1. Set out below are the responses we received to the questions we asked in the consultation. These responses are grouped under each question.

Section three, and annex one
Q1: Do you agree with the proposal to move to a rolling programme of performance review?

2. Yes. We believe the principles set out to govern the performance review process are appropriate and we welcome the risk based approach that underpins the proposals.

3. Looking at risk frameworks takes the focus to productively looking forward rather than backwards.

4. It is a logical step forward for the Authority to adopt a rolling programme to review the performance of each regulator, whether that consists only of an assessment, or an assessment plus a change review, targeted review or detailed review; with a separate report being published for each regulator. This should facilitate a smoothing of workload through the year, enabling the Authority to make effective targeted and proportionate use of its resources and making best use of income which is generated though the levy on the nine healthcare regulators.

5. The Consultation document is unclear as to how the Authority will manage the transition to the new process or the first year of the new performance review proposals and how that will feed into compiling of the performance review in 2015/16.

6. Whilst we appreciate that we are in the early stages of transition to a new process, it would be beneficial to have a clearer indication as to the timeframes and potential key milestones for a rolling programme of performance reviews. All nine regulators would benefit from the early publication of a plan which would clearly set out key dates and timescales throughout the new assessment lifecycle.

7. As no initial timelines have been identified regarding the quarterly collection of data, and any feedback of the findings to the regulator, it is possible that the timing of a subsequent review may not allow the regulator the time to amend existing processes or act on the feedback.

8. This proposal represents a fundamental change to the way in which the performance of the nine healthcare regulators is reviewed. It will have substantial

resource and internal development requirements across the respective organisations, as new processes are embedded to enable the level of data capture, both in terms of detail and frequency, such reporting will necessitate. Whilst we anticipate being able to meet the requirements, will consideration be given both initially, and on an ongoing basis, to those regulators for which these reporting requirements may not be immediately achievable? This is even more pertinent whilst the fine detail of the timeframes for the coming year remains unknown.

9. The process of a rolling review may allow the Authority to review information which is more indicative of the current operation and performance of the regulators.

10. Currently, the information reviewed by the Authority provides an historic view of the operations and performance of a regulator as opposed to a snapshot of its present day activities. Such a change would be beneficial to the Authority, the public and the respective regulators, as it could mean that rather than reviewing an historic issue which may already have been remedied, the new system would provide greater insight into the up to date direction of travel of each regulator. Where issues have been identified or a change made in a regulators process, an early review of progress can be established. However, the new system will only be effective if the data and evidence base upon which performance is reviewed is current. The Consultation suggests that this would be the case but further assurance on this point would be welcomed.

11. We agree in principle with the proposal to move to a rolling programme of performance review, providing it is in line with the concept of right-touch regulation.

12. In order to ensure the review is transparent, we would appreciate sufficient notice of the timetable for our review, so that we can plan for this as part of our annual business planning process. It is not clear when the Authority intends to implement the revised system and consequently when the reviews of regulators will be scheduled. The Performance Review requires a significant investment of our resources which needs to be planned for effectively so we can ensure that sufficient resources are available. We approve our Business Plan in February annually, to cover the next financial year, therefore notice by January each year (for reviews being undertaken between April and March of the next financial year) would be appropriate.

13. We would appreciate further guidance from the Authority regarding the process for assessment by the PSA to determine whether or not any further review (change, targeted or detailed) is required. We are particularly concerned that this process is conducted in a transparent and consistent manner across regulators. Depending on how the assessment will be made, the process may indirectly

favour larger regulators who have more capacity to provide the information required by the Authority.

14. The process indicates that any regulator who demonstrates satisfactory performance with no significant changes would not need to undergo a detailed review, until one of these elements changed. We are concerned that such a process may not identify a regulator whose performance may have declined relative to other regulators, and suggest that a detailed review is scheduled to take place on a routine basis (such as every three or five years). We would appreciate further guidance to ensure clarity of the term 'significant changes' to ensure consistency of approach by regulators in reporting such changes to the Authority. We view changes to practice to be a constant and feel that failure to review and improve our practices is an indicator of poor organisational health.

15. We are also keen that the move to a rolling programme does not impact on the Authority's ability to ensure the review remains consistent in its application and ability to moderate performance across the healthcare regulators. By holding each regulators review at the same time and one year after the previous review, the process currently provides all regulators the same opportunity to change performance before

16. Being reviewed again and the same timetable to input into the review. We therefore recommend that a rolling programme should maintain the same timetable structure for each regulator, with the same time period between reviews (unless they are a different type of review).

17. In addition, the current process enables the Authority to moderate its view of each regulator's performance by comparing performance across the regulators. This is important as the Authority does not identify any range or threshold for what good performance looks like and there is variability between each regulator's performance targets.

18. To ensure consistency and transparency in relation to the outcome of our performance review we would like clarity regarding what constitutes good performance with clear published criteria and metrics setting out the level of performance required to meet each standard. Therefore we are keen that the rolling programme does not impact on the Authority's and our ability to draw comparisons as well as identify good practice across the regulators.

19. We can see that a rolling review cycle makes sense for the Authority in spreading its workload through the year. We also support the proposal that other information arising from, for example, initial stages audits, section 29 referrals and Council papers, is considered alongside the regulators' evidence submission reporting against the standards of good regulation.

20. The current process requires the regulators to complete the evidence submission at a fixed point in the year. The process is resource intensive but as it takes place at the same time every year we are able to plan for it. If a rolling programme is to be implemented sufficient notice should be given to each regulator as to when they will be required to report.

21. MPS agrees with the principles behind this proposal but suggests that a full performance review should take place earlier than five-six years even where no concerns are identified based on the information provided by the regulators. This regular, independent assurance would provide the profession, the public and Parliament with the confidence that the regulator is performing to the expected standard.

22. MPS would like to see a full audit/review at least once every 2-3 years.

23. We have concerns about the Authority relying on the regulator to disclose data before a decision is reached on whether the PSA will 'audit' as part of a 'targeted review'. We think audits ought to be routinely undertaken, randomly, at specified periods.

24. We see value in a moving to a rolling programme and in combining the various oversight activities, such as the initial stages audits, within a single performance assessment process.

25. In practice, we would be interested to understand what assessment the Authority has made of the practical feasibility of this approach, reflecting on the challenges encountered this year in relation to our performance review report and the outstanding initial stages audit from 2014.

26. Essential to the introduction of a rolling programme would be a commitment to agree a clear timetable with each regulator, recognising the extensive resource that regulators are required to commit in complying with the performance review process.

27. A collaborative approach to agreeing realistic and reasonable deadlines with each regulator in relation to each stage of the process will also be necessary if a rolling programme is to work effectively.

28. We consider that the new process presents an opportunity to introduce more direct communication and ongoing interaction throughout the performance review. This would reduce the significant quantities of written evidence, data and supporting documentation currently required, which is time consuming and

resource intensive for both the regulators and the Authority and we would encourage more immediate engagement to discuss issues as they arise, so that the resulting reports have currency and relevance rather than being simply a backwards look which may no longer reflect latest practice.

29. We have previously advocated adoption of a thematic based approach across regulators, as likely to yield positive results in helping cross-fertilise good or innovative practices. We would not wish a rolling programme to reduce the scope for this and would encourage the Authority to consider how a thematic approach could be built into any revised process.

