

## Response to Welsh Government consultation on Welsh Language Standards for healthcare regulators and the Professional Standards Authority

September 2020

### 1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

### 2. General comments

- 2.1 We welcome the opportunity to comment on the proposed Welsh Language Standards. We are grateful to the Welsh Government for heeding the concerns that we and the other regulators raised about the regulations proposed in 2016. We broadly consider the revised proposals to be more reasonable, proportionate and appropriate to our role, and we look forward to working with the Welsh Government and the Welsh Language Commissioner to consolidate our Welsh language offer to the public in accordance with our legal duties.
- 2.2 The Authority has a UK-wide remit. Our main functions are:
- to review the work of the health and care professional regulators through performance reviews and the Section 29 process, which provides us with the discretion to refer to the High Court final fitness to practise decisions which are insufficient to protect the public;
  - accrediting voluntary registers of non-statutorily regulated health and care practitioners, and
  - conducting research and providing policy advice to UK governments to improve regulation.
- 2.3 We are a team of 40 with an office space in London; however, most of us are currently working remotely due to the pandemic. We do not currently have any proficient Welsh speakers within the organisation and no roles require substantial interaction with the Welsh public.
- 2.4 The Authority is funded by the professional regulators (and the accredited registers) we oversee, which are in turn funded by their registrants. Any additional costs of complying with the standards will therefore be borne by them.

- 2.5 For some of the standards it has been difficult to fully assess whether compliance would be reasonable or proportionate for the Authority. Our comments below focus on where we would welcome further clarification of definitions or explanation of how a standard should be interpreted. For other standards we have struggled to estimate costs because of a lack of baseline data, as highlighted in our regulatory impact assessment (forthcoming).
- 2.6 We currently receive very few requests for the provision of services in Welsh or correspondence in Welsh (less than once per year), therefore predicting future demand and the associated costs is challenging. We have elaborated on this in our regulatory impact assessment.

### **3. Detailed comments on specific consultation questions**

#### **Question 1**

- 3.1 We understand that many of the service delivery standards are intended only to apply when providing services to an ‘individual’, meaning ‘a natural person ordinarily in Wales acting in their personal capacity’. Unlike the professional regulators, we do not have registrants and we do not directly investigate concerns from members of the public about professionals’ fitness to practise. Our main interaction with patients and the public is through the information and publications we provide on our website and other digital channels, and through our policy and research work.

#### **Legal proceedings – erratum**

- 3.2 We are pleased that regulation 3(2) recognises our unique role among the regulators and withholds authorisation from the Commissioner to make the standards concerning legal proceedings applicable to the Authority. We note however an apparent error in the drafting, which states ‘the Commissioner is not authorised to give a compliance notice to the Professional Standards Authority for Health and Social Care requiring them to comply with standards 23 to 26.’ We believe this should say standards 22 to 25. We would welcome its correction or further clarification if this is not an error.

#### **Definition of ‘registrants’ (Standard 19)**

- 3.3 The Authority does not hold a register of statutorily regulated professionals. However, we do accredit voluntary registers of health and care practitioners who are not subject to statutory regulation, where the register meets the criteria to be awarded our Quality Mark. All of the current accredited registers operate on a UK-wide basis (with the exception of one that is Scotland-specific) and none are predominantly based in Wales, but it is possible that in the future a Wales-specific voluntary register might apply for accreditation.
- 3.4 We note the definitions given of a ‘registrant’ as a person ordinarily resident in Wales registered with a body or applying to be registered and of ‘individual’ as a person in Wales acting in their personal capacity (in Regulation 1); and of ‘persons’ to include individuals, registrants and corporate bodies (3.3 in the consultation document). We would welcome clarification about how current or prospective accredited registers would be categorised, which has implications

for standard 19. Our interpretation of the standard is that, as corporate bodies, it would not apply to the application process for accredited registers.

