HOUSE OF COMMONS

Health Committee

Oral evidence: 2015 accountability hearing with the Nursing and Midwifery Council, HC 847
Tuesday 13 January 2015

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Written evidence from witnesses:

- Nursing and Midwifery Council

Watch the meeting

Members present: Dr Wollaston (Chair), Charlotte Leslie, Grahame M. Morris, Andrew Percy
David Tredinnick

Questions 1 - 66

Witnesses: **Jackie Smith**, Chief Executive, NMC, and **Dame Janet Finch**, Chair, NMC, gave evidence.

Q1 Chair: Good afternoon. Welcome to the Select Committee and particularly Professor Dame Janet Finch. It is your first appearance before us, having just taken up your role.

Professor Dame Janet Finch: It is indeed, yes.

Q2 Chair: Perhaps we could start this hearing with you introducing yourselves to those following this debate. Jackie Smith, welcome too.

Professor Dame Janet Finch: Thank you very much; I would be happy to do that. My name is Janet Finch. I am the chair of the Nursing and Midwifery Council and I began that role at the beginning of January.

Jackie Smith: Thank you, Janet. I am Jackie Smith. I am the chief executive and registrar of the Nursing and Midwifery Council. I have appeared before the Committee on a number of occasions in the past. Thank you.

Q3 Chair: Thank you for coming this afternoon. Could we perhaps start by looking at the difference between the highly critical report of the NMC from the Professional Standards Authority commissioned two years ago and the subsequent review that you commissioned from KPMG? We still see in the follow-up statements from the PSA that there is some discrepancy between the performance that has been commented on by KPMG and the PSA. Could you say what you feel about those differences and the accuracy, and why the discrepancy exists?

Jackie Smith: Certainly. Perhaps I should say a few words about that. Of course, this Committee will remember that the PSA carried out a strategic review in 2012 and it made 15 recommendations. The fundamental recommendation was that the NMC needed to focus on its core purpose of protecting the public. What they also said was that the NMC needed to demonstrate improvement within a two-year period. So what we decided to do was to seek an independent review of progress against those recommendations, and that is in the form of the KPMG report which was published last September.

The headline of that is that the NMC is in a much stronger position than it was in 2012. They assessed the progress against those specific recommendations. They concluded that we are absolutely focused on protecting the public and that we have demonstrated across the board that we have made progress. They identified a couple of areas where progress had not been as good and as fast as others that they would expect to see, and this Committee may well wish to return to that. In a sense, they were testing where we were two or three years ago compared with now against those recommendations. Of course, what the PSA has been looking at for a number of years is our progress against the standards. It is two slightly different things. What the Committee can take from both, in effect, is that the NMC has made a lot of progress in some key areas, but we still have much we need to do. We are not complacent about that; we recognise that we do.

With regard to the standards we are not meeting, there were seven where we have not met them and two where we were inconsistent, largely around Fitness to Practise, some around customer service and registration, and, of course, revalidation. I am happy to detail the progress that we have made in Fitness to Practise, particularly in relation to the adjudication key performance indicator, which we have now met. I am hopeful that on the basis of demonstrating that improvement in relation to timeliness that the PSA, when it does this year's performance review, will feel reassured, particularly in that area, that we have demonstrated sufficient progress. It is possible to read both reports and to recognise, as the PSA do, that we have made improvements across the board.

Q4 Chair: But it presumably is still of great concern to the NMC—not to say your registrants—that you are still not meeting seven of the standards. Could you set out what you are going to tackle next? As you point out, there is recent data that you have met one of those standards on waiting times, but what is your next priority for action against those standards?

Jackie Smith: What we did in July 2014, as we always do, was to present the PSA's performance review to our Council. The Council decided that we should focus on four thematic areas around customer service, quality assurance, and our ability to demonstrate that we are taking action where we need to in Fitness to Practise. We are focusing in those areas

to be able to demonstrate to the PSA that we can meet the standards. In addition, we are tackling the areas identified by KPMG in relation to the original recommendations, and specifically IT, where I think we have made progress. Again, I am happy to give examples of that. The big, long-term solution we have not yet implemented and that is the place where we need to get to.

I am confident that, as an organisation, the Council is holding the Executive to account appropriately and that we take a thematic approach to the areas that the PSA has identified. As I say, we are not complacent. We know we still have a lot to do and it is terribly important that as a regulator we win back the confidence of the professions and the public. We have demonstrated, however, that we have achieved a lot in the last two years. There is still more to do.

Q5 Chair: When you appear in front of our successor Committee next year, in which areas are you confident that you will have now met the standards?

Jackie Smith: We can demonstrate to the PSA progress in Fitness to Practise. As I say, we have achieved the adjudication KPI. You may recall that was a condition of the £20 million grant from the Government, to keep the fee at £100. We signed up to achieving a target of no more than six months waiting in the adjudication queue for hearings. There was a lot of scepticism about the NMC's ability to be able to achieve that, but actually we have done it. We have done it in 93% of cases.

Chair: My colleagues want to come on to that further.

Q6 David Tredinnick: I just wanted to pick up on something you said—I am not sure if we are going to ask about this further on—and that is the information technology issue. Has that proved very difficult for you? Is that one of the key reasons why you have had problems generally in maintaining the standards as set?

