in having so many registrants economically hampered whilst the threat of NMC sanction is over their heads.

**For example, there is no financial impact of the Employer Link Service in reducing the number of new referrals to the FtP process:**

We undertake a regular financial review and challenge process within the Executive that is designed to provide the forum for exactly this debate. The creation, development and expansion of the ELS has been possible due to demonstration of its added value.

**Little discussion about the number of registrants referred to FtP how, having sat sometimes for 3 years or more....., are then discharged without any action being taken:**

A report detailing the length of time cases have been at various stages of the process is provided to our local management teams weekly, the Executive monthly and Council quarterly. We are acutely aware of the fact that many cases have been with us for extended periods and that overall around 90% of our referrals ultimately close with no case to answer, no misconduct or no current impairment therefore requiring no further action. Our FtP Improvement Programme is delivering a number of changes that are designed to ensure that we are able to make informed decisions at the earliest possible stage of the process including revising our screening guidance, the importance of hearing about how a registrant may have strengthened their practise and the context of any matters that are raised to us. We monitor the levels of concerns that are concluded at each stage with these outcomes and we believe the actions above will reduce the number of referrals that travel through the process before ultimately concluding in such a fashion.

8. Between 60 and 80% of cases are discharged at the initial screening stage which means that, of the 3,108 cases awaiting screening, between 1,986 and 2,486 registrants are going to be released from any temporary sanction and have the threat of NMC sanction removed from them (because they are innocent of the charges alleged against them).
9. The charts which show median figures hide more than they display. Any statistician will tell you that mean, median or mode are simply different measures. What is wrong with providing a proper scatter chart which shows how long these 3,108 registrants are actually waiting for their innocence to be decided? And shows the shortest and the longest waiting time.

**Between 60 and 80% of cases are discharged at the initial screening stage:**

This is correct. We make full use of our powers to make enquiries at this stage to ensure that a fully informed decision is taken at screening. Our recent changes to articulate the impact of context on our decision making and the move to strengthening practise rather than remediation in our language all seek to obtain all possible information to make an appropriate, proportionate and informed decision.

**The charts which show median figures hide more than they display:**

Our regulator, the Professional Standards Authority, has a preference for median analysis and this is reflected in some of our metrics. We also do a detailed review of the number of concerns in different age categories on a weekly, monthly and quarterly basis as outlined above.

**What is wrong with providing a proper scatter chart which shows how long these 3,108 registrants are actually waiting for their innocence to be decided? And shows the shortest and the longest waiting time:**

This information is considered on a weekly, monthly and quarterly basis by the management team and a monthly basis by the Executive. We also report our longest and shortest cases as well as medians to our regulator together with case numbers that have been within our process beyond certain thresholds.

10. Of course, the costs per case at screening stage would also help the Council to focus on whether additional monies spent earlier in the process – supporting and educating employers to deal with matters locally would be a better spend of registrants monies.

11. And the same applies at the following stages – case examiners – where between 30% and 60% of cases are closed with ‘no case to answer’ or ‘no current impairment’. How long does it take the NMC to conclude (another scatter chart, please, showing minimum and maximum and distribution of duration) that the registrant should not have been referred to the NMC in these cases?

**Of course, the costs per case at screening stage would also help the Council to focus on whether additional monies spent earlier in the process – supporting and educating employers to deal with matters locally would be a better spend of registrants monies:**

We do consider the cost/benefit of our marginal decisions to make investment in growing the team, recognising that we are required to provide the fitness to practise process itself. When seeking to establish the detailed cause and effect relationship between our various actions, those taken in partnership with us, those from other organisations – quality drives within NHS trusts, regions or nations – and the underlying changing landscape of the concerns brought to us from all sources the picture is often less than clear-cut. This does not stop our constant efforts to seek to be an effective regulator by avoiding errors, patient harm and therefore referrals rather than responding to these.

Amongst our successes the implementation and growth of the Employer Link Service has delivered an identifiable, measurable and significant reduction in referrals from Employers where these matters were closed without the need for regulatory intervention.

**And the same applies at the following stages –.....**

Our responses above equally apply to other stages of the process.

12. And the backlog – which cannot all be put down to Covid – why is the NMC holding £30 million that it can invest in the stockmarket when it has so many registrants waiting (a recent case) 3 and a half years for a hearing decision?

13. Would it not be a better use of registrants fees to actually remove the backlog of cases and invest heavily in prevention and remediation rather than employ lots of FtP staff for years to come?

