
A review of the Standards of Good Regulation

Consultation paper

June 2017

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care¹ promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise. We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement, we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.² We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce. We are committed to being independent, impartial, fair, accessible and consistent.

More information about our work and the approach we take is available at www.professionalstandards.org.uk.

Our aims

The Authority aims to promote the health, safety and wellbeing of patients and other members of the public and to be a strong, independent voice for patients in the regulation of health professionals throughout the UK.

Our values

Our values act as a framework for our decision making. They are at the heart of who we are and how we would like to be seen by our partners. We are committed to being:

- Focused on the public interest
- Independent
- Fair
- Transparent
- Proportionate.

¹ The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence.

² Professional Standards Authority. 2015. Right-touch regulation. Available at: www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation

Right-touch regulation

Right-touch regulation means always asking what risk we are trying to regulate, being proportionate and targeted in regulating that risk or finding ways other than regulation to promote good practice and high-quality healthcare. Right-touch regulation means using the minimum regulatory force required to achieve the desired result.

The proposals contained within this consultation are based on the principles of right-touch regulation as set out below:

- Identify the problem before the solution
- Quantify the risks
- Get as close to the problem as possible
- Focus on the outcome
- Use regulation only when necessary
- Keep it simple
- Check for unintended consequences
- Review and respond to change.

Contents

Chief Executive's foreword.....	5
1. Reviewing the performance of regulators	6
2. The existing Standards	8
3. What should the Standards cover?	10
4. How the Standards are presented: two options	20
5. Measurement.....	24
6. Impact assessment of the proposals.....	26
7. Consultation questions.....	28
8. Our consultation process	32
Annex A – The Standards of Good Regulation	33
Annex B – Standards aligned by principle.....	35

Chief Executive's foreword

We have been overseeing the performance of the regulators for more than ten years. One of the key tools that we have used in that time has been our Standards of Good Regulation (the Standards). We have used these to work with the regulators to help them develop and improve and we must challenge ourselves to do the same. Last year we introduced a new performance review process and now we think it is the right time to review the Standards.

The Standards are the basis on which we judge regulators' performance. They are intended to identify the key outputs of good regulation. We do not prescribe how the regulators should approach meeting these Standards because we recognise that they work in different contexts and with different levels of risk. In recent years, we have found that the majority of regulators have met the majority of the Standards and that this shows that, overall, they have risen to many changes and challenges over the past several years.

Our statutory remit requires us to report annually with our opinion about how each of the regulators we oversee has complied with their own duties to promote the safety and wellbeing of patients and service users. Our reports aim to inform Parliament and the public and we hope they may also generate improvement in the performance of regulators.

The Standards set out the outcomes of good regulation, as well as how good regulation promotes and protects the public. Since patient protection is the main aim set out in our statute, our current Standards are designed to focus on those areas of the regulators' work that most affect improved outcomes in patient protection. In this consultation we would like to hear from anyone with a view about how best to design our Standards so that good regulation can lead to improved outcomes in patient protection.

This document aims to describe some of the problems with the current Standards for us, the regulators and our other stakeholders. We ask you to consider whether you think improvement to the Standards would be achieved by making modifications to the present Standards, such as by taking the focus away from some areas and examining others in more detail. We also ask you to consider whether there might be value in exploring a different approach altogether and creating a system based around principles rather than functions.

We have already spoken with a number of stakeholders, including the regulators, that are closest to our work. We have discussed with them how we could make our Standards a more effective, focused and useful tool for assessing the performance of the regulators and taking into account their comments and suggestions. We are grateful for the contributions we received, this consultation paper is improved as a result.



Harry Cayton

Chief Executive

1. Reviewing the performance of regulators

Our role and what it entails

- 1.1 The Professional Standards Authority for Health and Social Care (the Authority) was established on 1 December 2012, taking over the functions of the Council for Healthcare Regulatory Excellence. We are an independent UK body. Our role and duties are set out in the Health and Social Care Act 2002. We oversee the work of the nine statutory regulators of healthcare professionals:
 - **The General Chiropractic Council (GCC)** which regulates chiropractors in the UK
 - **The General Dental Council (GDC)** which regulates dentists, dental nurses, dental technicians, dental hygienists, dental therapists, clinical dental technicians and orthodontic therapists in the UK
 - **The General Medical Council (GMC)** which regulates doctors in the UK
 - **The General Optical Council (GOC)** which regulates optometrists, dispensing opticians and student opticians in the UK
 - **The General Osteopathic Council (GOsC)** which regulates osteopaths in the UK
 - **The General Pharmaceutical Council (GPhC)** which regulates pharmacists and pharmacy technicians in Great Britain
 - **The Health and Care Professions Council (HCPC)** which regulates arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, paramedics, physiotherapists, practitioner psychologists, prosthetists and orthoptists, radiographers and speech and language therapists in the UK, and social workers in England
 - **The Nursing and Midwifery Council (NMC)** which regulates nurses and midwives in the UK
 - **The Pharmaceutical Society of Northern Ireland (PSNI)** which regulates pharmacists in Northern Ireland.
- 1.2 One of our key roles is to report annually to Parliament on the performance of each of the health and care regulators which we oversee. We are required to state how far each regulatory body has complied with any duty imposed on it to promote the health, safety and wellbeing of patients.
- 1.3 In order to comply with this duty, we undertake annual performance reviews of each regulator.
- 1.4 To inform our assessment of the performance of the regulators we developed Standards of Good Regulation (the Standards) which set out the outcomes that we expect regulators to achieve. These were last reviewed in 2010. Those Standards are set out at Annex A.
- 1.5 In the performance review we seek to identify strengths and areas of concern in the regulators' performance and to assess how far they meet the Standards and, where appropriate, recommend changes. We also aim to inform

Parliament and the public about how well the regulators are protecting the public and promoting confidence in health and care professionals and the system of regulation.

The performance review process

- 1.6 We reviewed our process for reviewing the regulators' performance in 2014/15 and introduced a new process in January 2016. Under this, we look at the data provided by the regulators, publicly available information from the regulators, information from our other work (for example, scrutiny of final fitness to practise decisions) and from other stakeholders. We can supplement that, if appropriate, by seeking further information from the regulators or auditing their processes.
- 1.7 Having considered all the information, we reach a judgement on how far the regulator has met each of the Standards and prepare a report setting out our findings.³

This consultation

- 1.8 Having revised the performance review process, we have decided to review the Standards. We wish to ensure that they continue to capture the key outcomes and characteristics that we would expect from professional regulators.
- 1.9 We have adopted a phased approach to this consultation to ensure that there are several opportunities for stakeholders to engage with the development of the Standards. We anticipate that this will better enable the testing and refinement of any new Standards.
- 1.10 Between October and December 2016, we conducted a pre-consultation engagement exercise. During this period, we invited stakeholders, including the regulators, to meet with us to discuss the advantages and problems with the present Standards, what areas of the regulators' performance we should be scrutinising (and continuing to scrutinise) and whether we were approaching the review of the Standards in the right way. We are very grateful to all the individuals and organisations that met with us and provided us with written comments and would like to express our thanks to all those that made themselves available to assist. We analysed the responses and comments received and took them into account prior to preparing this consultation paper.
- 1.11 In this consultation paper we seek wider views about the areas that the Standards should cover and about how the Standards should be expressed. The analysis of the responses to this first consultation will inform a second public consultation paper. The second consultation paper will set out the revised Standards. We anticipate that the second consultation will take place in Winter 2017. We plan to settle our final proposals in early 2018 for adoption in the performance review cycle beginning in 2019 which should provide time for the regulators to adapt to any changes.
- 1.12 We welcome responses to the questions posed in this consultation paper from all stakeholders. Please send them to Teena Chowdhury (teena.chowdhury@professionalstandards.org.uk) or provide your answers via: www.surveymonkey.co.uk/r/PSA_Standards_Consultation_2017 no later than **12 September 2017**.