Jackie Smith: We have not made quite the progress in terms of the long-term solution to our systems, but there are five areas where we can demonstrate we have made progress in relation to the systems.

The first is NMC Online. Of course, it is essential for our registrants that they can access the systems in an efficient way, which provides a better customer experience. That is the first thing that we have done. Of course, we are preparing for revalidation and we need to have our systems effective for us to be able to roll out revalidation online. We have introduced an overseas test of competence that allows registrants to take the first part of it anywhere in the world, and we are introducing case examiners. So there are a number of things that we have done with our systems to make the experience for customers better. The long-term solution is what we need to provide to the Council for them to be able to say, "Yes, that is a proper investment and that is the right road to take." That is the place we are not yet at. Of course, that is linked to the strategy that this Council will consider, with Dame Janet's

valuable input, in the next few months, because where we need to be is being savvy about our data and being able to use it in an effective way to enhance public protection.

Professor Dame Janet Finch: I might just add one or two points, Chair, if I may. This is very early days for me. I am still learning a lot about the organisation, but I have to say in my early phase as the Chair that I am really impressed with the progress that has been made. I know you are rightly focusing, as we are, on the things that still need to change, but when you consider where the Council was two or three years ago it is very impressive that so much progress has been made. The Council is now very focused, as is the Executive, on priorities that really make the difference. So I am very comfortable about the approach that is being taken. Perhaps it is worth saying that the KPMG report particularly highlighted governance as an area where they said it was "enhanced progress", that is to say going further than they would have expected in two years. So the governance of the organisation is really very strong now. My predecessor Mark Addison as the Chair, obviously, bears a huge amount of responsibility for that. He did a very, very good job.

The fundamentals of how decisions are made, how priorities are set, holding the Executive to account, as Jackie said, are all very strong now. That doesn't mean to say that we believe we do not have to make any further changes—we plainly do—but the environment is there in which they can happen.

Q7 Andrew Percy: The number of Fitness to Practise referrals is on a steady increase. I know it dropped in 2012-13, but the general line is upwards. What is the driver for that, just before I get into my main question?

Jackie Smith: That is a really good question and I know it is a question that you have put to us before. It is difficult for us to be able to say there is one thing that is driving this. Our guess—we haven't done any research around this—is that it is a combination of factors. It is public expectation, quite rightly, so an increase in complaints to us from members of the public. It is high profile incidents that bring the NMC as an organisation to the awareness of the public, so it is lots of different factors. Last year, 2013-14, we had a 14% increase in referrals. This year we are looking at round about 10% to 11%. Of course, that is true for all the regulators. They have seen an increase and it is an area where we need to understand it a bit better than we do.

Q8 Andrew Percy: The chart we have here shows that 45% of referrals are coming from employers. Obviously, post-Francis and all of the publicity there has been around that, one could understand why perhaps there would be an increase in referrals from the public. That is perhaps to be welcomed, in one respect, because it means people are wanting the system to be more transparent, but what is the breakdown in terms of the numbers of referrals coming from an employer, because a referral coming from an employer is perhaps more worrying in many ways? Has there been a big increase in that and what work has been done to get behind why that is happening?

Jackie Smith: Off the top of my head, I cannot give you the data around referrals from employers, but perhaps I could say two things about the importance of working with employers. Of course, revalidation, when we roll out revalidation, will help us understand a bit more of that because we will be engaging with employers at a much earlier stage. Also, our proposal is to try and link with employers so that we provide advice at an earlier stage in order that we can understand what is driving referrals to us. If we go right back to the beginning, of course it is about setting the right standards for registrants who join our register. Our standards do bear scrutiny and are delivering what we need them to, but, again, we should not be complacent. There are two things we are doing—revalidation and linking with employers to give advice at the appropriate stage.

Q9 Andrew Percy: Obviously, when complaints do come in, timeliness is important, as we have been debating. I think I heard you say in response to the Chair's question that the target for adjudications has been met now.

Jackie Smith: Yes.

Q10 Andrew Percy: At 93%.

Jackie Smith: Yes.

Q11 Andrew Percy: In terms of the start to end target, which is 15 months, I believe, we have in our brief that it currently stands at 69% of cases.

Jackie Smith: Yes.

Q12 Andrew Percy: That is correct, is it?

Jackie Smith: It is.

Q13 Andrew Percy: When will that time frame be reduced from 15 to 12 months?

Jackie Smith: Perhaps that gives me an opportunity to mention the Law Commissioner's Bill, if you will forgive me. We were desperately disappointed. I am sure you have heard that from others, but for us particularly, because, if you look at the performance review information published by the PSA, we hold two and a half times as many hearings as all the other regulators put together. We spent £55 million on Fitness to Practise last year. It is not sustainable. That has a direct impact on our registrants. We have a duty to be efficient and effective, and to be able to do that better by reducing the time it takes us we need help. We need the next Government to make a commitment that we will see the Law Commission Bill see the light of day. We have to have it.