### **Equal treatment of Welsh and English and reasonable delays**

- 3.5 We are committed to the principle of treating the Welsh and English languages on the basis of equality, as set out in our 2009 Welsh Language Scheme. We currently aim to do this by providing Welsh and English versions of relevant documents, such as our annual report, business plan and any consultations which are likely to be of interest to stakeholders in Wales, and through the bilingual functionality of key pages of our website. We welcome correspondence in Welsh and would seek to respond in Welsh when appropriate using an external translation service.
- 3.6 We rely on an external translation service because we are a small organisation with an office in London and currently no Welsh speaking staff. Using a translation service inevitably leads to delays. It would therefore be unrealistic for the Authority to guarantee that there would be no delay when responding to correspondence or providing certain items in Welsh (as is implied by standards 2, 4 and 29) compared to in English.
- 3.7 Similarly, we feel that delaying correspondence in English to ensure parity of response time would be unreasonable and in extreme circumstances could potentially compromise public safety. As we receive such a low level of correspondence or demand for services in Welsh (less than once per year), it would be disproportionate for us to comply fully with some of the proposed standards where it is required that there will be no delay.
- 3.8 We recognise that the Commissioner will be able to select standards from the regulations and can further specify either the extent to which or conditions for when a body is required to comply. We would, however, welcome greater clarity about the scope of application for the following standards, as this would have a significant impact on our ability to deliver:
- **Standard 2 (initiating correspondence)** – We would be able to do this in general; however, it would be very challenging for us to comply if this standard applies to our newsletter because of its functionality. We also cannot know if there are any individuals who wish to receive it in Welsh from the contact list, though we could specify in the newsletter that we would provide a translation on request.
  - **Standard 29 (official notices)** – Further explanation about the meaning of an official notice that is published or displayed in Wales and which relates to a service provided in Wales would be helpful, specifically: whether this would extend to UK-wide items (such as press statements, accreditation notices, and the notes from Section 29 case meetings); what would be considered a service provided in Wales; and, whether this includes items that are published online only.
  - **Standard 33 (corporate identity)** – We note that Regulation 2(1) Part 3(35) states this standard includes the way a body presents itself through branding and slogans, such as branding and slogans printed on its stationery. As a small organisation with no physical presence in Wales, we

feel it would be disproportionate for us to comply in full here (for example, by changing letterheads, email signatures or our name on logo on materials that will not be used in Wales) as this would not seem a prudent use of finances. We also have some concerns that presenting a bilingual corporate identity to such an extent may give an inaccurate impression of the Authority's ability to communicate in Welsh or our physical presence in Wales.

### **Meetings (Standards 8-9C)**

- 3.9 The Authority does not currently arrange any meetings in Wales that are open to the general public. Regarding the standards for meetings that are not open to the general public, our understanding is that we would only need to ask invited members of the public present in a personal capacity if they wish to use the Welsh language, and then arrange for simultaneous translation if required. We consider this reasonable, though it is unlikely that this event would arise. We would welcome confirmation though that we would not be obliged to do this for persons at the meeting in a professional capacity.
- 3.10 Considering current restrictions caused by the pandemic, it would also be helpful to have guidance on how these standards should be interpreted for virtual meetings with persons in Wales.

### **Question 2**

- 3.11 It would be helpful if Part 3 included additional information about standard 29 (official notices), as raised above.

### **Question 3**

- 3.12 These standards seem reasonable and proportionate.

### **Question 4**

- 3.13 These standards seem reasonable and proportionate.
- 3.14 There appears to be an error at Regulation 2(3), Part 3 (5) on page 30, which refers to the interpretation of standards 46 and 46A but we assume should refer to operational standards 45 and 45A.

### **Question 5**

- 3.15 These standards seem reasonable and proportionate.

### **Question 6 / Question 7**

- 3.16 We assume that the net effect on the Welsh language would be positive because formalising our offer in standards could help to raise the profile of the material and policies we do have. However, it is difficult to assess this because we have had very low demand for Welsh language provision previously. We also recognise that the regulations provide an opportunity to improve awareness within the Authority of our legal duties and how to comply.

### **Question 8**

3.17 N/A

#### **4. Further information**

4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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