³ Copies of our most recent performance review reports are available on our website: www.professionalstandards.org.uk/what-we-do/our-work-with-regulators/read-performance-reviews

2. The existing Standards

- 2.1 In our consultation in 2007 we developed the Standards against which each regulator is assessed. These were substantially updated in 2010. The Standards cover each of the regulators' statutory functions, and describe the outcomes of good regulation for each of these functions. They also set out how good regulation promotes and protects the health, safety and wellbeing of patients, service users and other members of the public and maintain public confidence in the profession. They are the cornerstone of our mechanisms for assuring ourselves that a regulator is performing effectively.
- 2.2 We have made some changes to the format and text of each of these Standards to make them clearer, but we have not altered the Standards themselves since 2010. We are now considering whether the Standards, in their current form, remain a valid and effective way of assessing the work of the regulators.
- 2.3 The Standards cover four of the core functions of the regulators. These are:
- Guidance and standards – the Standards require the regulators to publish and promote standards for conduct and competence which reflect up-to-date practice and legislation and to issue guidance to assist compliance and address the diverse needs of patients, service users and the public
 - Education and training – the Standards require regulators to set standards for education and training which are linked to the standards for registrants and prioritise patient care and to ensure that there is a proportionate process for the quality assurance of education programmes and that information about approved programmes is made publicly available
 - Registration – the Standards require the regulators to have processes that ensure they only register those professionals who meet the regulators' standards. The register should include a record of any action taken against a registrant that limits their entitlement to practise
 - Fitness to practise – the Standards require regulators to have appropriate and accessible systems for assessing its fitness to practise function including risk assessments, the timeliness of casework, the quality of decisions and the need to retain information securely.
- 2.4 The Standards have been in place for the past seven performance review cycles and whilst they have driven improvements in some areas, we are not convinced that they have kept pace with changes in the priorities and risks faced by regulators. They reflect matters which were a priority at the time but there have been a number of regulatory and policy developments since they were last revised. Expectations about regulation and ideas of good regulation, including our own, have evolved and it is important that the Standards keep up with current thinking.
- 2.5 It is also notable that the regulators currently meet the overwhelming majority of the Standards. This is welcome, but the Authority needs to be sure that the Standards are set at the right level.

- 2.6 When we consulted on revisions to the performance review process in 2015/16, many of our stakeholders commented that the Standards needed to be reviewed as well. Our Board agreed that this should be done at a later stage.
- 2.7 In our initial discussions, we noted the following general points:
- The Standards could be more outcome-focused in several areas, and less focused on process
 - The Standards are repetitious in some areas and could be simplified
 - Some Standards have a limited value for some regulators but are more significant for others
 - The Standards could be revised in light of the *Francis Inquiry report* to emphasise information-sharing and the need to promote professionalism.

Our initial views

- 2.8 In the light of these discussions, we have reached some initial views on the way in which the Standards should be developed. These are:
- The purpose of our assessment of the Standards is to inform our reports to Parliament on the regulators' performance. That suggests that our Standards should continue to focus on the core activities of the regulators
 - We wish to avoid changes to the performance review process unless they are necessary and it is important that the Standards should be readily measurable under that process
 - The Standards and the process for assessing them should take account of the right-touch principle: keep it simple.
- 2.9 These views inform our approach to this consultation. We now seek views on how the Standards should be revised and we examine this in two stages.
- 2.10 First, in section 3, we consider what should be covered by the Standards and ask whether new areas should be included and whether some should be dropped.
- 2.11 In section 4, we look at two options for expressing the Standards. The first retains the existing framework where Standards are grouped by regulatory functions. The second involves adopting a different framework based on principles. Both should be able to accommodate revisions to the Standards arising out of decisions taken on the proposals set out in section 3.

3. What should the Standards cover?

- 3.1 In this section, we ask what areas of the regulators' work should be covered by the Standards. We consider that there are two key questions to consider:
- Whether the Standards are focused on the regulators' core activities for public protection. We explore this at paragraphs 3.2-3.25
 - Whether changes are needed to the way that the Standards apply to those core activities. We set this out at paragraphs 3.26-3.49.

What are the regulators' core activities that the Standards should cover?

- 3.2 Here, we identify six activities which can be considered as the regulators' core activities for public protection. We invite comments about whether the Standards should cover each of these core activities. We also invite general comments about what aspects of the regulators' performance in relation to these core activities should be covered by the Standards.

Professional standards and guidance

- 3.3 The Standards in this area currently require the regulators to publish and promote standards for conduct and competence which clearly describe the standards for safe and effective practice. They also require regulators to ensure guidance prioritises safety, helps registrants apply the regulator's standards, and address current issues and the diverse needs of the public.
- 3.4 We think the Standards ought to continue to cover this area as this is one of the core roles of the regulators. Changes may be required, for example by reducing or increasing the number of Standards covering this area and updating the Standards to ensure that they require the regulator to publish and promote standards for professionalism, openness and transparency.

Question 1(a): Should the Standards cover the regulators' performance in respect of Standards and guidance?

Question 1(b): Which aspects of work related to the setting standards and guidance for registrants should the Standards focus on?

Education and training

- 3.5 The Standards for Education and Training currently require that education and training standards are linked to the standards for registrants and prioritise patient safety and patient-centred care. Regulators should ensure that there is a proportionate process for the quality assurance of education programmes so that the public can be assured that education providers provide students, trainees and professionals with the skills and knowledge to practise safely and effectively and that information about approved programmes is made publicly available.
- 3.6 This is a core role of a regulator and the Standards ought to continue to provide oversight to the regulators' work to quality assure education programmes. We think this could now focus on the regulator having methods for assuring themselves that the learning outcomes required for registration are

appropriately set and assessed. This would be consistent with the approach we have suggested in *Regulation rethought*.⁴

- 3.7 It may also be worth looking at the fairness of education outcomes or making use of feedback from students and trainees to drive patient safety improvements. We discuss this later in this paper – see paragraphs 3.28-3.30. Our policy team is developing its views on education and training as part of its work on the future of professional regulation and this will also inform our review of the Standards.

Question 2a): Should the Standards cover the regulators' performance in respect of education and training as set out in these proposals?

Question 2b): Which aspects of the work related to education and training should the Standards focus on?