Q14 Andrew Percy: Why are you holding twice as many hearings? What is the—

Jackie Smith: Because if you compare us with the GMC, for example, in 2013-14 they had 241 final hearings—we held 2,332—because they are able to dispose of cases in a way at the end of an investigation that we can't do. The time is significant, the cost is significant and the impact is significant. This is why we desperately need it. Any help this Committee can bring would be much appreciated.

Q15 Chair: Perhaps I could bring that part of the questioning forward, now you have started on that, because there is not going to be a Law Commission Bill in this Parliament, and we have already expressed the fact that we share your disappointment in that. In terms of regulations, if there were a priority that could be set out in regulations, what would be your clear priorities at this stage?

Jackie Smith: Our clear priority is enabling us to reduce the number of hearings that we hold.

Q16 Chair: In terms of regulations, some of this could be brought forward in regulations, as has been done on behalf of the GMC.

Jackie Smith: In terms of section 60?

Chair: Yes.

Jackie Smith: Yes, if we had to. That is not our preferred option.

Q17 Chair: It is not ideal. We are all agreed it is not the preferred route, but, given that time is of the essence here, if there is something that can be achieved through regulation, it will be quicker than waiting for the alternative.

Jackie Smith: Absolutely; thank you for that opportunity. If we had to pick then, we would say we want to be able to dispose of cases in a way that the GMC do at the end of their investigation process because that is the thing that makes the difference in terms of time, cost and impact.

Q18 Chair: Have you corresponded with the Department of Health on exactly how that could be put in place in regulations?

Jackie Smith: We had previously made a request, going back two or three years, that we would like to have a section 60 rule which enabled us to have that option, so they know it is a priority for us.

Q19 Chair: They know exactly what you wish them to take forward.

Jackie Smith: Yes, they do.

Q20 Chair: What response have you had from them so far in terms of discussion?

Jackie Smith: Their response is that they are still hopeful the Law Commissioner's Bill will come into effect in the next session of Parliament. They recognise that, if that is not likely, they need to be talking to the regulators about what they most need—so exactly this discussion. They have not committed to anything and they have not promised anything, but we will be saying, as an organisation, from a simple business model it is not sustainable.

Q21 Chair: Could you perhaps set out to this Committee in writing exactly what regulations and what would need to be achieved by those regulations so that we can ourselves put that again to the Department of Health on your behalf?

Professor Dame Janet Finch: We would be happy to do that and thank you for your support.

Chair: Thank you. Andrew, we drifted off your line of questioning.

Andrew Percy: You have. I am happy where we are now. I will come back in later, if that is all right.

Q22 Chair: In that case, perhaps could I just follow up one point from this, and that is the historic cases? I have certainly, and I know several colleagues from this House have, written to the NMC about long overdue cases. Is there a danger that, in wanting to meet the target, you are prioritising new cases that are near the time limit at the expense of some individuals whose lives are being severely disrupted by the fact that they cannot practise at the moment because they are waiting for a hearing? Is there not a case for trying to clear those individual cases rather than try and pursue targets? Is it an injustice to people who have been waiting a very long time indeed?

Jackie Smith: Sure; I do understand that and I absolutely understand why you are questioning whether that is in fact our practice. Let me say at the outset it is absolutely unacceptable that we take years to dispose of cases. That is not acceptable and I am sorry about those cases where we have done that. I can say that the cases that are three years and older are down to a number of round about 50. As you will know in this Committee, it used to be considerably more than that. The approach that we took to achieving the adjudication KPI was not to go down that road, was not to prioritise those cases where we thought we could, but to deal with the oldest cases first, because we felt that that was the right thing to do. It would have been easy for us to say let us take the younger ones first because we will get there quicker, but we did not do that. We identified 1,100 cases, which we tracked individually—they were the oldest—as well as the others that were naturally forming the queue, so that we could deal with the oldest ones first. Of course, there will always be cases

which are held up because something else is going on and that prevents us from reaching a conclusion. We need to think about ways in which we account for those cases, but we absolutely have not neglected older cases to put the newer ones through first.

Q23 Chair: Would you accept that some of your registrants feel concerned that they are not getting enough information about why their particular long-standing case is being delayed?

Jackie Smith: Yes, I absolutely accept that we can communicate what we are doing better. Maybe one of the actions we can take away from this is reassuring registrants and the public that we have not chosen an easier route here. We have been very determined to clear older cases first and that is what we have largely succeeded in doing.

Q24 David Tredinnick: Before I go on to my questions about Fitness to Practise decisions, I must say, Chair, I am slightly alarmed to hear your drifting towards the edge of the cliff philosophy with your work load and there not being a Law Commission Bill. If there is not going to be a Bill, there isn't. I do not think you can guarantee it will be in the next session at all and you may have to work within your existing resources. I would like to hear what contingency you have in place to function effectively if you are not granted a lot more money. I do not think it is personally satisfactory to say, "We are just not going to be able to do it." You have a duty to see what you can do within the existing arrangements. I do not think you can bank on anything, particularly with the general election coming up that we have this time round. Would you like to comment on what I have just said?

Jackie Smith: Yes, I absolutely agree. We are not using the lack of a Law Commission Bill as an excuse for poor performance.

