

## Council

### Appointments Board annual report to Council 2020–2021

<b>Action:</b>	For discussion.
<b>Issue:</b>	Report to the Council on the work of the Appointments Board during 2020–2021.
<b>Core regulatory function:</b>	Supporting functions.
<b>Strategic priority:</b>	Strategic aim 6: Fit for the future organisation
<b>Decision required:</b>	None.
<b>Annexes:</b>	None.
<b>Further information:</b>	If you require clarification about any point in the paper or would like further information please contact the author below.

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**Context:**

- 1 The Appointments Board is a Committee of the Council. Its remit is to assist the Council in connection with the exercise of any function or process relating to the appointment of Panel Members and Legal Assessors to the Practice Committees. In May 2020, the Board's oversight was extended to include Registration Appeal Panel Members.
- 2 The primary focus of the Board's work is to ensure that effective arrangements are in place for the selection and appointment, training and performance management of Practice Committee members (Panel Members), Legal Assessors and Registration Appeal Panel Members.
- 3 The Board's Terms of Reference require it to "report annually to the Council on the Appointments Board's activities, including an assessment of compliance with, and effectiveness of, the policies in place."
- 4 The Board usually meets four times a year but the meeting scheduled for June 2020 was cancelled due to reprioritisation of internal NMC resources as a result of the Covid-19 pandemic. As well as holding three meetings in 2020–2021, the Board took two decisions by correspondence, one in April 2020 and one in June 2020. All meetings were held virtually.
- 5 So far 2021-2022 has been a busy year for the Board. In addition to its scheduled June 2021 meeting, the Board has held two special meetings: in April 2021 relating to the Panel Member selection exercise; and May 2021 to decide Panel Member and Legal Assessor fee changes.

**Key issues covered in this report**

- 6 The Board's anticipated key areas of focus for 2020-2021 were set out in the Board's 2019-2020 Annual report to Council. The Board's progress against these areas is reported as follows:
  - 6.1 Preparation for the 2020-2021 Panel Member appointment campaign, including enhancing diversity (paragraphs 18 to 22).
  - 6.2 Oversight of the process for the appointment of Registration Appeal Panel Members (paragraph 26).
  - 6.3 Ensuring panels are prepared for nursing associate hearings (paragraph 29).
  - 6.4 Reviewing the Panel Member Services Agreement (paragraph 32).

6.5 Reviewing the Panel Member Code of Conduct and policies for Panel Members and Legal Assessors travel arrangements, expenses and allowances (paragraphs 32 to 35).

7 This report also covers:

7.1 The Board's membership and effectiveness (paragraphs 9 to 11).

7.2 The strategy for delivering high quality panel members, delivery plan, and success measures (paragraphs 16 and 17).

7.3 Panel Member and Legal Assessor fees (paragraphs 33 to 35).

7.4 Oversight of complaints about Panel members (paragraph 36).

**Four country factors:**

8 Panel Members and Legal assessors are recruited from across all four nations to ensure they reflect the UK population.

**Discussion:**

**Board membership and effectiveness**

9 The Board's membership is made up entirely of non-Council (partner) members to ensure an appropriate separation of the Board's work from that of the Council.

10 Membership of the Board remains at full complement (five members including the Chair). In January 2021 two members of the Board were reappointed to serve a second three year term and in June 2021 the Chair and a further member were reappointed to serve a second term three year term. Membership comprises:

10.1 Jane Slatter (Chair) (appointed 6 August 2018, reappointed from 6 August 2021)

10.2 Robert Allan (appointed 1 October 2018, reappointed from 1 October 2021)

10.3 Angie Loveless (appointed 1 March 2018, reappointed 1 March 2021)

10.4 Frederick Psyk (appointed 1 September 2016 and reappointed 1 September 2019)

10.5 Clare Salters (appointed 1 March 2018, reappointed 1 March 2021)

- 11 The Board undertook an annual effectiveness review in June 2021. The Board had a positive discussion about progress made in taking a more strategic approach to its remit as well as identifying some actions that could be taken forward to improve its effectiveness. The Board also reflected on future ways of working with a view to the possible return to 'in-person' meetings from September 2021. The Board would encourage the Council to make increasing the diversity of its membership a key objective in the new member appointment in 2022.

### **Integration of the Board with the wider work of Council**

- 12 The Board is committed to ensuring that its work is aligned with the wider strategic aims of the Council, in particular the NMC strategy for 2020–2025, the values and behaviours, and the strategic approach to Fitness to Practise.
- 13 Members of the Board have continued to attend Open Council meetings and feed back to the Board at its meetings. The Chair of the Board also met with the former Chair and, subsequently, the Acting Chair of Council.
- 14 The Chair of the Board has also met with the Executive Director, Professional Regulation and, subsequently, with the Interim Executive Director, Professional Regulation, as well as the Executive Director, People and Organisational Effectiveness.
- 15 The Board continues to receive regular updates on organisational developments, including corporate updates on: the response to the Covid-19 pandemic; Equality Diversity and Inclusion matters and the response to Black Lives Matter; the Fitness to Practise caseload backlog; and Regulatory Reform, as well as changes in Council membership and the Associate scheme.