Continuing fitness to practise

- 3.8 We currently have one Standard in respect of continuing fitness to practice. This only requires that a regulator have either a revalidation or continuing professional development system in place that enables registrants to maintain the standards required to stay fit to practise.
- 3.9 Since that Standard was introduced, we published our guidance about the role that professional regulation plays in supporting registrants to demonstrate that they are fit to practise throughout their practising lives.⁵ The regulators also have been reviewing and expanding their thinking in this area. It might be appropriate to expand the Standard to require regulators to use an assessment of the risks presented by the profession in designing their requirements in this area. It could also include consideration of whether appropriate performance measures are in place as well as the regulator's processes for feeding learning from the scheme into other regulatory functions.

Question 3a): Should the Standards cover the design and delivery of continuing fitness to practise schemes?

Question 3b): Which aspects of the design and delivery of continuing fitness to practise schemes should the Standards include?

Registration

- 3.10 The Standards currently require the regulators to have processes that ensure they only register those professionals who meet their standards. The register should include a record of any action taken against a registrant that limits their entitlement to practise.
- 3.11 This is another core function of a regulator which needs to be included, albeit that the existing Standards may need review. For example, one of the Standards for Registration focuses on the register being publicly available. It

⁴ *Regulation rethought*. October 2016. Available at: [//www.professionalstandards.org.uk/what-we-do/improving-regulation/regulation-rethought](http://www.professionalstandards.org.uk/what-we-do/improving-regulation/regulation-rethought)

⁵ *An approach to assuring continuing fitness to practise based on right-touch regulation principles*. November 2012. Available at: www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/continuing-fitness-to-practise-based-on-right-touch-regulation-2012.pdf?sfvrsn=4

might be appropriate for us also to look at the accuracy, accessibility and clarity of the register.

Question 4a): Should the Standards cover the delivery of the registration function as set out in these proposals?

Question 4b): What aspects of the registration function should the Standards focus on?

Illegal or unregistered practice

- 3.12 Most regulators have a role in the prevention of illegal practice by individuals. This means either individuals who are undertaking activities which are restricted by law and which they are not permitted to do, or individuals who are using a protected title to which they are not entitled. This differs from regulators' other roles in that it involves people who are outside the regulated community and involves spending registrants' money in pursuing them.
- 3.13 There is a public interest in ensuring that only those who are qualified undertake restricted activities and that the public is not misled about an individual's status and qualifications.
- 3.14 Against this, some have argued that the problem is only relevant to registrants who work in private practice – the NHS has its own systems in place to manage the risk of individuals misusing a protected title, though this does not lessen the need to protect the public who are using private services. It has also been suggested that many of the cases arise out of protecting the business interests of registrants, rather than any tangible danger to the public. It can also be difficult to assess performance in this area, particularly because the regulators are often required to liaise with other bodies, such as the police or local authorities, and outcomes tend to be outside the control of the regulator.
- 3.15 It may be difficult to argue that the Authority should not report on this area, since these functions are given to regulators by statute and there is no other process which addresses the risks. However, we do seek views on how far this should be a priority for the Authority.
- 3.16 If the Authority were to continue to monitor this area, the Standards could focus on:
- Whether the regulator has appropriate methods for identifying those cases which pose a risk of harm to the public
 - The proportionality of decision-making according to the regulators' assessment of risk
 - How effectively the regulator liaises with other relevant authorities.

Question 5a): Should the Authority continue to monitor regulators' activities to prevent illegal or unregistered practice and what level of priority should be given to this work?

Question 5b): If yes, do you agree that the Standard(s) should be limited to the areas we have identified above?

Question 5c): In general, what aspects of work related to the prevention of illegal or unregistered practice should the Standards focus on?

Fitness to practise

- 3.17 Fitness to practise (i.e. consideration of complaints and information relating to a registrant's conduct, competence or health) is another core area of the regulators' work. There are currently ten Standards in this area out of a total of 24 and some of our stakeholders have suggested that there are too many in comparison with other functions which suggests that they might focus their energies on this area of work at the expense of others. Other stakeholders commented that fitness to practise is central to the public's perceptions about the effectiveness of a regulator and we should continue to report on this area. Changes to these Standards could involve both simple rationalisations or wider revisions. It might involve dropping some Standards and adding new Standards. We set out further details about this below.
- 3.18 A project being led by the policy team on the Future of Fitness to Practise will test our thinking in this area and set out a clear position to ensure that any revision of the Standards is in step with *Regulation rethought*, and with the most up-to-date thinking about fitness to practise generally.

Question 6a): Should the Standards cover fitness to practise?

Question 6b): Which aspects of the activities related to fitness to practise should the Standards focus on?

Governance

- 3.19 By governance, we mean the arrangements that the regulator has for overseeing the management of processes by its executive and looking at wider strategic matters, such as finance and risk. We also think that it should cover how independent a Council is of competing interests. Good governance is crucial, in the long term, to the effectiveness of an organisation and to public confidence in it.
- 3.20 The Authority, so far has not explicitly included governance in its Standards. We have taken the view that governance itself is not an outcome, rather that the outcome of good governance is good performance. However, it is notable that the majority of Special Reviews that the Authority has undertaken in UK have arisen out of failures of governance.
- 3.21 In our consultation on the performance review process in 2015, we proposed a possible new Standard relating to regulatory risk and focusing on the effectiveness of the regulator's management of risk and resources, and how it ensured that its Council could provide effective oversight of the executive. Following that consultation, the Authority decided not to introduce this Standard at that stage. While most respondents agreed that the Authority should consider governance and risk management arrangements, there was no agreement as to whether it was appropriate to introduce a new Standard.
- 3.22 The Authority is, to an extent, able to use its scrutiny of individual regulatory activities to identify potential governance concerns. The current process involves detailed consideration of the regulators' Council papers and routine observation of discussions at Council meetings. This informs our ongoing assessment of the regulators' performance. The Standards, however, do not enable us to capture concerns that ineffectiveness by Councils is beginning to affect performance.

- 3.23 Our present view is that consideration needs to be given to assessing whether a regulator's governance processes enable its Council to have effective oversight of the work of the regulator, that the Council is providing appropriate challenge and scrutiny and acts with independence. We think that standards could include the following elements:
- The demonstrable independence of the regulator from registrants, government and other special interests
 - The transparency of its processes (many of which can be looked at as part of our review of individual aspects of the regulator's work)
 - The quality and adequacy of processes for providing the Council with information to enable it to monitor performance and compliance
 - The effectiveness of the Council in addressing that information.
- 3.24 We would expect that a formal review of governance would likely be triggered by evidence that operational processes were not working well and by an apparent failure of the Council to address them properly.
- 3.25 We welcome the views of our stakeholders before reaching any final decisions about whether or not new standards covering governance are needed.

Question 7a): Should the Standards cover the governance activities of the regulators?

Question 7b): Which aspects of the activities related to governance should the Standards focus on?

Question 7c): Do you have other comments on our approach to governance?

Changes to the Standards applying to the core activities

- 3.26 We now consider specific areas where it may be beneficial to consider new Standards.

Adopting new Standards

- 3.27 Following our engagement with stakeholders, we identified several areas where new Standards could be introduced.