Q25 David Tredinnick: I am not saying that. I am saying that you have said to the Committee—forgive me for interrupting you, but this is my understanding—that the work load is unsustainable. You used the word several times. I am saying to you—but you may not get a whole lot more resources and you may not get a Law Commission Bill. So I do not think it is very good practice to almost allow your engine to just travel on to hit the buffers. There has to be some internal mechanism to perform effectively within the constraints that you have.

Jackie Smith: Yes. I am sorry if I created the impression that that was where we were. We are not. Just on the financial model here and the business sustainability, we have built in £25 million-worth of efficiency savings so that we can operate within a reasonable fee level, because we are obliged to do that. As we have demonstrated, we can make improvements in terms of timeliness because we are hitting a 15-month target in about 69% of cases from beginning to end. We are not being complacent about operating with the limitations that we have. We recognise that we may not see any changes, but we are duty-bound to point out the impact of that.

Q26 David Tredinnick: You have not met two of the PSA standards—the one relating to Fitness to Practise decisions and the one relating to secure retention of information, and security is very much in all our minds at the moment; and that is in any performance review since 2010-11. Why is this? Going back to my earlier question—not the one I have just asked—is any of this related to the inability of IT systems to communicate to each other? I know you say you are making strides forward, but very often in organisations the inability of information technology systems to talk properly to each other increases costs and inefficiencies.

Jackie Smith: Partly it is about the fact that our two systems do not talk to each other, which means that we have to—

David Tredinnick: There you go.

Jackie Smith:—have alternatives in place, which means using employees to check. That is one aspect of it.

Q27 David Tredinnick: I am sorry to interrupt you on that. It means that the efficiency savings that you were talking about in terms of personnel and salaries cannot be made because the IT is not up to scratch.

Jackie Smith: The IT is not ideal, but it doesn't stop us being effective. I do think something about the volume that we are dealing with here is relevant. In the last six months we made over 1 million transmissions—1.2 million. What is really important for us is that we treat the data that we have with the utmost care. Where there have been information security breaches, they are relatively few but every single one is terribly serious, and they have been the result of human error. I do not think any system can prevent that from happening. Our focus is ensuring that our staff are trained and educated in the meaning of treating data with the utmost care. We have been in discussions with the Information Commissioner's Office, we have talked to them about good practice, and we have asked them if there is anything else we ought to be doing. Regrettably, human error does occur and I do not think we can have a system in place—

Q28 David Tredinnick: We find it here too. We all accept there is human error. Just moving on from that, if I may, because we have a lot to cover this afternoon, on March last year the Professional Standards Authority published an audit of some of your cases, including some from Mid Staffs. They found, in relation to those Mid Staffs cases, failures to gather sufficient information or evidence and failure to take information or evidence into proper account when deciding whether to close the case. They say that as a result "either the wrong decision was made, or the decision that was made was based on unsound or inadequate reasons". What do you say to that?

Jackie Smith: Our record in relation to Mid Staffs cases is pretty good. We looked at over 50 nurses and midwives. Some of those cases were very old; some of them date back a

number of years. We did strike off five nurses or midwives coming from Mid Staffordshire, including the director of nursing, so we do have a reasonable story to tell in relation to the seriousness with which we took those cases and our handling of them.

David Tredinnick: Thank you very much.

Q29 Chair: Can I just come on to the issue of the number of cases that have been appealed? The number of NMC decisions that the PSA appealed under section 29 has increased from four in 2013 to 11 last year. The PSA has stated that it would be "cautious", as they put it, about drawing conclusions from the increase, but have you made any attempt to analyse why that is?

Jackie Smith: What we do know is that over the last three years we have made 5,000 final panel decisions and the PSA has appealed 0.29%. So the numbers are actually very small, which gives us a reasonable amount of confidence that our decision making is where it ought to be. Of course, we don't want to see any cases where the PSA appeals on the basis of an unduly lenient outcome. We take training our panel members very seriously; we engage with them all the time, and we obviously want to know about every case where the PSA feels that we have made the wrong decision, but I do think the numbers are relatively small.

Professor Dame Janet Finch: If I could just add, I agree with the PSA that one should be cautious about drawing any conclusions. If you look at the comparison between the two years of the total number of cases that we have dealt with and, therefore, which the PSA have reviewed, the actual total number has also increased.

Q30 Chair: Thank you for that. Another issue is the issue of registrants who have lapsed from the register before the PSA can appeal the case, and, obviously, the high profile case of Jan Harry, the former director of nursing at Mid Staffs. Can you explain your view on this problem, because that is something that does concern the public?

Jackie Smith: This is where our legislation requires the registrant to lapse. It is mandatory, so this is where we differ from the HCPC in terms of our legislation.

Chair: Right.

Jackie Smith: It has to happen. The PSA's concern here, which we absolutely share, is that we need to change our legislation to prevent that from happening. We and the PSA have been talking to the Department of Health about prioritising that change.

Q31 Chair: That is another issue you would like to have changed in the regulations.

Jackie Smith: Yes.

Q32 Chair: Again, perhaps you could include that in your letter so that at least it is something that perhaps could be achieved in the last few months of this Parliament.

Jackie Smith: Certainly.

Chair: I am going to come on now to Grahame.