30. Not sure.

31. The publication of the reports at the same time were helpful in certain comparisons between the regulators. By publishing them separately, some of these comparisons may be lost due to different timelines of assessment.

32. It is of utmost importance that any new process is meaningful for all those concerned.

33. With regard to our comment on third-party feedback above, we note that the regulators will be required to provide third-party feedback directly. Given the lack of confidence the profession currently has in its regulator, we do not believe that relying on this provision by the regulator will be meaningful as they will have the opportunity to provide their own commentary without the opportunity of additional feedback from those third parties. We expect that this will not be the only way in which third-party feedback will form part of the review process. The table on page 8 of Annex 4 seems to suggest that 'information provided by other bodies' will still be taken into account, but then it is not clear in how far the process for such feedback has changed.

34. We also note the reference to provision of Council papers. It is not clear from the consultation whether the Authority would see the published or the private versions of Council papers. We believe that there could be significant differences between them in some cases.

35. One way in which this process will be meaningful is if the data is published in as full a version as possible. There is a comment in the consultation document that the full data will not be published, but, effectively, a summary of it, or some detail where this is relevant to the report. It might save the regulators and interested parties much by way of freedom-of-information work if this data were published, suitably anonymised where appropriate, of course.

36. For an organisation such as the Scottish Government, the detail in the current performance review is complex and sometimes quite difficult to follow and understand. The benefit that a single performance review may have over a rolling programme is that currently all the information for the professional regulators is available in one place so it is easy to compare details between each of the regulators. Moving to a rolling programme of performance review brings the benefit that there will be specific focus on each of the regulators.

37. In principle we agree with moving to a rolling programme of performance review. However, we have a number of concerns with the outlined proposal. As the proposal stands no certainty is provided as to when the initial assessment will take place for each regulator throughout a year, and subsequently when a Change, Targeted or Detailed Review is likely to take place (paragraphs 3.11 and 7.1 of the consultation document are illustrative of this point).

38. To deliver against targets all organisations require operational plans which provide some certainty of activities, including allocation of human resources – this is particularly true of a relatively small organisation with limited resources. Closely linked to this is the fact that we have specific periods of concentrated activity, such as Retention and Pre-registration activity, our own strategic internal audits which are scheduled a year in advance, all taking place at set times throughout the year. If we were subject to a Change, Targeted or Detailed review (and an associated audit) in these areas at these times, this is likely to significantly impair our performance.

39. We ask for clarification on the exact period the revised performance review will cover (for example a calendar year, a rolling year, financial year etc) and within that defined period when initial assessments and evidence gathering will take place for each regulator and we would seek assurances that the Authority will consult with the regulators and agree relevant dates to ensure any subsequent reviews will not negatively impact on the operational performance of organisations.

40. It is our view that the timetable of any review or audit must be agreed between the parties including response times.

41. We agree in principle with the proposal to move to a rolling programme of performance review.

42. We consider that the proposed rolling programme of review which incorporates the outcomes of the Authority's other activities, including the initial stages audit of fitness to practise cases, is a sound one.

43. We have two comments to make about this proposal. In the current approach, the regulators know that they will be required to complete the self-assessment template between September and October each year, with further information requested in January of February of the following year. Drafts of the regulators' report and overview section are then considered between April and May. This approach helps the regulators to plan effectively and ensures that sufficient resources are available to participate in the performance review.

44. We would want to be sure that the Authority will provide sufficient notice of its intention to ask each regulator to participate in the performance review and that, wherever possible (unless an earlier review is triggered by significant adverse information), the Authority undertakes its stage one review of each regulator in approximately the same period each year.

45. In addition, one of the advantages of the current approach is that this provides an easy opportunity for the Authority to moderate its judgements by comparing performance across the regulators. For example, the Authority is able to note changes in the number of data breaches a regulator has reported, but then compare this to the rate of breaches across the regulators as a whole, in order to inform its judgement about whether the regulator has met its standards. This is particularly important given that (appropriately) the Authority does not prescribe performance targets (or their equivalent), and there will be variability between each regulator's performance targets.

46. Both changes in the regulator's performance year-on-year and the regulator's performance relative to other regulators are crucial. The increased frequency of data reporting proposed in the consultation should enable the Authority to continue to do this to some extent. We would be keen that the Authority ensures that the move to a rolling programme did not mean that this opportunity for moderation is lost.

47. In principle, we agree with the proposal to move to a rolling programme. However, we would request that where there are audits (initial stage or registration), these should cover only cases within the current performance review period. Also, a clear timetable should be made available in order that appropriate resources can be arranged to be available to deal with the workload.

48. Yes, provided that there is clarity about when an Individual Performance Review is due to take place. For a small regulator the Performance Review requires a significant investment in staff resources which needs to be planned well in advance, and if there are to be variable timings these will need to be agreed with us.

Section four, and annex two
Management of Risk Standard
Q2: Do you agree with the proposal that the Standards of Good Regulation should include a new Standard relating to the management of risk?

49. No. We think that it's reasonable for the performance review to consider the effectiveness of each regulator's internal governance mechanisms and if each governing Council is able to provide effective oversight of the executive.

50. We do not believe that a new standard relating to management of risk will enable an effective assessment of this for the following reasons:
    - Currently, the Standards describe an outcome against which we are asked to provide evidence that demonstrates how we achieve each standard. We believe that it would take a disproportionate amount of time and effort to provide clear and straightforward evidence to demonstrate 'good governance'

    - The evidence against the standards is compiled by the executive. While we would be able to provide evidence about our governance arrangements, Council's ability to provide 'effective oversight' of the executive is a less tangible outcome that necessarily is a view formed by Council about the quality of relationships and sense of assurance they derive from the management of the regulator.

51. Yes, we agree that in principal that a Management of Risk standard would be an appropriate addition to the performance review. The definition of key risks and of what might constitute adequate management or mitigation will have to be discussed in detail with each regulator, since the risks each faces and their powers vary considerably.

52. We agree that the proposed new standard which considers governance, organisational learning and risk management should be added. It is appropriate for the Authority to wish to be assured that regulators have good governance processes, such as risk management, which are effective in maintaining good organisational health.

53. The introduction of a new standard and the costs imposed on regulators to evidence performance, and the Authority to evaluate performance, should be appropriate to the risks posed, with the minimum of side effects. We would be interested to see the impact assessment of this proposal and wish to be assured that there will not be an impact in relation to the Authority levy. We hope the overall cost of undertaking the Performance Review will not be increased.

54. We agree that consideration of governance and risk management arrangements would be useful to the Authority alongside its review of the regulators' performance against the current standards of good regulation.

55. If this standard is to be introduced the Authority should be clear about what criteria it will use to assess performance against the standard i.e. what does good look like?

56. MPS agrees, but argues that this should be based on standards that can be measured using objective evidence rather than the subjective view of those tasked with the reporting role within the various regulators. It would be helpful if further guidance could be provided by the Authority to elaborate on what is meant by 'risk' in each of the categories identified, with reference to examples. It is crucial that the view of "risk" is properly informed by discussion with the various professions. It appears to MPS that the Authority's view of risk when considering the need for Interim Orders Committee referrals in relation to the GDC can be disproportionate. MPS would welcome the opportunity to discuss this with Authority.

57. Generally, although what is being proposed in Annex 2 is really about good governance, of which risk is only a part.

58. If the standard is based only on risk, it could be simplified significantly, alternatively a name change to "management of governance standard", or similar, may be appropriate.