Education

- 3.28 The *Francis Inquiry report*⁶ noted that medical education and training systems provide an opportunity for enhancing patient safety. It recommended that students and trainees should only be placed in establishments which comply with fundamental standards and that those bodies responsible for overseeing and regulating these activities should make the protection of patients their priority. It also recommended that there be mechanisms for greater transparency so that, for example, the GMC should seek information from students and tutors on compliance with minimum standards of safety and encourage openness amongst trainees. It may be beneficial to explore how this applies across all professional regulators and endorse this within the Standards.
- 3.29 Including this explicitly in the Standards might lead to the development of mechanisms for feedback so that regulators take appropriate action on information from students, trainees and tutors about standards of safety for patients and service users and that the regulator ensures that transparency and candour is encouraged amongst students and trainees.

Question 8) Should we introduce a new Standard that requires regulators to have mechanisms that enable them to gather information from students and tutors about compliance with minimum standards of safety?

- 3.30 The existing Standards focus on a regulator's quality assurance process for its education programmes. Our paper *Regulation rethought*⁷ recommended that regulators ensure that their focus was on assessing the robustness of the processes for setting and assessing the learning outcomes required for registration. It is through examination and assessment that a student or trainee demonstrates competence in the profession and therefore that they are suitably qualified for registration. This would leave other regulators and quality assurance mechanisms to deal with broader questions of course management. Regulators would continue to work in partnership with higher education institutes and other training providers to understand the impact of future population and workforce needs. We believe that such a change of approach would offer the potential for cost-savings and efficiency in the way that registrants prove their suitability for registration, as well as reducing the regulatory burden on higher education institutes.

Question 9) Should we adjust the wording of the Standards to focus on regulators' work in ensuring the robustness of learning assessments?

⁶ This report examined why the serious problems at the Mid Staffordshire NHS Trust were not acted on sooner by the regulatory bodies in place at the time. Report available at: <http://webarchive.nationalarchives.gov.uk/20150407084003/http://www.midstaffpublicinquiry.com/report>

⁷ See footnote 5.

Continuing fitness to practise

- 3.31 We currently have one Standard related to continuing fitness to practise and this Standard only requires the regulators to have a scheme in place which covers CPD or revalidation. This is very high level and gives little detail about our expectations in light of current and developing practice. In 2012,⁸ we published our guidance about the role that professional regulation plays in supporting registrants to demonstrate that they are fit to practise throughout their practising lives.
- 3.32 Many of the regulators have taken into account the principles in that paper, and conducted their own research, consultations and stakeholder engagement exercises to develop continuing fitness to practise schemes. Different approaches now exist.
- 3.33 We think that this Standard could usefully be developed to encourage regulators to develop and review schemes to ensure that they are designed with regard to the risks presented by the profession, address those risks and are actually achieving what was intended. We also think the outcomes of those reviews could provide learning for other regulatory functions and that regulators should develop schemes to achieve this.

Question 10) Should the Standard covering continuing fitness to practise be expanded to cover the efficacy of the scheme and the regulators' processes for using learning from the scheme to inform other functions?

Prosecution of fitness to practise cases

- 3.34 Over the past five years, our process for examining fitness to practise decisions by panels has identified cases where there has been under-prosecution or inadequate decision-making due to poorly drafted allegations. The Court of Appeal in *Ruscillo*⁹ envisaged the role of the final decision-making panel to include making sure that the case was properly presented by the regulator and that the relevant evidence was placed before the panel. The Standards do not explicitly cover the portion of the fitness to practise process between the case examiner/Investigating Committee decision and the final fitness to practise decision. This might be thought to be a gap in our oversight because it is often during this period that key decisions are made about how the allegations should be drafted and what evidence should be presented. This is not always apparent from our examination of final fitness to practise decisions.
- 3.35 Development of a new Standard would set out unequivocally the need for the regulator to ensure adequate information is presented to decision-makers to enable them to reach sound decisions on the correct evidential basis.

Question 11) Should we introduce a Standard that covers the portion of the fitness to practise process between the IC/case examiner decision and the final panel?

Consensual mechanisms for disposal of fitness to practise cases

⁸ "An approach to assuring continuing fitness to practise based on right-touch regulation principles" <http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/continuing-fitness-to-practise-based-on-right-touch-regulation-2012.pdf?sfvrsn=4>

⁹ *Ruscillo v CHRE and GMC* [2004] EWCA Civ 1356

- 3.36 Since the Standards were introduced, there has been a growing appetite amongst regulators and policy makers for finding alternative mechanisms for disposing of fitness to practise cases. Several regulators have adopted processes for voluntary removal, discontinuance, undertakings and consensual panel determinations. In 2013, we commissioned UK-wide research with members of the public on this topic.¹⁰ The research found that there was strong support for these alternative mechanisms, mainly because hearings are often stressful for the people who have complained. There were however concerns that these alternatives could lead to less thorough investigations, overly lenient sanctions, a lack of transparency and the loss of the complainant's voice in the process.
- 3.37 Our discussions with those regulators that have consulted on new processes have led to us recommending that these mechanisms only be considered where the registrant has admitted the facts and impairment, has demonstrated insight into the seriousness of their failings, and that there is transparency in the decisions that are taken. Given that this is an increasingly important development (and one which the Authority supports in principle, a new Standard will be important in enabling us to scrutinise how effectively the regulators are implementing alternative mechanisms in a way that protects patients and reduces harms, promotes professional standards and secures public trust.

Question 12) Should we introduce a Standard covering the operation of consensual mechanisms for disposal and the appropriateness of their outcomes?

Equality, diversity and fairness

- 3.38 The Standards do not currently address how regulators approach equality and diversity. These are important social considerations and we are aware, in addition, of the Government's initiative on social mobility and the ability of people from disadvantaged backgrounds to enter and progress in professions.
- 3.39 Some regulators are doing work in this area. For example, the GMC commissioned independent reviews that identified that there were differential outcomes for black and minority ethnic and international medical graduates (compared to each other and compared to white UK graduates) in both education and fitness to practise. The GPhC has also engaged in research which identified that those students that identified themselves as Black African performed significantly less well than other self-declared ethnic groups. Some of the other regulators have conducted similar research to examine the issue for their own registrant population. We think there is great value to regulators examining this issue and identifying ways to support greater understanding. We think we should consider whether to introduce a standard covering this to encompass all the regulators.
- 3.40 We recognise that there may be challenges with monitoring performance in this area. Regulators cannot control the social make-up of potential registrants or the prevalence of complaints. However, it is in the public interest that there should be a wide range of practitioners available to the public and that a

¹⁰ *Alternatives to hearings for fitness to practise cases – the public perspective*. May 2013. Available at: www.professionalstandards.org.uk/publications/detail/alternatives-to-final-panel-hearings-for-fitness-to-practise-cases-the-public-perspective

regulator's processes should not impose inappropriate barriers to entry. There is also a public interest that the regulators are fair in their dealings with registrants and other stakeholders. Fair processes lead to better decisions.

3.41 We believe, therefore, that it may be reasonable to introduce Standards that expect regulators to:

- Understand the diversity of their registrant population and the environment generally
- Ensure that their processes do not provide inappropriate barriers to or otherwise disadvantage people with protected characteristics.

Question 13) Should we introduce Standards covering equality, diversity and fairness?