Q33 Grahame M. Morris: My question is in relation to the consultations on revalidation that the NMC has been undertaking over the last year or so. The Professional Standards Authority stated that in their opinion these were "disappointingly lacking in detail" and particularly highlighted the lack of analysis of the types, severity and prevalence of risks being presented by different groups of nurses and midwives. Could you tell the Committee if, in responding to the concerns of the PSA and others, you have adapted your revalidation plans to target the highest risk groups of professionals? I know earlier on, in response to a question from my colleague Andrew Percy where you were talking about Fitness to Practise hearings, you said you were doing the oldest ones first and not necessarily the ones that were presenting the highest risk; but what about revalidation?

Jackie Smith: Our model is a one size fits all. That is for practical reasons but also because we do not have data to identify high risk groups. That is not to say that we can't work with employers during the revalidation process to enable them to help us identify high risk groups. It is a one size fits all. It is based on the concept of appraisal, reflecting on the Code, getting feedback from patients and service users, and confirming to us that they have met the revalidation requirements. I do note that the PSA has concerns about the model, but I would say that we need to start somewhere with revalidation. What we have proposed will make a difference in time. It is important that we have some sort of check and balance on individuals who sit on our register. That is a public expectation and it is what the professions want to demonstrate.

Q34 Grahame M. Morris: The PSA had a number of criticisms. One of their suggestions was that the NMC could learn from research and development work carried out in this particular area of revalidation by other regulators. Have you done that?

Jackie Smith: We have talked to other regulators and we have taken account of what they are proposing. One of the other challenges we face is that we need to work within our existing legislation. We are not able to simply decide ourselves where, as a registrar, I can ask for further information. That takes us down the one-size-fits-all approach. This is something that we can finesse over time. I do believe that revalidation gives us the opportunity to carry out the necessary checks, but only time will tell the value added to public protection.

Q35 Grahame M. Morris: Can I just pick out one more thing that the PSA was saying in terms of the consultation exercise? You have touched on it to a degree. They say that the Nursing and Midwifery Council had not fully considered how the revalidation proposals would actually work in practice, or what impact they would have both on registrants and on employers. Having taken note of that comment from the Professional Standards Authority, how did you try to address that in terms of the impact on registrants—your members—and on employers? You did say it is difficult to do that because of the numbers involved and the variety of workplaces and employers and so on.

Jackie Smith: We are proposing a system that is linked to appraisal. In most cases, certainly within the NHS, compliance with appraisal is running at about 85%, so most nurses and midwives have an annual appraisal. In terms of this being particularly burdensome, we have proposed something that would work. Two things are really important; we have 18 pilot organisations that are operating the model that we have proposed this year. It is absolutely essential that we take account of the information we get back from those pilots, not only the individual experience of it, but the impact on the organisations and their ability to be ready for it to be able to deliver it. That is the impact on the system. If we hadn't proposed this model, then you might be asking us a set of different questions, but it is a model that can work because the systems do exist.

Professor Dame Janet Finch: I can absolutely assure you that the Council will want to take account of what comes out of the pilots and, if necessary, make adjustments if there is a case for doing so.

Q36 Grahame M. Morris: Okay; thanks. I would like to ask a question about Standards of Conduct, Performance and Ethics—the Code that has been also consulted upon. You have also carried out a consultation on the Code this year, and, again, the PSA and the RCN have made some less than positive comments about the initial drafts and the consultation process. The question I would like to ask is, are you confident you have taken full account of these negative comments from the RCN and the PSA in amending the final version of the Code?

Jackie Smith: The short answer is I am absolutely confident we have. There were a number of criticisms of the Code that we went out to consultation on, but we have done a tremendous amount of engagement to listen to those concerns and to respond appropriately. We have had quite a lot of feedback since we produced the final version to say, "That is much better. Thank you very much for listening to our concerns."

Q37 Grahame M. Morris: Could I ask just one more supplementary for my information? It follows on from a line of questioning from last week from the accountability hearing we had with the GMC. In their Code of Ethics, paragraph 80 relates to conflicts of interest. Do you have anything similar in the NMC, in your Code?

Jackie Smith: Can we return to you on that, please?

Q38 Grahame M. Morris: Please. I looked through the evidence to see—do we have a copy of the final draft Code?

Jackie Smith: If you don't, can I make sure that it is sent to you?

Grahame M. Morris: I may have missed it.

Chair: Just before we move on to regulation of midwives, can I just bring in Andrew Percy for one final point on removals?

Q39 Andrew Percy: Yes; this is voluntary removal from the register. The PSA made significant criticism of the process. The quote we have here is the NMC "has failed to train its staff, decision makers and panellists adequately on the application of the guidance, that it has misinterpreted key aspects its own guidance, that it has misjudged the seriousness of various cases and that its decision makers have failed to demonstrate that they have considered all the relevant factors appropriately and reached sound decisions." So they have not really pulled any punches in respect of these voluntary removals. What is your response to that and how have you addressed those quite serious concerns?

Jackie Smith: We were obviously very concerned to read their views on that. At the time they carried out the audit of those cases it was a very, very new process. It was back at the beginning of 2013, so two years since. We took full account of their criticism, which was really around documenting our decision making. We amended our guidance, which was approved by the Council, we shared it with the PSA, and we invited them back in to audit our voluntary removal cases. So we took full account of their comments.