### **The strategy for delivering high quality panel members, delivery plan, and success measures**

- 16 In December 2019 the Board approved a three year strategy produced by the Executive for delivering high quality panel members ('the strategy') and an accompanying strategic delivery framework. This sets out the Board's overall vision, which is to ensure that Panel Members are technically proficient, empathetic in their approach and reflect the diversity of the communities we serve.

- 17 The Board approved quantifiable success measures for the strategy in September 2020, covering three categories: Selection and Appointment; Diversity and Training.

### **Panel Member selection and appointment process 2021**

- 18 A major focus in 2020-2021 was preparation for, and oversight of, the Panel Member selection and appointment exercise carried out from January 2021 to June 2021.
- 19 The Board has approved as a key success measure that by 2023 the Panel Member pool should reflect the diversity of the UK population for lay Panel Members and the registrant population for registrant Panel Members. The Board remains strongly committed to this objective and has worked throughout the year with the aim of ensuring that the 2021 selection and appointment process builds on the improvements in diversity made by the 2018 Panel Member appointments.
- 20 The Board scrutinised and approved the following:
- 20.1 **A revised Chair and Panel Member role description** (September 2020). The Board undertook a thorough review and approved a simplified and inclusive role description.
  - 20.2 **The candidate information pack and communications and engagement plan** (September 2020). These were key components in seeking to attract a diverse pool of suitable candidates aligned with the NMC values and behaviours.
  - 20.3 **A values based assessment methodology for use in the 2021 campaign** (December 2020). The Board approved a values-based selection process which included a situational judgement test, application questions and a values based interview. The shift to a values-based approach sought to ensure that the selection process fully aligned with our values and behaviours, and was designed to select individuals who live those values. The methodology was carefully scrutinised to ensure that there was no adverse impacts on minority groups.

- 20.4 **The approach to deciding cut-off levels for each stage of the 2021 selection campaign** (at an additional meeting in April 2021). At the Board's request it received regular updates on the impact analysis and corresponding cut-off levels at each key stage of the process to ensure there were no adverse outcomes for minority groups.
- 21 The Board agreed to recommend to Council 82 panel members for appointment (see Item 10: Panel member appointment recommendations). Further detail on the equality, diversity and inclusion breakdown of candidates is contained in the paper at Item 10. In summary:
- 21.1 Nineteen percent of applicants were from individuals from black, Asian, and minority ethnic backgrounds. A key challenge for future appointment campaigns will be to increase diversity at the applicant stage.
- 21.2 Approximately 17 percent of candidates recommended for appointment are from black, Asian, and minority ethnic backgrounds. Currently 10.5 percent of the panel member pool is made up of individuals from black, Asian, and minority ethnic backgrounds. Subject to the Council accepting the Board's recommendations for appointment, it will increase to 12.2 percent which is a modest positive increase.
- 22 The Board would have wished to secure a more significant increase in diversity and will carry out a review to identify any learning for future campaigns. Subject to Council's approval of the appointments, the Board will oversee the induction and monitor the performance of the new appointees against its agreed success measures.

### **Equality Diversity and Inclusion monitoring information**

- 23 The Board has expressed concerns over the past year in relation to the NMC's approach to equality, diversity and inclusion monitoring, specifically that it does not currently monitor 'Sex', which is a protected characteristic under the Equality Act 2010. The Board's views have been shared with the Executive and it has been advised that the approach will be revisited and the Board looks forward to hearing the outcome.

## **Panel Member reappointments and appointment of Panel members to hear Registration Appeals**

- 24 As well as overseeing the selection of new Panel Members, Chairs and Legal Assessors, the Board scrutinises reappointments. Before recommending any reappointments, the Board ensures that Panel Members are meeting performance requirements, undertaking the necessary training, and have no outstanding complaints against them.
- 25 On the Board's recommendation, in 2020–2021 the Council has:
  - 25.1 Reappointed 100 Panel Members for a second term; and
  - 25.2 In line with the power granted by the emergency rules established in March 2020, accepted the Board's recommendations to extend the second term of appointment of a cohort of 19 Panel members for a further 12 months to March 2021, and due to an ongoing need a cohort of 18 Panel members for a further 12 months to March 2022.
- 26 The Board has also developed its approach to expanding the remit of current Investigating Committee Panel members to hear Registration Appeals. On the Board's recommendation, the Council appointed 55 Investigating Committee Panel members to hear Registration Appeals. All those appointed were meeting or exceeding performance requirements and had undergone the required training on registration appeals.