59. I'm unsure why there are two proposals based on the management of risk. One proposal is the standard, the other appears to be a view on how it could be assessed.

60. Yes.

61. The management of risk is extremely important. The benefit of identifying future risks is key in establishing a model to manage risk however with the potential addition of a further standard of good regulation, there may be a concern that there could be too many standards making the process seem like a 'tick box exercise'.

62. A 'risk standard' might be better positioned as a wider governance standard which would then bring in the notion of a more comprehensive approach rather than just risk.

63. No. The inclusion of a new Standard relating to regulatory risk is inconsistent with the current rationale for Standards of Good Regulation. Currently the four Standards directly relate to the four core regulatory functions. Risk management is not a core regulatory function; it exists separately from the four existing Standards. To consider it as such will lead to confusion.

64. In our analysis the management of relevant risk is inherent across the output based Standards – the management of risk is an input, albeit an important one. The regulators' ability to identify, assess and manage risk will be reflected in the outputs in the other four Standards.

65. Councils of the regulatory bodies perform an important function in their strategy setting and oversight of those bodies, including the setting of performance targets and measures in the public interest. They are recipients of the performance review reports and are charged with ensuring that remedial action is identified and delivered where there are shortcomings in a similar manner to the receipt of internal and external audit reports.

66. The Executive arm of the Pharmaceutical Society of Northern Ireland is responsible for implementing the strategic vision of its Council and in turn the Council is accountable to the Minister for Health Social Services and Public Safety and the Northern Ireland Assembly. In this regard we submit that the PSA is best placed to work in parallel with the Council to facilitate the Minister and the Northern Ireland Assembly in holding the organisation to account in the public interest.

67. Creating a risk standard and dataset which directly focuses on the operation of Councils, in our opinion, will negatively change Councils' relationship with the Authority - from one of the PSA assisting Councils with oversight and governance to enhance performance and improve their accountability to the relevant Government Minister and Parliaments, to a relationship where the Councils themselves become directly answerable to the Authority. In our view this is likely to cause confusion within regulators with regards the separation of their management/implementation and governance roles.

68. In coming to this conclusion we have referenced the Good Governance Institute's 'Good Governance Handbook' which states that "Governance works on the basis of a separation of powers, so that those running the organisation day-to-day are internally accountable to themselves and others who have a focused governing role'[1]. The Handbook also states that "Boards and governing bodies are less effective if there is confusion around roles and when behaviours are out of tune with the value that good governance brings to an organisation, for example when

1. Andrew Corbett-Nolan et al, Good Governance Handbook, 2015 p.8 http://www.good-governance.org.uk/wp-content/uploads/2015/01/GGH-Main-.pdf 2

distinct disciplines of management and governance are confused, this can lead to fractured decision making and a lack of strategic thinking"[2]. We have concerns that pursuing the proposed risk standard will undermine the current good governance framework.

69. The Council of the Pharmaceutical Society NI already undertakes a self-assessment exercise to ensure the appropriateness of the arrangements and the organisation is also subject to both internal and external audit. The role envisaged for the fifth standard could cause problems with regards the organisation's external audit and the current timetable for preparation of annual reports and accounts. If, for example you decided that we have not met aspects of the proposed fifth standard but we have already laid our report and accounts, whose opinion takes precedence – the PSA's or external auditor's? Such a dilemma could create significant difficulties and in and of itself would be an example of poor governance arrangements.

70. We are concerned that if the governing role of the Councils of healthcare professional regulators becomes part of the performance review, the operational engagement and open interaction with the process may be damaged.

71. Yes.

72. We agree that a new standard on the management of risk should be added.

73. We agree that the consideration of management of risk would be a useful addition to the performance review. We are not necessarily convinced that this needs a separate standard.

74. We think that the consideration of governance and risk would be a helpful addition to the Performance Review. However, in the context of the new Levy, we would expect the PSA to maintain the cost of undertaking the Performance Review within current parameters.

Q3: If so, do you agree with the areas of focus relating to the management of risk?

75. We think that risk is one angle to consider that may give an insight into the governance of an organisation, but as above, do not believe a standard would enable an accurate assessment.

[2] Ibid,p.5

76. The focus of the proposed standard covers many questions that are part of the current performance process however, others may lead to duplication of effort, for example, effective controls relating to financial performance , that are already subject to external audit scrutiny.

77. It is unclear from the proposals as to how the Authority would assess what is 'good performance' in this area.

78. If such a Standard is to be introduced, we would strongly urge the Authority to ensure that the risk assessment methodology is the subject of a full external review and developed by experts in the field of risk management, to ensure that the proposals for a risk standard relate to how regulators themselves manage risk in carrying out the management of their statutory functions.

79. In general the areas of focus seem appropriate and mainly reflect questions already asked by the Authority as part of the overview section of the existing performance review template. The standard focuses on the management of organisational risk (governance of the regulator), rather than risks to public protection, which could be seen as limited in scope.

80. We would be interested in widening the scope to consider our capacity to understand the sector we regulate, having the strategic capacity to understand the risks to public protection and take actions in the public benefit. From the consultation it is unclear how an assessment will be made of whether we are managing risk well or what would constitute good performance. We would therefore appreciate further guidance on this from the Authority.

81. Yes. The standard as drafted contains some information already collected as part of the performance review process and some additional areas. As stated above, if the Authority is to make judgements on the regulators' performance in the areas of governance and risk management, it should be transparent about the basis on which those judgements are made.

82. MPS agrees but as explored above, it would be helpful if further guidance could be provided by the Authority to elaborate on what is meant by risk in each of the categories identified, with reference to examples.

83. As above.

84. Yes.

85. Yes

86. In answer to Question Six we describe in detail how we contend this issue should be addressed, giving our examples of the areas that we suggest should be addressed in an assessment rather than a review

87. Yes.

88. The proposed new standard reflects questions already asked by the PSA as part of the existing performance review template and appropriately includes content which looks at how the regulators have used sources of information, such as the outcomes of organisational complaints, to improve what they do.

89. The areas of focus at both paragraphs 6.4 and 6.5 seem to be appropriate and seek to define whether there is an appropriate assurance framework. However, the examples stated seem to be much more around performance improvements in an operational sense rather than the monitoring of the robustness of the assurance framework.

90. Yes, these seem appropriate.

Q4: Are there other areas that could be defined as management of risk that should be included as part of this standard?

91. No.

92. Not at the present time but experience of reporting against a new standard may indicate other areas to be included in the future.

93. We advocate that any other areas included are targeted on the risks which the Authority is seeking to address, related to ensuring public benefit and kept as simple as possible to ensure consistency of application.

94. No.

95. Poor and inconsistent decision making at each stage of the fitness to practise process (which includes unduly harsh as well as unduly lenient decisions) risks undermining public and professional confidence in the regulator. The regulator should be asked to demonstrate how this particular risk is addressed and how far this has been achieved based on objective evidence.

96. No comment

97. It is not clear from the dataset on page 10 whether, for example, the judicial review won by the BDA in 2014 would have been included in the information to be provided, either under the 'organisational complaints' section or the 'judicial review' section. While the case related to the Annual Retention Fee (ARF) and problems with the GDC's fitness to practise processes indirectly, the central issue was the fairness and legality of the 2014 consultation. The dataset definition might exclude this type of challenge. We believe that the dataset should include information about challenges to the GDC's procedures in terms of governance, fairness and transparency.