Q40 Andrew Percy: Have you changed how those decisions are made, because one of the criticisms was that they are not made by a panel, are they?

Jackie Smith: No, they are not.

Q41 Andrew Percy: Is that still the case?

Jackie Smith: That is correct.

Q42 Andrew Percy: Is there still the risk then that the perception at least could be that those decisions are not subjected to proper scrutiny?

Jackie Smith: They are, of course, scrutinised by the PSA, and we would welcome that and continue to welcome that. Where the confusion perhaps arises is in relation to those consensual disposal cases, which are ratified by a panel, and voluntary removal cases, which are not but of course can be scrutinised by the PSA.

Q43 Andrew Percy: The PSA, I think you said, have positively responded to your changes then, have they?

Jackie Smith: We have shared the guidance with them. They have been in to do an audit of Fitness to Practise cases. We haven't yet seen the report so we do not know what their view is. I was simply referring to the fact that this was two years ago and it was a very new process at the time.

Q44 Andrew Percy: We do not know what the PSA's view is.

Jackie Smith: We do not know, no.

Q45 Andrew Percy: In terms of independent scrutiny, given that there is not a panel process for this, do you accept, though, that there is still the potential for, as I say, the perception that there is not independent scrutiny? Presumably, the PSA could very well come to the same conclusion again, could they not, because nothing has really changed? That is what you are saying, I think.

Jackie Smith: We have changed our process to fit with the PSA's criticisms and the areas that they wanted to see improved. They were concerned about the extent to which we took account of the wider public interest. Those cases that they looked at were very old; the allegations were very old. Of course, voluntary removal is about effectively protecting the public, so if you remove someone from the register you do it very quickly. That is important to bear in mind. In the last six months there have been 107 applications to voluntarily remove from the register and we have agreed in less than half of those; so we do not automatically accept someone's request to remove themselves. We do apply the criteria strictly. We have learned the lessons from the PSA's comments.

Q46 David Tredinnick: Turning to the regulation of midwives and Morecambe Bay, following the Ombudsman's review of the three cases at Morecambe Bay, she recommended that midwifery supervision and regulation should be separated and that the NMC should be in direct control of regulatory activity. Can you just give us a brief overview of what you perceive to be the problems with the current system? I know you have touched on some of this, but I just want to whizz through this.

Professor Dame Janet Finch: It is a complicated subject.

Jackie Smith: So, briefly—

Q47 David Tredinnick: What are the problems with the current system?

Jackie Smith: In effect, what the Ombudsman was saying was that the NMC did not have sufficient control. That is because the LSA function—the local supervising authority—sits in the NMC's legislation; so statutory supervision is in our legislation. Of course, we don't appoint the midwifery officers who comprise the LSA function, so they are not accountable to us but they do provide us with an annual report on progress. They carry out the annual supervision of midwives. What the Ombudsman highlighted in her report was the potential for conflict between supervision and investigation, plus the NMC's lack of control. What the Council did in January of last year was to accept that there was a structural flaw and that we needed to commission the King's Fund to take a look at whether there was a wider issue that we needed to understand.

Q48 David Tredinnick: You got hold of the issue, you took it out to the King's Fund, and I understand they are reporting soon; is that right?

Professor Dame Janet Finch: The Council will receive their report at our meeting in two weeks' time.

Q49 David Tredinnick: The Royal College of Midwives has argued that the complex structure of responsibility and management, including local supervising authorities—which are now part of NHS England—and the NMC has resulted in "a hands-off approach and on occasion no real oversight as to how the supervision of midwives is delivered at the grass roots". That is another criticism.

Jackie Smith: Obviously, the RCM has a particular perspective here and we are mindful of that, but the Council's decision last January accepted that there needed to be change. There needs to be a system of regulation for nurses and midwives that best protects the public and is understandable.

Q50 David Tredinnick: If the NMC is to take a more direct role in midwifery regulation in the future, going back to the earlier questions about finances organisation, do you think you have the capacity to do this at the moment? Can you do it within your current structure and resources?

Jackie Smith: I do not think there is any doubt about that at all because we regulate nurses who comprise 630,000 on our register.

Q51 David Tredinnick: The RCM also told us that in their view it is inappropriate for midwifery regulation to be the responsibility of a regulator which is "very much perceived as being for nursing" and highlights the absence of a single professional midwife working at the NMC. In their written evidence they raise three specific concerns and I will fire them all at you in one go: insufficient knowledge of midwifery within the NMC; insufficient input into midwifery decisions by the Midwifery Council; and specific public protection issues

relating to the operation of the Specialist Community Public Health Nurse part of the register in regard to midwives.

Professor Dame Janet Finch: May I just make one comment before Jackie goes into the detail of that?

David Tredinnick: Please do open up.

Professor Dame Janet Finch: The NMC has, within its structure, something called the Midwifery Committee, which is a statutory body. There is not an equivalent for nursing. The Council is required to, and certainly will, take note of the views of that body on the proposals from the King's Fund before we take the decision on it. That, of course, is obviously composed of very significant figures within the midwifery community. So you can be very reassured that the voice of midwives will be heard when these decisions are taken.

