

Response to HCPC consultation on the Standards of Conduct, Performance and Ethics

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care ('the Authority') 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 social 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.
- 1.2 As part of our work we:
- Oversee the 10 health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to comment on the revised Standards of Conduct, Performance and Ethics (SCPE).
- 2.2 Overall, we found the consultation documents clear and helpful, and welcome the significant amounts of engagement that have gone into reviewing and updating the Standards.
- 2.3 We support many of the changes proposed. Some of the concepts and language in the current Standards seem out-of-step. For example, we welcome the replacement of language relating to 'encourage and help' with 'empower and enable', with respect to service users maintaining their own health and wellbeing. The new wording around consent also seems more in-line with current practice and thinking, in the light of the Montgomery Judgment.¹
- 2.4 We also welcome the strengthening of requirements relating to discrimination, professional boundaries, communication, social media use, and raising concerns about bullying and intimidation.
- 2.5 More generally, we support the shift to more active language, which, in our view, makes the expectations on registrants clearer.

¹ [Montgomery \(Appellant\) v Lanarkshire Health Board \(Respondent\) \(supremecourt.uk\)](http://supremecourt.uk)

- 2.6 The activities undertaken in support of this review of the SCPE do not seem to have included looking at other regulators' codes. We think that there would be benefits to regulators agreeing a common code of conduct across the professions, to bring greater consistency to the standards of behaviour expected of professionals across the sector. However, in the absence of a shared code, we would like to encourage regulators to look to other codes, standards etc., to ensure greater coherence, and where desirable, consistency. This is especially important for registrants working side-by-side in multi-professional teams.
- 2.7 In addition to these general comments, we have included below our responses to the relevant consultation questions.

3. Questions

Q1: Do the revised Standards make it clear what the appropriate boundaries are between a registrant and service users or carers?

- 3.1 We welcome the expanded detail within this standard relating to boundaries with service users and carers.
- 3.2 We also support the changes made to this standard for boundaries between colleagues, as we know that transgressions in this area can be relevant to fitness to practise, and have negative impacts on the service user experience, and potentially confidence in the service provided.² We suggest however that 1.12 could be clearer on whether/when consensual relationships between colleagues would be considered acceptable.

Q3: Do the revised Standards ensure that registrants maintain a practice that promotes equal, fair, and inclusive treatment?

- 3.3 We support the changes to the standards relating to discrimination, and in particular the more active focus of this standard. This fits with the finding in *Safer Care for All*³ that there was variation across regulators in this area.
- 3.4 We welcome the fact that the HCPC has considered and engaged with stakeholders on the possibility of including a requirement on registrants to challenge discriminatory behaviour, in line with our suggestion in *Safer Care for All*. This is a complex area, and we understand that the standards for registrants need to be pitched at the right level to help move the dial on discrimination and inequalities, without placing unreasonable expectations on individual registrants. The question of how registrants can play a more active role in tackling discrimination and health inequalities is one that we would like to continue to explore with stakeholders from across the sector.

² <https://www.professionalstandards.org.uk/news-and-blog/latest-news/detail/2018/05/08/does-sex-between-colleagues-put-patients-at-risk>

³ <https://www.professionalstandards.org.uk/safer-care-for-all/safer-care-for-all-recommendations-and-commitments>

Q4: Are the revised Standards clear about what registrants must do when things go wrong?

- 3.5 We welcome the decision to include the term ‘candid’ in the Standards, where before it did not feature at all. However we suggest it might be preferable for the standard to refer explicitly to the ‘duty of candour’, to embed and promote shared terminology and understanding of the term. We note that this is nonetheless a technical term that would benefit from being explained, along with any other terms in the SCPE that may not be readily understood by a member of the public.
- 3.6 We also welcome the decision to strengthen the requirement for apologising to service users when care has gone wrong. We know both that apologies are important to service users and families when care has gone wrong, and that the myth persists among some professionals that an apology can be used to infer liability.⁴ It is therefore important for this standard to be as clear as possible.

Q7: Are the revised Standards clear about the appropriate use of social media and how this relates to registrant practice?

- 3.7 Overall, we found the revised Standards were clear, when combined with the revised social media guidance.
- 3.8 We do however suggest that it might be helpful to make more explicit reference, probably in the guidance, to online abuse towards other registrants and service users. This would fit with the wording of the relevant standards relating to communications with service users and colleagues. We note that the guidance refers to registrants being ‘*polite and respectful to others when communicating in a professional capacity*’, presumably as opposed to a personal one – and suggest that this distinction could be misinterpreted as allowing ‘carte blanche’ for communications made in a personal capacity. Perhaps this whole section of the guidance could be tested to ensure that it sets out position on online abuse that provides sufficient clarity for registrants and service users, as well as fitness to practise decision-makers.

Q9: Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation – as defined by the Equality Act 2010?

- 3.9 In line with our feedback on Q3 above, we consider that on the face of it, the changes to the Standards would be likely to have a positive impact in promoting equality and diversity.

⁴ <https://resolution.nhs.uk/wp-content/uploads/2018/09/NHS-Resolution-Saying-Sorry.pdf>

Q10: Do you have additional comments about any of the proposed changes to the Standards, or regarding the Standards of conduct performance and ethics in general?

- 3.10 On the Standard regarding communication with service users, we suggest a more explicit link could be made between good communication and the informed decision-making that is referenced in Standard 1.3. For a service user to be empowered to make their own decisions about their care, it is essential that healthcare professionals communicate with them in the right way – by giving them all the relevant information, and responding to questions about their options – all in terms they can understand. Setting out this link in the standards would support the move towards more shared decision-making in healthcare, which is right in principle and in law, but also has benefits for the quality of care.⁵
- 3.11 We also noted that the Standards did not explicitly cover the scenario in which a registrant might refuse to provide care on the grounds of a conscientious objection. This is covered in some other codes, and we recommend the HCPC consider providing some guidance on this – whether in the SCPE or elsewhere – because it is a complex area that touches on both the registrant’s rights, and the service user’s ability to access the care they need.

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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⁵ <https://www.patients-association.org.uk/Handlers/Download.ashx?IDMF=8a8cb262-813e-4b35-9ab2-fdf0ec72c8a8>