98. Not aware of anything further to be added to the management of risk.

99. We do not support the introduction of a risk standard and consequently do not consider there to be other areas that should be included.

100. No.

101. Please see response to question three.

102. It is probably helpful in the first instance for this to be kept simple and developed further in the light of experience.

Management of risk question

Q5: Would you prefer the alternative proposal that, instead of including a new Standard about the management of risk, we should ask the regulator about forthcoming risks as part of the information we use to decide the scope of their review?

103. We believe the alternative proposal is more likely to give the Authority insight into the governance of a regulator rather than a standard.

104. We believe the 'assessment' of the effectiveness of regulators governance is not without risk. There is a balance to be struck between transparency and maintaining confidence. Where regulators are frank about the existence of risks that they view as significant and their intention to respond to those, the Authority should factor that into their assessment, but should also undertake to protect the confidentiality of these interactions.

105. We particularly think that any information considered in making this assessment should only be used to form the Authority's view on the effectiveness of a regulator's governance and that this is not an opportunity to revisit or challenge decisions that have been legitimately made by Council as the Trustees of the organisation who have their own responsibilities to discharge.

106. We believe that reviewing risk frameworks moves regulators to look forward but the focus needs to be on the robustness of our mitigation plans and risk assessment framework.

107. In our opinion, it would be preferable to ask management at the respective regulators about forthcoming risks as part of the information used to decide the scope of the review. It is our belief that asking for information in this way would provide more outcome-focused measures against which the effectiveness of the regulators' internal governance mechanisms in practice can be assessed.

108. Asking such a question would allow the review to be much more proactive in its line of inquiry and responsive to any risks identified.

109. For consistency we prefer the approach of a new standard rather than the alternative proposal. This is consistent with the approach taken to evaluating performance across the regulatory functions (other standards), but also means that the implementation of approach in evaluating each regulator against this standard will be fair.

110. We would be interested in understanding what benefit there would be for using the question rather than a standard and how the answer to the question would be measured and evaluated consistently across regulators. The consultation document does not contain a rationale or impact assessment in relation to asking this question, rather than including a new standard.

111. The standard on risk would be our preferred option.

112. MPS suggests a hybrid of both. In addition to requiring the regulator to demonstrate how it manages the various categories of risk identified in 'standard five', each regulator should also be asked what further risks it anticipates during the forthcoming year and how it plans to address these risks. This will ensure that the regulator is looking forward as well as back over its performance and, in doing so, should be better prepared to meet any potential risks.

113. It is also crucial that there is robust challenge on this point. For example some concerns may not be reported since the question would be subjective 'likelihood that you will fail in the coming year'. It is foreseeable that the person/s charged

with forming that opinion within the regulator might conclude there was no risk of a situation occurring, or that it is not 'likely'. However, any objective perspective, such as that of the Authority or other third parties, could highlight risks that the regulator had not declared.

114. This proposal could provide a useful way of assessing a regulator's management of risk, however it does not cover wider governance or operational issues.

115. No.

116. The issue with this proposal is whether there is enough openness from the regulators. All regulators would have to be completely transparent on potential future risks – nothing should be hidden. It is a good idea in context but it may not work effectively in practise. The benefit of this approach is it would mean that there would be no additional standard added to the standards of good regulation.

117. How would this information be gathered, be analysed and published?

118. We recognise that ensuring the regulators have adequate and effective risk management regimes in place, is an appropriate area for the Authority to focus on in setting the scope of its performance review. In line with our concerns outlined in answer to Question Two, we consider that asking the regulator about risk analysis is a more appropriate approach and more closely aligned to the principles of Right Touch Regulation.

119. Embedding a robust risk question within the current scope of the performance review will allow regulators to better maintain the important separation between operational management and governance. We note the proposed methodology for this approach as outlined in Annex one and welcome the fact that it appears to be much more dialogue based with a focus on building an understanding of the work, practices and systemic risks faced by the regulators. This means of assessment and interaction between the Authority and the regulator will be critical to success. We would welcome the opportunity to further explore how this might work and to suggest or participate in a pilot to fully test it.

120. We would like reassurance that the Authority will have the operational capacity and mature skill base to conduct such an assessment. We suggest in paragraph 17.2 that some form of joint induction/training be introduced to assist mutual working and understanding and potentially introduce a positive and collaborative approach.

121. No.

122. We consider that the proposed standard is much clearer and would ensure that comparable information is provided by each regulator.

123. We consider that this method would be preferable. It is for the Authority to review the assurance framework of the regulator and consider whether that adequately manages risk. This could quite easily be asked as part of the questions before the specific questions on each of the standards and further discussed as part of the review process.

124. We are unclear as to why these are alternatives rather than complementary approaches. It might be helpful in the first instance for the Authority to gain a greater understanding of the way in which regulators manage risk and then use the 'question' approach to identify any changes in approach as well as any identified emerging risks.

Q6: Do you have any views on the effectiveness of the question as currently drafted, and whether it will assist us in determining how risk is managed?

125. We believe that risk is a useful focus because it is an area where the executive and Council should have a regular and productive dialogue and it is prospective rather than reflective. However, we think that the wording of the question is less important than how it is used.

126. We are concerned that the phrasing of the question would allow for a wide spectrum of answers. In its current form, it would be possible for the answer to range from one word responses, to the provision of comprehensive submissions supported by hundreds of pages listing the cause and effect of every possible risk which the regulator could face.

127. We consider that the structure and phrasing of the risk question is something that would benefit from the input of experts in the area of risk management.

128. The current question does not appear to be clearly defined and as a result may not be effective in assessing performance. The question appears to be narrower than the proposed standard and may result in answers which focus on corporate risks or duplicate information provided in relation to other standards.

129. Many of the corporate risks faced by regulators will not necessarily have a direct impact on the protection of the public. Therefore the responses to the first part of the question 'what is the likelihood that you will fail in the coming year to protect the public' are likely to be limited. The second part of the question 'and

have you identified any specific risks' is likely to generate information about a lot of specific risks which may not be useful, may vary widely across regulators and prove difficult to analyse.

130. If this question is used, we would appreciate guidance on how the PSA would use the question to measure performance on a consistent basis. We feel it is difficult to measure responses to an open question in a consistent manner.

131. The question as drafted focuses on the prospect of regulators failing to protect the public. It is unlikely that this will yield useful information about how the regulators are identifying risks. We would suggest that the Authority should focus on assuring itself that regulators have appropriate risk management processes in place rather than consideration of individual risks.

132. As previously stated, it would be helpful if further guidance could be provided by the Authority to elaborate on what is meant by risk in each of the categories identified, with reference to examples. Additionally, it is also crucial that there is robust challenge on the question of forthcoming risks and the views of third parties should be considered.

133. We would question whether there is yet sufficient clarity about what the introduction of this additional element to the performance review is intended to achieve and how it will add value. As currently proposed, this appears to encompass both internal governance and risk management and capability to manage regulatory risk.

134. In respect of governance and internal risk, all regulators have risk management policies/processes in place, together with internal and external audit arrangements. Careful thought will be needed to ensure that there is no unnecessary duplication or no usurpation of the functions of regulators' Councils.