Jackie Smith: Shall I attempt to deal with those three points? Of course the NMC in the past, as we were referring to right at the beginning of this session, was criticised for not focusing on its core purpose, which is protecting the public. We do have a very effective Midwifery Committee which advises the Council. The KPMG report and the PSA demonstrate our ability to engage extensively with our stakeholders and to listen to them, so we are not blind to the criticisms. We are not saying that we do not take account—we do—but it is about public protection first and our ability to be able to deliver that, and not necessarily what someone's professional background is. I am happy to deal with the SCPHN issue if you would like me to, but it is rather complicated.

Q52 David Tredinnick: Try and give us a simple explanation. Boil it down.

Jackie Smith: The issue that they are referring to is the extent to which somebody on that part of the register needs to complete the required number of hours to revalidate. There are three parts to our register: nurse, midwife and SCPHN. If you are a SCPHN, which is likely to be a health visitor, then you may have to do 900 hours—which is what the Royal College of Midwives would like—to be able to demonstrate your ability to revalidate. It is a very technical area, and what the RCM is trying to illustrate here is perhaps their concern that the NMC is not sufficiently aware of all of the issues concerning midwives and to be able to respond effectively.

Q53 David Tredinnick: Are you saying the bar is higher for SCPHN nurses?

Jackie Smith: We are saying that you should revalidate in your practice as is, so if you joined the register as a midwife and you are now practising as a health visitor, that is what you should revalidate in. What the RCM is saying is, "What about your midwifery registration because you are on that part of the register as well?" For us, it is about the scope of practice at the time you revalidate. That needs to be sensible and pragmatic, rather than necessarily follow a required number of hours. It is a fairly technical area. We are happy to provide the Committee with more information on that.

Q54 David Tredinnick: Perhaps, through you, Chair, you could drop us a line.
Jackie Smith: Yes.

Q55 Chair: Is it one of those aspects that would need to be dealt with through regulations, because you talked about issues—for example, the LSA not being accountable to the NMC? If there are issues again to do with regulations that are needed, it is very helpful to be specific in what practical steps this Committee can take in recommendations to support—
Jackie Smith: We will certainly write to you on that issue.

Chair::—issues that are about protecting public safety. If there are areas that need to be dealt with, it would be nice to set that out.

Jackie Smith: Of course.

Chair: I think we come now to the Francis report and Andrew.

Q56 Andrew Percy: I touched on a couple of points that I wanted to raise earlier, which were about public awareness. That is probably partly answered in terms of the profile of increasing cases, which perhaps would suggest that, in terms of what we recommend as a Committee about profile raising of the work of the NMC, then that has perhaps happened already. Do you have any further evidence to add to the increasing number of complaints to suggest that, as far as the patients, public, registrants and employers are concerned, they are finding it easier to raise concerns with the NMC now than they were previously?
Jackie Smith: I do not think we can point to evidence that they are finding it easier. There are obviously lots of things that we are doing to engage with employers, to talk to patient groups in particular about the work that we are doing in Fitness to Practise. That is an important part of the work that we do do. We engage with 92 different organisations; we have a patient and public forum, and we seek their advice on things that would make it easier. We published a leaflet last year on how to make a complaint about a nurse or a midwife. We are always thinking of ways in which we can reach out. I do not think we have come up with all the solutions yet.

Q57 Andrew Percy: Post-Francis, what are you doing as an organisation in terms of the recommendations of Francis around promoting the duty of candour, promoting information sharing and gathering of intelligence? What work is ongoing? It would seem, as we see from the complaints, that clearly there is a greater awareness of the work of the NMC because we are seeing more complaints. I would be interested, perhaps post this Committee, if there is any more behind those figures you could provide to us. I know you do not

necessarily understand them fully yourself yet, but perhaps that is something the Committee might want to take forward as a recommendation with regard to understanding that better. Post-Francis, what else are you doing to comply with the recommendations?

Jackie Smith: You have touched on a really important piece of work that we are doing jointly with the GMC on the duty of candour, which we launched with them last year. It is the first time the two regulators have ever worked together. That consultation period has just closed, so we hope to publish the duty of candour in March. That is an example. Raising our profile is certainly something that we have done; working alongside employers engaging with the organisations that I have mentioned; making our website more accessible and easier for members of the public to complain. There is a whole range of stuff that we have done. Perhaps it would be helpful if we provided the Committee in writing with the initiatives that we have embarked on.

Q58 Chair: Can I just raise a follow-up point on the recommendations of the Francis report? What about the issue of members of staff feeling confident to raise concerns about the organisation? Do you think there has been a change—do you sense that—of staff feeling that they have more confidence to report concerns about colleagues, not just being employers but people working on the ground feeling confident that they can raise concerns?

Jackie Smith: I can point to at least three phone calls that I have received from individuals who feel able to raise concerns. There is some small evidence that there is growing confidence and a recognition of us as an organisation that people can turn to, but there isn't anything that we could provide that is concrete evidence of a shift in that direction.

Q59 Chair: Just as it is a stressful process in raising concerns about colleagues, it is a very stressful process for any health professional going through a disciplinary procedure and having a hearing with the NMC. We heard from the GMC about the study they had undertaken into doctors who have taken their lives during that process. Have there been any similar issues for your registrants who are awaiting proceedings?