Rationalising the Standards – addressing duplication

3.42 We think we could make straightforward amendments to the Standards covering the development of standards and guidance for registrants and the need to make information accessible.

3.43 There are four Standards related to how the regulators develop standards and guidance for registrants:

- In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and international regulation and learning from other areas of the regulators' work (*First Standard for Standards and guidance*)
- Additional guidance helps registrants apply the regulators' standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care (*Second Standard for Standards and guidance*)
- In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and international regulation and learning from other areas of the regulators' work (*Third Standard for Standards and guidance*)
- Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user centred care. The process for reviewing or developing standards for education and training should incorporate the views and experiences of key stakeholders, external events and the learning from the quality assurance process (*First Standard for Education and training*)

3.44 There are also several Standards requiring regulators to make information accessible which include:

- The standards and guidance are published in accessible formats. Registrants, potential registrants, employers, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be

taken if the standards and guidance are not followed(*Fourth Standard for Standards and guidance*)

- Employers are aware of the importance of checking a registrant's registration. Patients and members of the public can find and check a registrant's registration (*Fourth Standard for Registration*)
- Information on approved education programmes and the approval process is publicly available (*Fourth Standard for Education and training*)
- All final decisions, apart from matters relating to the health of a nurse, are published in accordance with the legislation and communicated to relevant stakeholders. (*Ninth Standard for Fitness to practise*)

3.45 While these concepts of developing standards and guidance for registrants, and making information accessible are part of the essential fabric of good regulation, these standards clearly contain an element of duplication. It would be relatively simple to rationalise these Standards to cover the key concepts of regulators articulating publicly the standards, responsibilities and behaviours that constitute safe practice and be outward facing in their roles. The overall number of Standards covering this could be reduced substantially.

Question 14) Do you agree with our proposals to rationalise the Standards in the areas we have suggested?

Question 15) Are there any other areas where you think the Standards could be rationalised or simplified?

Rationalising the Standards – information governance

3.46 There is currently one standard covering information governance. This requires 'Information about fitness to practise cases to be securely retained' (*Tenth Standard for fitness to practise*). Our reviews of this area are aimed at measuring the regulators' ability to prevent problems arising and to pick up on emerging risks rather than focusing on past actions. Some of our stakeholders consider this to be an important area of performance as failures to retain information about fitness to practise cases securely can be damaging to public confidence. It is also part of the general picture that we can gain about an organisation's performance. Other stakeholders have commented that the Authority should not place emphasis on this as the Information Commissioner's Office also considers how well the regulators handle information.

3.47 Given the difference in views amongst our stakeholders, we think it would be beneficial to consider this as part of the public consultation.

Question 16) Do you think our Standards should specifically include consideration of the information governance arrangements of the regulators?

4. How the Standards are presented: two options

- 4.1 The current Standards are presented according to the activities that support the key functions of the regulators. We have identified a number of advantages and challenges posed by presenting the Standards in this way for ourselves, the regulators and others interested in our work.
- 4.2 The advantages of the present the Standards are that they identify clearly the key areas of regulatory work that we will measure in our performance review and provide certainty (and manage expectations) about what our performance reviews will cover.
- 4.3 Some stakeholders, including the regulators, have commented that the current Standards are inflexible as, although we apply them equally across all regulators, some Standards cover areas of work that pose different levels of risk for different regulators. Some of the Standards are repetitive in that they cover the same concepts (e.g. providing publicly available information) across a number of different areas of work. In addition, the Standards have been criticised for being focused on process and not explicitly addressing the principles outlined in *Right-touch regulation*.
- 4.4 We are therefore seeking views about whether to retain the existing framework or introduce a new framework based on principles.

Option 1: retain the existing framework but update it

- 4.5 Under this option, we would retain the existing structure whereby we look at the existing core activities of the regulators' work with the possible addition of categories in respect of continuing fitness to practise and governance. We would then revise the Standards within those in the light of the responses to the proposals presented in Section 3 of this paper.
- 4.6 This option addresses the fact that the Standards need to be refreshed in light of the new developments in the health and regulatory sectors since the Standards were last introduced. It could also address some of the repetition that currently exists.
- 4.7 An advantage to adopting this approach is that it would be relatively easy for the regulators to adjust to the changes in the Standards and for us to implement. On the other hand, it would not address the concerns that the Standards are not outcome-focused and do not take account of the different ways in which regulators work. It may also mean that the Standards will need to be refreshed in 3-4 years in light of new developments in healthcare and regulation.

Question 17) Do you agree with our assessment of the advantages and disadvantages of the current approach? Are there any considerations we should take into account?

Option 2: A principles-based approach

- 4.8 In this option, we are proposing a different framework for the Standards where Standards are aligned with a small group of overarching principles which we believe should inform the regulators' approach to all their functions. We would

assess the extent to which each regulator had put into practice those principles across their regulatory functions.

- 4.9 We have set out an example of what the Standards might look like under this approach at Annex B. We would stress that we have not yet taken views about the wording or the placing of the Standards and that, if we were minded to adopt such an approach, there would be further consultation around the detail. We seek initial views on that detail below.
- 4.10 In looking at this option we set out first what the advantages and disadvantages of the approach might be and then seek views on more detailed questions about the option.
- 4.11 We think that this approach would have the following advantages:
- It would allow us to take into account the differences amongst the regulators fairly and encourage them to address risks in a way which works for their particular community
 - It would encourage regulators to look at their performance and behaviours across their regulatory functions and might encourage innovation
 - It would be less process-driven and focus on the behaviours of regulators
 - It would be likely to avoid the duplication found in the existing approach
 - Our reports could address behaviours which are important and not readily covered by the existing Standards.
- 4.12 We recognise that there may be disadvantages to the approach:
- There may be a lack of clarity about the issues that will fall under each principle and we may have to issue more guidance, which would then reduce the element of flexibility
 - In practice, the new Standards under each heading will be looking at very similar activities so regulators may in practice see little difference
 - The new reports will not be consistent with our current reports making comparisons of the regulator's performance with the previous year difficult
 - There will be significant adjustment and 'bedding-in' time required which may be burdensome and cause uncertainty.

Question 18) Do you agree with our assessment of the advantages and disadvantages of the principles-based approach? Are there any considerations we should take into account?

What should the principles be?

- 4.13 In, considering what the principles could be, our starting point has been to consider the principles identified by the Better Regulation Executive and in our paper on *Right-touch regulation*.¹¹ These are:

¹¹ See footnote 2.