135. In relation to regulatory risk, as the Authority is aware the King's Fund review of midwifery regulation was unable to find significant quantitative evidence about the impact of regulation on public protection or any quantifiable evidence about the nature of the underlying risk to be mitigated. In these circumstances it is difficult to be clear on what basis judgements would be reached about regulators' ability to manage regulatory risk; what would constitute 'good performance'; or what remedial action would ensue should a regulator be found not to be managing regulatory risk well.

136. We are not persuaded that either the proposed standard or the alternative question provides a sufficiently sound basis for moving forward at this stage. It is also unclear how a single assessment of performance could encompass both elements: it is not always inevitable that internal risk management weaknesses

will impact on public protection. On balance, we would tend to favour a question rather than the proposed standard but would welcome the opportunity to work with the Authority, in collaboration with other regulators, on how this might be better framed in a way which lends itself to objective assessment.

137. The question asks whether any specific risks have been identified, but does not ask how the regulator intends to mitigate them. I would expect regulators to identify a number of risks, but this in itself is not useful without information on how the regulator proposes to manage them.

138. Similarly, in order for this proposal to be effective, the regulator would need to identify to the Authority any regulatory projects or changes that were taking place in that reporting period. This is so that the Authority can ensure that the risks identified are appropriate to the work being undertaken.

139. The question should therefore be extended into a series of questions, along the lines of: “What is the likelihood that you will fail in the coming year to protect the public? What major regulator projects will you be undertaking? Have you identified any specific risks, and what is your mitigation for these?”

140. A final suggestion is that the response provided by the regulator could be in the form of a regulatory plan. Such a plan could ensures that regulators consider the risks of their regulatory activities over the course of a year (or any reporting period) and would allow the Authority to target certain areas in reviews based on this report.

141. Our recent experience has included the GDC misrepresenting certain facts and not being candid where things have gone wrong. We therefore have no confidence in the regulator at this moment in time to give full, honest and transparent answers to such a question.

142. No

143. We are concerned that the question as presently suggested will not meet the needs of the proposed process as we understand it. In our view the question does not constitute an adequate evaluation of risk and is not in line with the principles of Right-touch regulation.

144. In our opinion the focus should be on the systems in place to identify and manage risk and to openly learn from and develop as an organisation when failure occurs.

145. For the risk question approach to have maximum benefit and in order to encourage behaviours which demonstrate a learning approach, we suggest that an assessment of whether a threshold of good practise is currently met, is more appropriate than speculating on whether there is likely to be a specific failure to protect the public or near misses (reporting against the four standards of good regulation should clearly identify any failures which have occurred)

146. The practice of failing on the basis of past incidents, or potential future incidents, without recognition of the risk management regime in place and an organisation's capacity to learn and improve from incidents is more akin to a punitive than learning and improving regime.

147. We would promote a "fitness to regulate" approach which recognises the insight, learning, correction and improvement a regulator is capable of. Such an approach is more likely to result in better protection for the public and a more open and learning based environment.

148. In coming to this conclusion we have considered the nature of failure, which can be divided into three broad categories: preventable failure, complexity related failure and proficient failure.

149. Incidences of preventable failure occur when people act in a deviant manner, when they are inattentive, lack ability or they fail to follow the systems which are in place.

150. We note that in the proposed methodology for assessing the type of review to undertake the consultation document states that a detailed review will involve the provision of general information about the regulator's management of the relevant risks. (Annex 4 p.4)

151. Complexity related failure can occur when a process composed of many elements breaks down when it encounters novel interactions and/or future risks which were not identified leading seemingly reasonable actions to result in negative consequences; and

152. Proficient failures occur when a practise, which is expanded to develop knowledge/performance, leads to an undesired result.

153. All organisations should try and eradicate preventable risks and should be held to account when they fail in this regard. Complex organisations must manage the perpetual risks associated with complex systems and should try to learn from failures which occur in this category to ensure that they do not happen again.

154. In this regard we consider an approach to assessing a regulator's general ability to deal with the full strata of risk would be more in line with a 'fitness to regulate' approach.

155. Please see below questions which present an example of such an approach:

a) What system do you have in place to identify and manage risks?

b) What risks have you identified since the previous performance review? (Right Touch: Identify problem before the solution)

c) What is their likely impact across the organisation? (Quantify the risks)

d) What is the likely impact for public safety? (Get as close to the problem as possible)

e) What actions are you taking to mitigate this risk? (Review and respond to Change)

f) What steps have you taken to learn from incidents/near misses identified in the previous performance review, reducing adverse outcomes and improving systems and practises? (Review and respond to change)

156. Such an approach may allow the Authority to assess the performance of the regulators against the strata of risk management as opposed to the emergence of risks and potential failure; it would provide more nuanced and productive advice. For example, the Authority may conclude that a regulator has inadequate systems for identifying risk, but excellent systems in place to learn from incidences and near misses. This would result in focused work in this area.

157. We consider that the key purpose of the performance review is to help improve the performance of the regulators to enhance public safety. This requires regulators to take a transparent and honest approach to failure and risk and the development of positive relationships with the Authority which are focused on accountability, improvement and learning. We would welcome the opportunity to work with the Authority and other regulators to develop such an approach.

158. We consider that the proposed question outlined in paragraph 4.8 is too ambiguous and as a result the depth and type of information that the Authority would receive from each regulator would vary considerably.

159. The question as currently drafted appears to be much narrower in focus than the proposed standard and would lend itself to answers which focus on the regulators' corporate risk registers and/or duplicating information about performance challenges (if they exist) discussed in response to the other

standards. In contrast, the proposed standard is much clearer and broader in scope, covering areas such as organisational learning and governance.

160. The question as it is currently drafted requires the regulator to determine whether they have passed or failed the standard, which is the responsibility of the Authority.

161. We suggest the question(s) should be framed as:

> 'Have there been any changes to the assurance framework during the year?'

162. Explain what, if any, these changes have been, the reason for introduction of these changes and the risks which are being minimised as a result of their introduction?

163. Within the specific risks that have been identified, are there any which are likely to adversely affect the performance of the organisation in meeting its statutory duties over the next three years?

164. We think that the current formulation may not be effective. There are many ways and to varying degrees in which the performance of a regulator could be at risk but without necessarily having a direct impact on the protection of the public, but the responses to the first part of this question 'what is the likelihood that you will fail in the coming year to protect the public' are likely to be very limited. The second part of the question 'and have you identified any specific risks' appears likely to generate very broad responses which may not be useful and prove difficult to analyse.

Q7: Should the response to the question be signed off by the Chief Executive, the Chair of Council, the Chair of the Audit and Risk Committee, or a combination of these individuals?

165. We believe that the response should be signed off by the Chief Executive. All data and evidence submitted through the performance review process should be signed off by the Chief Executive and Council should engage with the final performance review report.

166. The response should be signed off by the Chair of Council, on behalf of Council, as the Council should engage with the final Performance Review report, as part of holding the executive to account. This is consistent with other audit relationships.

167. The Authority does not prescribe how each regulator prepares and approves its response to the performance review, and therefore we do not understand the rationale for the Authority prescribing who should sign off the response to this question (if implemented). This would seem inconsistent with the current approach and contrary to the Authority's general approach to scrutinise and seek assurance, but not to prescribe in detail how the regulators undertake their work. If however the question is introduced and the Authority wishes to be prescriptive regarding sign off, we would advocate the Chief Executive having responsibility for signing of the response.