**And the backlog – which cannot all be put down to Covid – why is the NMC holding £30 million that it can invest in the stockmarket when it has so many registrants waiting (a recent case) 3 and a half years for a hearing decision?**

In terms of our backlog, the Council has committed to raising the expenditure of Fitness to Practise by approximately £20m over the next 2 years specifically to tackle the high numbers of cases - and an increased headcount within the directorate of approximately 100 full-time equivalent positions. When taking these decisions we must balance the imperative for action against the capacity of the organisation to grow, our marginal costs and the requirement to perform to consistently high standards in terms of our decision making.

We also acknowledge that case numbers were rising before the pandemic and our intention is to return numbers of referrals within the process back to or below those seen in 2018.

**Would it not be a better use of registrants fees to actually remove the backlog of cases and invest heavily in prevention and remediation rather than employ lots of FtP staff for years to come?**

As we state above, our fitness to practise processes are set out in statute and must be available for all. We do however agree that prevention and early engagement to support strengthened practise are the most effective way for us to perform our role and our strategy is to expand the activities that support these approaches.

<p>14. Again – where are the outcome measures – and I do NOT mean statistics on how many FtP cases settle at which stage – but the outcome measures of increased public safety and satisfaction amongst the public and registrants with the NMC’s regulatory functions.</p>	<p><b>Again – where are the outcome measures – and I do NOT mean statistics on how many FtP cases settle at which stage – but the outcome measures of increased public safety and satisfaction amongst the public and registrants with the NMC’s regulatory functions.</b></p> <p>We do undertake and report on customer satisfaction in registrations and in fitness to practise – that’s included in the performance report that went to the Council in July. We also undertake periodic qualitative perception work so that we understand in more depth what stakeholders and the public think about us and can use that to inform our work. We also undertake in depth stakeholder work and/or evidence reviews whenever we consult on any changes to the way we regulate; some examples include a detailed piece of work in 2017 which informed the FTP strategy; more recently we’ve done it on post registration standards and on our approach regarding the successor arrangements for EU directive references within our education standards. Given the infrequent nature of this work it is not conveyed within the regular periodic key performance indicator process but it is scrutinised by the Executive and Council.</p>
<p><b>Question 3 submitted by Mr Peter Bell, Member of the public</b></p>	
<p>Performance against corporate plan (page 50)</p> <p>Could I please ask that thought is given to making financial commentary intelligible?</p> <p>What does the phrase “over-accrual of external invoices” actually mean – in plain English, please?</p>	<p><b>Response: Executive Director, Resources and Technology Services</b></p> <p>Dear Mr Bell, thank you for submitting the above question.</p> <p>The financial commentary on page 50 of the pack highlights an underspend of £0.8m in the budget of the Professional Practice department for the first quarter of the year. One of the reasons for that is “over-accrual of external invoices”. That refers to costs that we had estimated that we had incurred in financial year 2020-2021, and we charged / “accrued” in the accounts for 2020-2021. It turned out that we had over-estimated those costs, and the correction reduces the costs that get charged this year.</p>

<p>And why has there been a halt in recruitment to some roles in the Modernisation of Technology Service?</p> <p>This is an area where the Council has repeatedly demonstrated weaknesses in planning and monitoring and has underachieved its targets for an area of its work that is hugely important. Why does this item keep coming back with adverse reports on progress?</p>	<p>The Modernisation of Technology Services programme was missing its delivery targets and overshooting its budget over the period from spring 2019 to summer 2020. More recently, though, the programme has been performing much better, and as noted earlier in the report the current phase is on track against time and scope and budget. We needed to improve the productivity of the programme, and we concluded that some of the roles that we had budgeted for were not necessary or would not be good value for money. So, we did not recruit to those roles, and that is part of the underspend against budget for the programme for the first quarter of the year.</p>
<p><b>Question 4 submitted by Mr Peter Bell, Member of the public</b></p>	
<p>Target for Information Requests (p 53)</p> <p>Could I ask why the “target” against a statutory requirement (of 100%) is only set at 80%?</p> <p>Forgive me but there is a legal requirement to respond to Information Requests in a particular timeframe. It is not an optional requirement. It is the law.</p> <p>Why has the Council set itself a target to break the law in 20% of cases?</p>	<p><b>Response: Executive Director, People and Organisational Effectiveness</b></p> <p>Dear Mr Bell, thank you for submitting the above question.</p> <p>Our target within the Executive Report papers is set 90% (not 80%) and we achieved 82% in quarter one.</p> <p>In 2019-2020 we sought guidance from the Information Commissioner’s Office (ICO) on setting targets for this. The ICO confirmed that below 90% is the threshold at which an organisation is added to their ‘watch list’. They advised us that a target of 90% is therefore acceptable. We put this target in place for 2020-2021 and continued this for 2021-2022.</p> <p>While we clearly do want to aim for 100% compliance, the Information Commissioner’s Office recognises it’s unlikely that public authorities will achieve that and that 90% is acceptable.</p>