Jackie Smith: No, not to our knowledge. We do not have a similar study that we can point to and, anecdotally, we are not aware of those issues, but I do think it is an important area that we need to factor into our plans because it is very stressful and we need to try and make it as compassionate as we can. You will probably know that we have done a bit of work with Patients First—quite a lot—talking to them about their concerns around whistleblowers. We invited them in, and we invited in a group of nurses and midwives who had not had a particularly pleasant experience, to try and understand from their point of view how we can improve. What we would like to encourage is individuals speaking up, so, if they are making a complaint to us because they have tried to raise a concern, how we can help them with that. That is what we have talked to Patients First about. They have been reasonably reassured that we are on the right lines, but, of course, the proof will be in the eating when they see something different at the end of the day.

Q60 Chair: There are now mechanisms for referring doctors going through the process with the GMC to be referred if people have concerns about their health. Do you have similar mechanisms at the NMC, where you can refer individual registrants who are finding the process particularly stressful or you have concerns about their health?

Jackie Smith: We do not have a similar arrangement as they do in the GMC for doctors with health difficulties, but, of course, we do have very close links with the professional bodies and the unions, and we always advise, particularly unrepresented registrants, that they need to seek support where they can. Our Code particularly addresses the issue of whistleblowing and the importance of it, and it is important that we continue to work with groups like Patients First and hear their concerns.

Q61 Grahame M. Morris: I just have one brief question about overseas registrants from the EU and, more broadly, from overseas. Could you just tell the Committee and explain for the record what the implications are for the profession, for nurses, and for the public, of the powers that you have in relation to language testing, and, also, what the implications are of the introduction of the European Professional Card for both nurses from overseas and for the public?

Jackie Smith: This Committee will know that we are not able to test the language of European applicants to our register, but we do urge employers to do that before they recruit someone. From overseas, so from countries such as the USA, Canada and New Zealand, of course we can test their language and we do. The directive will be transposed into UK legislation and become effective January 2016. That will, in certain circumstances, allow us the opportunity to test language where we feel evidence has not been provided that communication is where it needs to be. We welcome that. It is still a year away but we are obviously keen to see that. There are some difficulties in relation to the European Professional Card, which we have expressed concerns about, and that is making sure that we are able to request documentation that we need to see to satisfy ourselves that individuals are able to practise safely and to UK standards on our register. Again, we would be happy to provide the Committee with more information on that if that would be helpful.

Q62 Andrew Percy: Let me get this right for the record. You have the power to test the English language skills of professionals coming from English-speaking countries but not from 27—or 26, if you count Ireland as English speaking—non-English-speaking countries?

Jackie Smith: We cannot test anyone from the EU. It is only from the non-EEA countries.

Q63 Andrew Percy: I thought that was the case, which seems completely barking mad. In terms of your profiling of referrals, how many complaints have you had where language has been a part of the complaint?

Jackie Smith: Again, I am relying on anecdote here rather than hard facts. I do not think the numbers are great. If we have any data that we can provide to the Committee we

will do that, but I do not think we are quite in the same place as the GMC on this. That said, communication is obviously absolutely vital and we need to be able to test it where we have concerns.

Andrew Percy: It would be useful to have that information.

Q64 Chair: Thank you. A final area, of course, that would be of great interest to nurses following this would be the point that the RCN have made, which is that they are "bitterly disappointed", as they put it, that you have recently announced another fee rise. Would you be able to comment on that and also on your plans for the future?

Jackie Smith: Certainly. As you know, we went out to consultation on a fee rise in 2012. At that time the fee was £76 and we put forward a case for an increase to £120. That case was independently assessed, and before the Council took the decision to increase the fee the Government offered a £20 million grant, which enabled us to peg the fee at £100, recognising, of course, that that is a significant hike in any event. Here we are two years on and nothing has altered, except of course there has been a 14% increase in referrals, a huge number of hearings and £25 million-worth of efficiencies. Nothing has changed apart from that and the original figure of £120 still stands, which is why the Council took the decision on 1 October last year to increase the fee to £120. We have two choices: we either hold the fee where it is and reduce Fitness to Practise activity, which means we do not protect the public, or we increase the fee in the absence of changes to our legislation that enables us to do it better.

Q65 Chair: In other words, if we brought in more effective regulations, it would enable you to peg the fee rises, but if those are not put in place that has implications for future fee rises as a consequence.

Jackie Smith: It does have implications for the future of the fee, most definitely, because that level of activity needs to be paid for and that is the bit that demonstrates public protection.

Q66 Chair: It would be helpful, in your note to the Committee about the regulations that are required to make it clear about the kind of future projections, because that is going to have big implications for nursing.

Jackie Smith: Certainly.

Professor Dame Janet Finch: I am sure that the Council will want to be very cautious about any future fee rises. There is a very strong sense that registrants should not have to face continuous fee rises. The Council is very clear about that. For the reasons that Jackie spelled out, it has been necessary this time. I sure we will want to be pressing for any further efficiencies that can be secured before any further rises come, but the key is the legislation.

Chair: Thank you. Do any of my colleagues have any further questions? No. In that case, thank you very much for your time today.