168. This is very much an operational matter which the Authority should not be considering. At the GCC we consider that the performance report should be signed off by the Chief Executive.

169. This is a matter for the regulators.

170. Sign-off from all of the above would provide greater reassurance, as fewer Authority audit/reviews will be taking place. It will also ensure that any response to Authority is subject to the governance of an executive review. This should, for example, make it impossible for an employee to provide misinformation or an underestimate of the potential risk to the Authority.

171. Any input to the performance review process should be signed off by the Chief Executive and Registrar. The outcomes of the performance review process should be a valuable tool for the Council but should not in any way seek to replace or undermine the Council's role as the governing body accountable to Parliament.

172. The regulator should decide on how their response should be signed off in line with their own governance arrangements. The response will be sent on behalf of the regulator and will affect how they are reviewed, organisations should be able to decide the weight that is required.

173. We do not support the approach of a question. If, however, this decision is made, we believe that it would be useful for all those named above to put their name to such a statement. This is because, while the Chair of Council holds the overall responsibility for the performance of the regulator, in the case of the GDC we have raised questions of governance for some time, especially in terms of the awareness of Council members of their own responsibilities in the governance of the Council.

174. It would add more weight if the response was signed by a senior delegate in the Regulators' Board such as the Chief Executive. This should be the same for all regulators – again to add a level of consistency.

175. In order to ensure clarity of roles within the regulators, the answer should be signed off by the Chief Executive – evidence from Audit and Risk meetings could be used in support of any answer.

176. We consider that it is unnecessary for the Authority to prescribe who signs off the response to this question (if implemented).

177. The consultation document does not include any information to explain the Authority's rationale for asking this question. We consider there is no more reason to prescribe who signs off the response to this question than to prescribe who signs off the regulator's response against the other standards. Being prescriptive about sign-off would run counter to the Authority's general approach to its work – that its role is to scrutinise and seek assurance but not to prescribe in detail how the regulators run their own organisations.

178. In the event that a question is introduced and prescribing sign off is considered desirable, we would suggest this should fall to the Chief Executive. We would suggest that prescribing the involvement of the Chairs of the regulators' Audit Committees may inadvertently lend itself to a more narrow definition of risk (see our answer to question six).

179. The response should be signed off by the Chief Executive. Our view is that the Performance Review process is one that should be conducted entirely between the regulator's staff and the Authority, and the Council should engage with the final Performance Review report. This is analogous to the relationships with financial auditors, the audit process and presentation of Audit Findings Report.

Section five, and annex four

Q8: Do you agree with the proposal that each regulator should provide information on how it meets the Standards at the outset of the revised performance review process, and in subsequent years only provide information relating to any changes to how the Standards are met?

180. Yes. We strongly believe this amendment would significantly reduce some of the administrative overhead of the existing process in re-evidencing things that have not changed from year to year.

181. It would be helpful if, over time, there were some common guidelines of what evidence constitutes good practice. For instance, if the first step in that process is documented, repeatable, and supported by standard templates, it would be

useful to be transparent about these so as to provide a clear pathway for regulators that are having performance challenges, to rectify the situation.

182. Yes. It is in line with right touch regulation and would allow the regulator to focus on changes made.

183. We believe that the Authority should maintain the proportionate approach it has applied to date in relation to only requiring regulators to provide information relating to changes to how the standards are met. The review is only proposing a change to the programme of review and introduction of a new standard and an enhanced dataset; it is not proposing any changes to the current standards of good regulation. Therefore it would be 'right touch' to only require us to provide information relating to changes to how the current standards are met and how we meet the new standard.

184. We do not consider it necessary to repeat the evidence submission reporting against the standards for this year. The Authority should have enough information from the 2014/15 review process, information we produce on an ongoing basis, for example performance monitoring reports to Council, to make a judgement about what type of review is required for each regulator for 2015/16.

185. If a new standard relating to governance and risk arrangements is introduced, we would suggest that regulators could report against this standard only for 2015/16.

186. MPS disagrees on this point, we think in addition regulators should have to disclose where they have failed and, in subsequent years, whether any changes made have also failed to meet the Standards.

187. No. We consider this to be disproportionate and unnecessary. The Authority already holds a wealth of information provided by each regulator evidencing its performance against the Standards. As now regulators, should only be asked to report any significant changes. Any other approach would not accord with the principles of 'right touch regulation.'

188. Yes. Although a regulator may wish to comment on why there are no changes after a period of years.

189. Changes to regulatory arrangements are important in order for regulators to improve and develop alongside external changes. The PSA should consider areas that haven't changed over time and ensure the regulator is continuing to manage their compliance with the standards appropriately.

190. We have concerns about future years. We currently have no confidence in the GDC and its procedures. If the GDC can 'pick and choose' what it wishes to declare, this will raise concerns about transparency. In the first instance, there is a need for the Authority to explain more about its powers to sanction failing regulators. Two successive negative reports have not led to any meaningful action by Parliament.

191. With this proposal it may be easier to see what has changed year-on-year and the reports could be made clearer and more concise if this proposal was used. However, would the 24 Standards be in an annex as some readers may want to see the consistency of regulators and weather they are improving or are continually meeting the standards?

192. No – the Authority has for many years been assessing the regulators performance against the current Standards, the baseline should be referenced to the previous year's performance review outcome – where Standards were not met evidence should be sought on how this had been addressed and then any changes should be reported with evidence to show how Standards would be met in the light of changes.

193. Additionally we would agree that those Standards which were met could be assessed in the light of changes or recent incidents as part of a decision to review.

194. We agree in part.

195. The Authority has sensibly applied this approach previously. We have been expected to provide updates about our performance against the standards for good regulation each year, without the need to repeat information each year about how we have continued to meet the standards if this has not changed. Not having to repeat the same information each year is a sound approach.

196. However, in this case the Authority is only reforming the process it uses and is not changing the standards of good regulation in any significant respect. Given this, we see no reason why the Authority would need the regulators to restate how they meet the standards at the outset of the new process unless this has changed from the previous year.

197. There appears to be merit in this approach as it appears that the Authority does not have fully documented primary records in relation to various functional areas such as Fitness to Practise legislation and does not have sufficient information with respect to each regulator in the form of a primary file from which

changes are reviewed. If this is correct, then we believe that this approach may be feasible and appropriate.

198. No. We have met all the Standards in each of the five years. Therefore, it would not be 'right touch' to require us to demonstrate that we meet the standards once again before the new system is introduced.

Section six, and annex three

Q9: Do you agree with the revised elements of the dataset?

199. We are supportive of the key performance indicators but do not support the quarterly dataset as proposed.

200. The consultation document identifies the existing challenges with the current dataset and the limitations in drawing meaningful conclusions from the information. By vastly expanding the scale and frequency of data collection we are not convinced that the underlying issues that limit the value of the current dataset have been addressed and that by expanding it in this fashion without a clear rationale for the benefits, we will exacerbate the limitations of the current arrangements.

201. We are concerned that by using rigid datasets to evaluate processes but looking at the KPI independently for each stage, the Authority misses an opportunity to encourage innovation of processes. We would expect the dataset to be understood in the context of strategy and interpreted in that context, not rigidly as stand-alone data. The Authority shouldn't discourage changes to processes that may have an impact on a specific dataset without considering the changes within the wider context of the purpose of the changes and their alignment with strategy.