## **Panel Member training programme 2021-2022**

- 27 The Board is mindful that effective and relevant Panel Member training ensures Panel Members have the skills and knowledge to make robust, consistent and proportionate decisions which protect the public and maintain confidence in the nursing and midwifery professions. These decisions must also be made in a person-centred manner in line with our values and behaviours.
- 28 The Board approved the Panel Member training programme for 2021-2022. The programme maintains the organisation's commitment to Equality Diversity and Inclusion, and examines the diversity and inclusion issues that are specific to Fitness to Practise processes. It also includes values and behaviours based training to ensure a person-centred approach.

- 29 Given the very low numbers of nursing associate cases coming through the Fitness to Practise process the Board took a proportionate approach and will consider incorporating training on nursing associate cases into the panel member training programme as numbers increase.
- 30 The training programme represents the minimum required training for all Panel Members and has a target attendance rate of 95 percent (to ensure achievability in the face illness and unexpected circumstances). The Board has sought assurance that any Panel Member falling within the remaining 5 percent would be encouraged to engage and, whilst the target is set at 95 percent, in reality 100 percent participation is sought.
- 31 The Board has also approved a pilot of modular case specific Panel Member training. The pilot is currently on hold due to re-prioritisation of resources but the Board expects it to commence within the next financial year.

### **Panel Member Services Agreement**

- 32 The review of the Panel Member Services Agreement (PSMA), which is the contract that governs Panel Member services and includes a Code of Conduct, was deferred on the advice of the Executive pending a tribunal claim relating to whether Panel Members should be classed as 'workers'. The Board began a light touch review of elements of the PMSA in January 2021 and will carry out a full review in 2021-2022.

### **Panel member and Legal Assessor fees**

- 33 The Board is responsible for approving policies for the payment of allowances to Panel Member and Legal Assessors. An additional meeting took place on 26 May 2021 to consider a proposal from the Executive to introduce a new fee for single event virtual hearings, to commence from 1 July 2021.
- 34 In the virtual environment Practice Committee panels are getting through fewer events in a day in comparison with pre-pandemic levels, leading to increased costs. This is in common with other healthcare regulators and the court system.
- 35 To address this the Board agreed proposals from the Executive for a single virtual hearing fee for Panel Members and Legal Assessors. This will assist in reducing fee costs where a single event is expected to take only half a day but runs slightly over.



## **Complaints against Panel Members**

- 36 The Board introduced a new standing item on its agenda to ensure that it maintains high level oversight of all open complaints against Panel Members. This allows the Board to monitor the number of Panel Members not being allocated to hearings and the effect on Committee capacity. The Board has received a report at each meeting since December 2020.

## **Whistleblowing concern**

- 37 The Board has been informed about concerns raised by a Panel member in April 2021 and which are being addressed using our Whistleblowing policy. The Board will consider an action plan being developed by the Executive to address the concerns at its September 2021 meeting. In line with normal practice, the concerns have been reported to the Audit Committee and both the Committee and the Board will be kept updated on progress.

## **Future focus**

- 38 The Board's focus for 2021-2022 is:
- 38.1 Review of the 2021 selection and appointment campaign against the success measures and identification of learning for future campaigns, particularly in relation to increasing the diversity of the applicant field.
  - 38.2 Ensuring that any new Panel Members are properly inducted and trained to perform their role to a satisfactory standard under the performance monitoring framework.
  - 38.3 Appointment of Panel Chairs.
  - 38.4 Preparation for, and oversight of, the selection and appointment of new Legal Assessors. The Board will consider a plan to improve Legal Assessor diversity through the 2022 appointments. This will be challenging due to the known lack of diversity in the legal profession, combined with the requirement, as set out in The Nursing and Midwifery Order 2001, for Legal Assessors to have 10 years' plus experience.

	38.5	Approval of the annual Panel Member training programme for 2022-2023.
	38.6	Continued review of the Panel Member Services Agreement.
<b>Midwifery implications</b>	39	The Panel Member selection process was open to registered midwives, as well as registered nurses and nursing associates.
<b>Public protection implications:</b>	40	Successful implementation of the three year strategy for delivering high quality Panel Members will ensure that Panel Members make high quality decisions that protect the public and maintain public confidence in the NMC.
<b>Resource implications:</b>	41	Panel members are required to make decisions that protect the public. The Board must ensure that we have sufficient panel Members to undertake planned hearings activity.
<b>Equality and diversity implications:</b>	42	The approved three year strategy for delivering high quality panel members which includes the following objectives in relation to equality, diversity and inclusion: <ul style="list-style-type: none"> <li>42.1 Ensuring the membership of the practice committees reflects the professions we regulate and the wider UK population.</li> <li>42.2 Ensuring panel members are equipped with the necessary knowledge and training to ensure equality, diversity and inclusion matters are understood, supported and well managed.</li> </ul>
<b>Stakeholder engagement:</b>	43	None arising directly from this paper.
<b>Risk implications:</b>	44	If we do not have high quality panels there is a risk that panels will not make decisions which protect the public and maintain public confidence in the effective regulation of the NMC.
	45	The Board has approved a strategic approach to delivering high quality panels which mitigates this risk.
<b>Legal implications:</b>	46	None.