- Proportionality: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised
 - Consistency: rules and standards must be joined up and implemented fairly
 - Targeted: regulation should be focused on the problem, and minimise side effects
 - Transparency: regulators should be open, and keep regulations simple and user-friendly
 - Accountability: regulators must be able to justify decisions, and be subject to public scrutiny
 - Agility: regulation must look forward and be able to adapt to anticipate change.
- 4.14 It may be useful to apply these principles in the performance review as they have already been articulated and the regulators are familiar with them. These principles also provide consistency between our scrutiny and policy work. However, these principles were not designed to be applied to the performance review in the way we have described and not all of the matters we would scrutinise during performance review fit logically within those principles.
- 4.15 In particular, there are two concepts which do not easily fit into the principles set above. These are ‘fairness’ and ‘efficiency’ as these are crucial to a regulator’s ethos in our view and are often articulated by stakeholders when describing their experience of interacting with the regulator.
- 4.16 These two principles could be defined as:
- Fairness: regulators should be impartial, just and treat people equally
Under this principle we might consider how the regulators approach equality and diversity (as we set out above, see paragraph 3.38-3.41). It might also include consideration of the fairness of a regulator’s registration and fitness to practise processes. This is something we already consider but isolating this principle may prompt greater scrutiny of these areas.
 - Efficiency: regulators should understand the demand for resources and properly match resources to that demand so that processes take no longer than is appropriate to achieve the right result.
Under this principle we can specifically consider a regulator’s ability to manage its workload efficiently, while recognising that speed, of itself, is not necessarily a key criterion, and to demonstrate that the regulator understands the current and likely future demand for resources.
- 4.17 We also recognise that there may be other concepts which might be more suitable for this purpose and we invite suggestions for alternative ways of articulating principles which would help us judge a regulator’s performance.

Question 19) Do you think that the Authority should use the principles in Right-touch regulation as the underlying concepts for its assessment of regulators’ performance?

Question 20) Should the Authority add the principles of Fairness and Efficiency?

Question 21) Are there other principles that should be added or different ways of expressing the concepts which might suit our performance review better?

- 4.18 The wording of the Standards set out in Annex B is for illustrative purposes only. It attempts to be broadly consistent with the wording of the existing Standards, while taking account of the amendments proposed elsewhere in this paper. We would be grateful for any initial comments on the wording of the Standards.

Question 22) Have you any initial comments on the draft wording used in the example (Annex B)?

- 4.19 In general terms, we do not expect the actual performance review process to change significantly if we implemented a principles-based approach, although it is possible that we may require new evidence not previously collected. We will need to revise our guidance documentation to clarify what the Authority will be looking for in assessing regulators under the new framework.

Question 23) Do you have any observations about difficulties that may arise for regulators or the Authority in gathering information and evidence to operate the performance review under a principles based approach?

Question 24) Do you think the Authority should adopt the first or second option?

5. Measurement

- 5.1 Our pre-consultation engagement work did not specifically invite comments about how we measure performance against the Standards but the question was raised during discussions. In particular, there was some discussion around whether we should describe performance against Standards as being 'met' or 'not met'. It is notable that the Authority has not always taken this approach.
- 5.2 We think that describing performance against the Standards as met/not met provides clarity for those interested in understanding our work because we can be unequivocal about where the problems with performance lie. It also provides a clear marker that a regulator needs to make improvements.
- 5.3 Having said that, describing a Standard as met/not met is a blunt tool and may not assist where performance is either improving or deteriorating and the picture is nuanced. It is likely to be difficult to adapt it to the principles based approach described in Section 4.
- 5.4 Moreover, performance against standards can be used as a way of comparing regulators' overall performance with one another in a way that is not intended. We do not regard regulators' performances as readily comparable and it does not follow that one regulator failing three standards is necessarily worse than another that fails two. This is because the variation amongst the regulators means that the failure to meet one Standard may pose greater risks to public protection for one regulator than another.
- 5.5 Finally, there can be considerable discussion between the regulator and the Authority about whether a Standard is described as met/not met and this risks distracting the regulator from resolving the concern that has been identified.
- 5.6 One option would be to return to a narrative approach without reference to meeting or not meeting Standards. This enables us to be clear about our concerns but risks there being a lack of clarity about how well a regulator is performing.
- 5.7 Another possible approach would be to grade performance as follows:
 - The regulator has met the Standard
 - The regulator has met the Standard with concerns which it is/is not addressing but there is insufficient evidence to say that the Standard is not met
 - The regulator has not met the Standard and is/is not addressing the concerns.
- 5.8 This approach would enable us to be more nuanced in the way we describe performance but may complicate the message about performance even with the narrative explanation of our decision.
- 5.9 In our initial work, we considered whether we should have a more complex approach which assessed the maturity of the regulator and its capacity generally. We have decided not to adopt this approach because we think that it is important that we should concentrate on the way in which the organisation is carrying out its regulatory function and protecting the public. We think that a more complex approach would be difficult to assess and not assist public understanding of the regulator's performance.

Question 25) Do you think that the Authority should continue with its 'met/not met approach'? If not, what other approach would you prefer?

Question 26) Are there other ways of reporting on performance that the Authority should consider?

6. Impact assessment of the proposals

- 6.1 The Standards are the tool by which we measure the performance of the regulators and we consider that the greatest impact of any changes to the Standards will be on them. We are keen to ensure that we understand any impact or burden that our proposals are likely to create so that we can consider any changes that may be appropriate.
- 6.2 Our initial view is as follows:
- The regulators may find an initial burden in developing ways of addressing the new Standards and there may be an additional continuing burden in providing information. However, we think that it is unlikely that the additional burden will be great, but would be grateful for views on this from the regulators
 - If some Standards are dropped, then the burden is likely to be reduced
 - Option 1 is likely to be simpler to introduce
 - Option 2 is likely to be more complex to deliver because the changes may require greater consultation and research and greater engagement with the regulators to ensure effective implementation.
 - We expect the Authority to undertake this work within its existing resources.
- 6.3 In all stages of the development of our proposals we considered whether there are significant equality implications, either positive or negative, for our stakeholders. We have not identified any significant negative equality or diversity implications from our proposals and expect there to be a positive benefit for patients, service-users and the public by the improved scrutiny of regulators that updated Standards will provide. Indeed, if diversity is included within our Standards, we would expect some positive impacts.
- 6.4 We would, however, welcome any feedback to ensure we consider all relevant issues. We would welcome any comments about the impact that these proposals will have.

Question 27: Are there any aspects of these proposals that you feel could result in differential treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010:

- *Age*
- *Gender reassignment*
- *Ethnicity*
- *Disability*
- *Pregnancy and maternity*
- *Race*
- *Religion or belief*
- *Sex*
- *Sexual orientation*

- *Other (please specify)*

If yes to any of the above, please explain why and what could be done to change this.

7. Consultation questions

Summary of questions

Question 1(a): Should the Standards cover the regulators' performance in respect of Standards and guidance?

Question 1(b): What aspects of the work related to setting standards and guidance for registrants should the Standards focus on?

Question 2a): Should the Standards cover the regulators' performance in education and training as set out in these proposals?

Question 2b): What aspects of the work related to education and training should the Standards focus on?

Question 3a): Should the Standards cover the design and delivery of continuing fitness to practise schemes?

Question 3b): What aspects to the design and delivery of continuing fitness to practise schemes should the Standards include?

Question 4a): Should the Standards cover the delivery of the registration function as set out in these proposals?

Question 4b): What aspects of the registration function should the Standards focus on?

Question 5a): Should the Authority continue to monitor the regulators' activities to prevent illegal or unregistered practice and what level of priority should be given to this work?

Question 5b): If yes, do you agree that the Standard(s) should be limited to the areas we have identified above?

Question 5c): In general, what aspects of the work related to the prevention of illegal or unregistered practice should the Standards focus on?