202. We are not convinced that the information being requested as part of the quarterly dataset will add more value to the review process than the compliance costs of compilation and submission on a routine basis. This analysis could not be undertaken without significant investment into our systems and resources and consequently we must be assured that it will provide insight and value. We would seek clearer instructions on how to calculate data to ensure that all regulators follow a consistent approach with consistent definitions and that the data is genuinely comparable. We are also keen for the Authority to set out performance criteria against each item of the dataset and to provide thresholds to clearly define what constitutes good practice for each item.

203. The amount of data that the Authority is proposing to collect from each regulator every quarter is extensive. The proposals if implemented, would add over 30 more data items to the requirements. We are unclear how some of the

data would help the Authority in its assessment of the regulators. Without supporting explanatory information, the data trends may be misinterpreted by the Authority.

204. We note that the Authority accepts that not all of the dataset included in the consultation document is relevant to all regulators and prior to the start of the collection process the Authority will work with each regulator to identify which data is relevant to them. Also, the Authority recognises that not all of this information will be available; or available on a quarterly basis and that they will liaise with regulators as to how they will be able to make the necessary arrangements to report this data.

205. We would welcome very clear definitions as to the criteria that the Authority would apply in reading the data sets. We also suggest that it would be helpful to set each up a working group of management information representatives from each regulator to establish consensus on the contents of the dataset and clarification of any measures that may be open to interpretation.

Registration dataset

206. None of the data requested in this dataset is linked to public protection facilitated by the accuracy of, or access to, our register.

207. The data requested as part of this dataset focuses primarily on volumes and processing time rather than the quality of registration decisions made by delegated authority of the Registrar.

208. Number of registrants (including where applicable students, premises and bodies corporate)

209. We would like to suggest an amendment to point 1 in the current registration dataset, to add an additional breakdown to count each title on the register separately (to complement the overall count of registrants) and also to note the number of dual registrants on the register with more than one title. This information would be helpful in providing an insight into the volume of specific titles being regulated by each regulator.

210. Number of new registration applications received (including where applicable students, premises and bodies corporate)

211. We would ask the Authority to clarify the definition of ‘new applications’, would this include restorations, exclude previous applications which were received but

incorrectly completed? It is our opinion that this should be included so as to provide an accurate snapshot of current Registration operations.

212. Does the definition of 'registration appeals' include appeals against a notification of intention to remove from the register?

213. In addition to the number of appeals being upheld or rejected (dismissed), the Registration Appeals Committee also has the option to 'substitute for the decision appealed against any other decision which could have been made by the Registrar', or to 'remit the case to the Registrar to dispose of in accordance with the directions of the Registration Appeals Committee' we would ask the Authority to confirm under which category these would be considered, or if new reporting categories would need to be defined.

214. Of those appeals concluded, and where no new information was presented: The same consideration listed above would also apply to this element of the dataset, in addition we would ask which category would be used to record the instances where new information was presented leading to a reconsideration.

215. Further clarification would need to be provided in respect of the phrase 'UK applicant', does this refer to applicants who are UK citizens or applicants who are UK qualified or another definition altogether? A similar question can be made for the phrasing of the other options.

216. The same question raised above regarding the definition of 'UK/EU/EEA/Non-EU/Non-EEA applicant' applies here also.

217. The listed criteria would not appear to be exhaustive; there is no mention of applications or renewals being rejected as a result of not meeting the required standard of qualification/knowledge/skills/CPD requirements.

218. There is a slight issue with the terminology used in this element of the dataset. We would not refer to registration applications with an FTP element as someone applying to register with the GDC would not be on the Register. Therefore, the list of possible issues at this point would be limited to checks on the health/character of an applicant. Any issues in this respect would be determined by the Registrar.

219. We can capture this, however, we primarily inspect programmes within institutions.

220. We can capture this – but we need the Authority to define 'regulatory action'. There are different levels of action each carrying varying significance, for example:
    - close the programme
    - require additional work by the institution
    - re-inspection.

221. We can capture this – but we need the Authority to define 'concerns'.

222. There are different levels of information provided: sometimes it is an anonymous phone call with limited information that is difficult to act on.

223. The GDC does not have the power to accredit. We inspect to determine approval for DCP programmes and to establish sufficiency of BDS programmes. We also arrange visits to inspect programmes and then we may visit separately to review the examinations – do we count them both?

224. We can capture this. The timeframe needs to be clarified, as we visit on the academic year – and not necessarily the same as the Authority year.

225. We inspect programmes not institutions.

226. We can capture this but, it would make more sense for the GDC to measure the % of programmes – as that is what we are scheduling visits for.

227. The GDC will be able to provide much of the information set out in the FTP datasets as much of the data has been collected as part of the current process.

228. We have set out in the table below where we will have to develop our CRM system in order to provide some of the data sets or where manual sources of data exist. This should be borne in mind by the Authority in setting the timescale for production of the first round of data under the new system. A reasonable period of time will be required to comply with the request and to ensure data accuracy.

229. On a wider point, the GDC would welcome the PSA publishing a more detailed rationale for requesting the specific heads of data. This will enable the GDC to provide additional information to set the data in context so that incorrect assumptions are reached.

230. As above, the GDC would also welcome clarification being issued by the Authority to ensure that basis for data collection is the same across the nine

regulators. This will ensure that proposed comparisons of performance between regulators is accurate.

231. The GDC currently operates the following classifications of:

Anonymous, Employer, GDC, Member of Public, Other Informant, Other Public Body, PCT or NHS, Police or Other Investigatory Body, Private Provider, Registrant, Self-Referral.

232. Whilst this does not align exactly with the criteria set out in the consultation, we would be able to comply with this request.

233. Changes we are building into our case management system will enable us to comply with this request. These changes will be complete by September 2015.

234. Whilst the GDC does not have a process for 'voluntary erasure', the Registrar (only) has a power to grant voluntary removal in some instances. The GDC would be able to report on 41- 44 and 45 bullet point 1.

235. The GDC does not operate a process consensual panel disposal other than voluntary removal from the register. If a section 60 order is granted delivering case examiners with the power to agree undertakings, we would be able to provide data in relation to 47, bullet point 1 only.

236. The GDC could provide information on the number of cases referred back to the IC generally but a programming change would be required to provide the division by registrant/regulator.

237. Total number of hearing days: This information is maintained outside of our case management system and accurate data can be provided. Future changes to our Case management system means that this information should be able to be reported on CRM shortly.

238. Percentage of final hearings that conclude within their original hearing day allocation: This information is maintained outside of our case management system and accurate data can be provided. Future changes to our Case management system means that this information should be able to be reported on CRM shortly.

239. While we share the Authority's view that data breaches must be viewed as a serious risk, are these indicators likely to lead to fewer reports? In our view the key indicator should be adverse findings from the ICO?

240. The reasoning behind the categories is not clear.

241. Whilst we agree that staff turnover may be an important indicator of organisational health, we suggest that both natural turnover and overall staff turnover figures are provided. This will provide clarity on whether the turnover is due to staff voluntarily leaving or whether the turnover is also due to the termination of contracts e.g. due to the end of fixed-term contracts, redundancy, or poor performance. Without this differentiation it is likely that misleading interpretation of the data will be made by the Authority.