Question 6a): Should the Standards cover fitness to practise?

Question 6b): Which aspects of the activities related to fitness to practise should the Standards focus on?

Question 7a): Should the Standards cover the governance activities of the regulators?

Question 7b): Which aspects of the activities related to governance should the Standards focus on?

Question 7c): Do you have other comments on our approach to governance?

Question 8) Should we introduce a new Standard that requires regulators to have mechanisms that enable them to gather information from students and tutors about compliance with minimum standards of safety?

Question 9) Should we adjust the wording of the Standards to focus on regulators' work in ensuring the robustness of learning assessments?

Question 10) Should the Standard covering continuing fitness to practise be expanded to cover the efficacy of the scheme and the regulators' processes for using learning from the scheme to inform other functions?

Question 11) Should we introduce a Standard that covers the portion of the fitness to practise process between the IC/case examiner decision and the final panel?

Question 12) Should we introduce a Standard covering the operation of consensual mechanisms for disposal and the appropriateness of their outcomes?

Question 13) Should we introduce Standards covering equality, diversity and fairness?

Question 14) Do you agree with our proposals to rationalise the Standards in the areas we have suggested?

Question 15) Are there any other areas where you think the Standards could be rationalised or simplified?

Question 16) Do you think our Standards should specifically include consideration of the information governance arrangements of the regulators?

Question 17) Do you agree with our assessment of the advantages and disadvantages of the current approach? Are there any considerations we should take into account?

Question 18) Do you agree with our assessment of the advantages and disadvantages of the principles-based approach? Are there any considerations we should take into account?

Question 19) Do you think that the Authority should use the principles in Right-touch regulation as the underlying concepts for its assessment of regulators' performance?

Question 20) Should the Authority add the principles of Fairness and Efficiency?

Question 21) Are there other principles that should be added or different ways of expressing the concepts which might suit our performance review better?

Question 22) Have you any initial comments on the draft wording used in the example (Annex B)?

Question 23) Do you have any observations about difficulties that may arise for regulators or the Authority in gathering information and evidence to operate the performance review under a principles-based approach?

Question 24) Do you think the Authority should adopt the first or second option?

Question 25) Do you think that the Authority should continue with its 'met/not met' approach? If not, what other approach would you prefer?

Question 26) Are there other ways of reporting on performance that the Authority should consider?

Question 27) Are there any aspects of these proposals that you feel could result in differential treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010:

- Age
 - Gender reassignment
 - Ethnicity
 - Disability
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
 - Other (please specify)
- If yes to any of the above, please explain why and what could be done to change this.

How to respond

- 7.1 You can respond to this consultation paper by entering your responses here: www.surveymonkey.co.uk/r/PSA_Standards_Consultation_2017 or by emailing: teena.chowdhury@professionalstandards.org.uk, or by post to

Teena Chowdhury
Professional Standards Authority
157-197 Buckingham Palace Road
London
SW1W 9SP

- 7.2 If you have any queries, or require an accessible version of this document, please contact us on 020 7389 8030 or by email at teena.chowdhury@professionalstandards.org.uk.
- 7.3 Please return your response to us by **12 September 2017**.

Confidentiality of information

- 7.4 We will manage the information you provide in response to this discussion paper in accordance with our information security policies which can be found on our website (www.professionalstandards.org.uk).
- 7.5 Any information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA) the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 7.6 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with

obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.

- 7.7 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.
- 7.8 We will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

8. Our consultation process

8.1 Our consultation process is based on the current Cabinet Office principles on public consultation, *Consultation principles: guidance*.¹² When conducting public consultations on aspects of the Authority's work we aim to:

- Be clear about both the consultation process and what is being proposed. This gives respondents the opportunity to influence our thinking and consider the advantages and disadvantages of our proposals
- Consult formally at a stage where there is scope to influence the policy in order that consultations have a purpose
- Give enough information to ensure that those being consulted understand the issues and can provide informed responses. We include assessments of costs and benefits of the options considered
- Seek collective agreement before publishing a written consultation particularly when consulting on the new proposals
- Consult for a proportionate amount of time, taking a judgement based on the nature and impact of the proposals. Consulting for too long will unnecessarily delay policy development and consulting too quickly will not give enough time for consideration and will reduce the quality of responses
- Ensure our consultation is targeted to consider the full range of stakeholders, bodies and individuals affected by the policy and include relevant representative groups. Consider targeting specific groups if necessary.
- Consider consultation as an ongoing process, not just about formal documents and responses.
- Analyse responses carefully and explain the responses received and how they have informed the policy. Give clear feedback to participants following the consultation. Publish responses to the consultation within 12 weeks or explain why that it is not possible
- Allow appropriate time between closing the consultation and implementing the policy.

8.2 If you have concerns or comments which you would like to make relating specifically to the consultation process itself, please contact us:

Christine Braithwaite
Director of Standards and Policy
Professional Standards Authority
157-197 Buckingham Palace Road
London SW1W 9SP
Tel: 020 7389 8030
Fax: 020 7389 8040

christine.braithwaite@professionalstandards.org.uk

¹² Cabinet Office. 2016. *Consultation principles: guidance*. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

Annex A – The Standards of Good Regulation

Guidance and standards	
First Standard	Standards of competence and conduct reflect up-to-date practice and legislation. They prioritise patient and service user safety and patient and service user centred care
Second Standard	Additional guidance helps registrants apply the regulators' standards of competence and conduct to specialist or specific issues including addressing diverse needs arising from patient and service user centred care
Third Standard	In development and revision of guidance and standards, the regulator takes account of stakeholders' views and experiences, external events, developments in the four UK countries, European and international regulation and learning from other areas of the regulators' work
Fourth Standard	The standards and guidance are published in accessible formats. Registrants, potential registrants, employers, patients, service users and members of the public are able to find the standards and guidance published by the regulator and can find out about the action that can be taken if the standards and guidance are not followed.
Education and training	
First Standard	Standards for education and training are linked to standards for registrants. They prioritise patient and service user safety and patient and service user centred care. The process for reviewing or developing standards for education and training should incorporate the views and experiences of key stakeholders, external events and the learning from the quality assurance process
Second Standard	The process for quality assuring education programmes is proportionate and takes account of the views of patients, service users, students and trainees. It is also focused on ensuring the education providers can develop students and trainees so that they meet the regulator's standards for registration
Third Standard	Action is taken if the quality assurance process identifies concerns about education and training establishments
Fourth Standard	Information on approved programmes and the approval process is publicly available.
Registration	
First Standard	Only those who meet the regulator's requirements are registered
Second Standard	The registration process, including the management of appeals, is fair, based on the regulators' standards, efficient, transparent, secure, and continuously improving
Third Standard	Through the regulators' registers, everyone can easily access information about registrants, except in relation to their health, including whether there are restrictions on their practice
Fourth Standard	Employers are aware of the importance of checking a health professional's and social worker's registration. Patients, service users and members of the public can find and check a health professional's and social worker's registration
Fifth Standard	Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk based manner
Sixth Standard	Through the regulator's continuing professional development/revalidation systems, registrants maintain the standards required to stay fit to practise.

Fitness to practise	
First Standard	Anybody can raise a concern, including the regulator, about a registrant
Second Standard	Information about complaints is shared with other organisations within the relevant legal frameworks
Third Standard	The regulator will investigate a complaint, determine if there is a case to answer and take appropriate action including the imposition of sanctions. Where necessary the regulator will direct the person to another relevant organisation
Fourth Standard	All complaints are reviewed on receipt and serious cases are prioritised
Fifth Standard	The complaints process is transparent, fair, proportionate and focused on public protection
Sixth Standard	Complaints are dealt with as quickly as possible, taking into account the complexity and type of case and the conduct of both sides. Delays do not result in harm or potential harm to patients
Seventh Standard	All parties to a complaint are kept updated on the progress of their case and supported to participate effectively in the process
Eighth Standard	All decisions at every stage of the process are well reasoned, consistent, protect the public and maintain confidence in the profession
Ninth Standard	All final decisions, apart from matters relating to the health of a nurse, are published in accordance with the legislation and communicated to relevant stakeholders.
Tenth Standard	Information about complaints is securely retained.

Annex B – Standards aligned by principle

Principle	Standard	Evidence
<p>Proportionate: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised</p>	<p>The qualification rules, Standards and guidance and arrangements to ensure continuing fitness to practise for registrants</p> <ol style="list-style-type: none"> 1. Focus on the public interest, ensure safe and effective practice, promote professionalism and prioritise patient and service user centred care. 2. Ensure that there are no inappropriate barriers to practice. <p>Changes to how the regulator meets its statutory functions are made following consultation and an assessment of the risks so that the regulator is satisfied that they are proportionate to meet the problem.</p> <p>The regulator's processes do not impose inappropriate requirements on would-be registrants, registrants or complainants which might hinder their ability to engage with the regulator.</p> <p>Processes for dealing with:</p> <ol style="list-style-type: none"> 1. Registration applications 2. Fitness to practise cases 3. Other administrative processes <p>take no longer than is necessary to achieve a fair result.</p> <p>When reaching decisions, the regulator collects</p>	<p>Views of stakeholders; reviews by the regulator; Numbers of registrants.</p> <p>Consultations and papers to the Board; Views of stakeholders. This covers the rules and standards governing qualification, registration, continuing fitness to practise, the fitness to practise process and the approach to illegal practice.</p> <p>Views of stakeholders/complainants; Reviews by the regulator.</p> <p>Examination of processes; Dataset.</p>

	<p>sufficient evidence to ensure that it or its panels reach an appropriate decision in the public interest.</p> <p>In dealing with non-registrants using a protected title or undertaking a protected act, the regulator acts proportionally to the risk of harm to the public and works effectively with other authorities.</p>	<p>Examination of the processes in respect of registrations and fitness to practice; The Authority's s.29 learning.</p> <p>Examination of processes; Views of stakeholders.</p>
<p>Consistent: rules and standards must be joined up and implemented fairly</p>	<p>The rules governing qualification and professional standards are consistent internally and with the statutory powers and, with those of other regulators and health care providers so far as practicable and in the public interest.</p> <p>Well documented procedures are in place that allow the regulator to carry out its functions consistently. These are reviewed regularly and are subject to appropriate oversight.</p> <p>Up to date and clear guidance is available to decision-makers to enable them to comply with rules and processes so that their decisions are consistent.</p> <p>Processes exist to enable the regulator to satisfy itself that third parties providing training or other work in support of the regulator reach appropriate standards.</p> <p>The regulator understands the diversity of those with whom it engages, considers this throughout its work</p>	<p>Other stakeholders; Regulator's papers; Regulator's documentation. This will cover all aspects of the regulator's work including continuing fitness to practise.</p> <p>Regulator's documentation; Other information available to the Authority (e.g. s.29 and complaints).</p> <p>Regulator's documentation; Other information available to the Authority (e.g. s.29 and complaints).</p> <p>Regulator's documentation; Third party feedback.</p>

	<p>and does not create barriers to any group.</p> <p>The regulator's processes are fair and provide parties, particularly those with disabilities or are vulnerable, with appropriate support.</p>	<p>Regulator's documentation. Covers qualification requirements, registration, standards and fitness to practise.</p> <p>Regulator's documentation; Complaints to the authority.</p>
<p>Targeted: regulation should be focused on the problem, and minimise side effects</p>	<p>When using statutory powers, the minimum regulatory force is used to address the concern identified and is used in the public interest and to ensure the safety of patients and service users.</p> <p>Decisions throughout the fitness to practise process ensure that the right level of evidence is gathered to address the seriousness of the concerns and to ensure that any action against a registrant address the public interest.</p>	<p>Regulator's assessments of risk and analysis of options when looking at changes to standards and processes in all areas.</p> <p>Consideration of:</p> <ol style="list-style-type: none"> 1. Thresholds for acceptance 2. Risk assessments 3. Investigatory/charging decisions/pre-panel disposals 4. Interim orders 5. Sanctions imposed 6. Registration decisions 7. Other processes.
<p>Transparent: regulators should be</p>	<p>The regulator clearly articulates its statutory purpose, and how it intends to achieve that purpose.</p>	<p>Regulator's register; Regulator's website.</p>

<p>open, and keep regulations simple and user friendly</p>	<p>Accurate, up to date and relevant information and guidance is publicly available about the regulator's statutory functions, including its rules and processes as they affect registrants and others.</p> <p>Stakeholders are consulted about changes to rules, standards and processes.</p> <p>The regulator works with other bodies in the health care system, particularly employers, occupational associations and others who are closer to the delivery of care, to ensure patient safety.</p> <p>The regulator responds to queries and concerns about its performance efficiently and openly.</p> <p>Regulators encourage candour and transparency amongst registrants and students.</p>	<p>Regulator's documentation.</p> <p>Feedback from third parties; Regulator's documentation. Looking all aspects of work including education, standards and fitness to practise.</p> <p>This involves dealing the registrants and external stakeholders. Regulator's documentation; Feedback to the Authority.</p> <p>Regulator's standards and processes. Feedback to the Authority.</p>
<p>Agile: regulation must look forward and be able to adapt to anticipate change</p>	<p>The regulator reviews the environment in which it works to identify and address new risks both to patient safety and to its own processes.</p> <p>The regulator seeks and uses feedback and learning from others and its own processes to inform changes and address risks.</p>	<p>Regulator's processes and papers; Information from other stakeholders.</p>

	The regulator regularly makes risk assessments on individual cases and reacts appropriately to new evidence.	
Accountable: regulators must be able to justify decisions, and be subject to public scrutiny	<p>The regulator is independent and focused on the public interest.</p> <p>The regulator monitors, evaluates and reports accurately and openly on its own performance and takes action to address concerns.</p> <p>There are suitable processes for providing the Council with information to enable it to monitor performance and compliance and the Council is effective in addressing that information.</p>	<p>Regulator's papers; Information from stakeholders. Complaints.</p>

Professional Standards Authority for Health and Social Care

157-197 Buckingham Palace Road
London SW1W 9SP

Telephone: **020 7389 8030**

Fax: **020 7389 8040**

Email: **info@professionalstandards.org.uk**

Web: **www.professionalstandards.org.uk**