242. We support the aim of developing a common high level set of key data (for example 10 to 15 indicators) to enable meaningful comparisons of performance across regulators, which is publically available and accessible across all regulators. We are keen to provide the Authority with data which will enable an accurate assessment of our performance in the public benefit. However, we consider the amount of data that is being proposed (to be provided to the Authority on a quarterly basis) is disproportionate and we do not feel it is appropriate for the Authority to impose 'key indicators' on the regulators.

243. The proposals, if implemented, would add 32 new data items to the reporting requirements, which would have an impact on the level of resourcing we require in order to comply with the quarterly reporting schedule. We do produce some of this data for our quarterly management information and performance reports to Council and our Executive team, however not all. The consultation is not clear on the timeframe for sending this data to the Authority.

244. Our quarterly reporting, which includes a data accuracy check and trend analysis, is completed approximately five weeks from the quarter end. We would not be able to provide data to the Authority earlier than this without incurring a resource impact. In addition any data provided earlier may result in the data not being quality assured or accompanied by relevant commentary and analysis that will be necessary for the Authority to interpret the data in a meaningful way. We are not yet able to quantify the impact of these changes in relation to resources until we are clear about the data requirements, but are aware that we will need to spend time developing our IT reporting and data analysis capabilities.

245. In some cases, it is not clear hw the data will help the Authority assess the performance of regulators, particularly where the data is not in relation to outcomes, timeliness or quality of outputs. We ultimately wish to assess our performance in relation to our success in protecting the public. We recognise that the development of suitable outcome performance measures is a challenge, and that in the absence of such indicators there may be areas where indicators need to be focused on inputs and outputs.

246. However we would welcome a shift over time from indicators assessing inputs and outputs, to those assessing the quality of outputs and the outcomes achieved, particularly ones which pick up work which is being undertaken to address risks to the public. For example our work on illegal practice is in response to evidenced risks to public harm, however the dataset does not consider the effectiveness of our work in this area. The consultation document does not contain a rationale or impact assessment in relation to enhancing the dataset, and does not justify how the data set will enable the Authority to make an assessment of our performance in the public benefit.

247. We understand that there may be a rationale for the Authority to gather some non-performance data (for example number of registrants) in order to maintain a central data set across all regulators, and can see that such indicators form a large part of the dataset. However we are unclear whether the performance review process is the most relevant mechanism for doing this, and do not think it is proportionate to gather this data on a quarterly basis.

248. We are mindful that collecting an enhanced data set on a quarterly basis is also likely to have an impact on the resources required by the Authority to monitor and assess the performance of each regulator. We would be interested to see the impact assessment of this proposal and wish to be assured that there will not be an impact in relation to the Authority levy.

249. Part of our Council's role is to set our strategic direction and then set performance indicators and targets to assess our achievement of our strategic objectives. We have a set of KPIs therefore which measure our performance in this respect, as well as other more operational performance indicators. It is not clear how our set of KPIs will relate to the 'key indicators' the Authority are proposing, and do not think it is appropriate for the Authority to prescribe which KPIs we should have. If the Authority are intending to prescribe the KPIs we should have, this seems contrary to the Authority's general approach to scrutinise and seek assurance, but not to prescribe in detail how the regulators undertake their work. We believe that we should be able to agree our own key performance indicators which are clearly linked to our strategic objectives.

250. The rationale provided in the consultation as to why the key indicators have been identified is to enable 'any member of the public to draw genuine comparisons between the regulators across key areas of their performance.' However without clear methodologies attached to each indicator, it is not obvious how the proposed 'key indicators' will achieve this aim, as there will remain inconsistencies in the data provided and a considerable degree of interpretation will need to be applied.

251. In order to limit the impact of the enhanced dataset on our and the Authority's resources, we recommend they consider collecting the dataset for a smaller number of indicators (those which the Authority requires in order to assess

performance in terms of outcomes, timeliness and quality of outputs) on a quarterly basis, and then collect the other supplementary indicators on an annual basis.

252. No. We would support the development of a core dataset but this should be limited to the collection of the minimum amount necessary for the intended purpose. We would welcome the opportunity to work with the Authority and other regulators to achieve this. Please see comments in response to questions 10, 12 and 14 (1).

253. In addition, part of the rationale for the new dataset is to provide greater consistency and reliability (para. 6.4). It is difficult to see how this would be achieved through the proposed increase in the number of data items or quarterly reporting.

254. MPS has no comment on this question.

255. In general, we would prefer to see the Authority develop any common data set from first principles, rather than adding to the current data set. This would enable each proposed data item to be rigorously tested against clear criteria to determine how the data contributes to an assessment of performance against a given standard.

256. We support the aim of developing a common dataset but consider that this comprise a limited set of outcome focused data items which give scope for meaningful comparisons of performance to be made across some or all regulators, where appropriate. Such an approach would be in line with current trends elsewhere in the health sector, for example, Lord Rose’s recent review on NHS Leadership.

257. The Authority's proposals for a considerably expanded dataset submitted quarterly are at odds with that direction of travel and potentially represent a significant new burden on regulators. Accordingly, we would expect to see justification of the need for each data item; an explanation of how it will be used as evidence in relation to any specific standard and add to the Authority's ability to make an informed assessment of performance. A more modern approach might be for the Authority to focus on how we monitor and report on our own performance and the starting point should be the data we are already monitoring and reporting in the public interest.

258. The impact and costs for regulators of complying with the Authority’s proposals would need to be taken into account. In our case, we envisage that this would require process and system changes. These are unlikely to be feasible in

the current year and would have a cost attached, as would the need to collect, analyse and submit a much larger set of data on an ongoing quarterly basis.

259. More generally, the proposed approach seems ambitious, given the current challenges in developing consistent definitions and reporting of data across the regulators and it is unclear how progress is to be made on this front.

260. Finally, as the Authority will appreciate determination of performance indicators and targets is a matter for Councils and we would encourage a more circumspect approach which avoids any suggestion that the Authority is seeking to impose 'key performance indicators' on regulators.

261. Generally, yes. Please note there are a number of duplicates and errors of the fitness to practice area of ‘6. Dataset rational’, pages 56 and 57 of the consultation document.

262. Yes.

263. No. See general comments below.

264. We anticipate that the data collected will be used to measure performance in critical business processes to ensure regulators are achieving a specific objective and preferred outcome of good regulation, we do not currently fully understand how the 62 proposed pieces of data will succinctly assist with this objective. We would prefer an approach which fully sets out the objectives of collecting the data, for example the timely execution of FTP cases and its associated dataset.

265. We are of the opinion that the rationale for choosing the individual 62 pieces of data is not robust enough; in some instances it is difficult to fully grasp how the data will be analysed and used by the Authority and what it will explain about the performance of the regulators. Linked to this, no rationale or nexus has been provided for why the particular ten indicators have been chosen from the 62 individual pieces of data to be considered key indicators – again this impairs our ability to make informed analysis about how the PSA will use the key indicators and how you believe they will best explain to the public and Parliaments how the regulators are performing.

266. We would draw attention to the focus on timeliness in the dataset and in particular the key indicators. Four out of the ten key indicators focus on timeliness, with three key indicators focusing on timeliness related to fitness to practise. With regards Fitness to Practise no clarity is given to exactly when a clock should begin to run in relation to FTP cases and no clarity is given as to whether consideration will be given to exceptional circumstances or the impact

the primacy of external criminal and health investigations have over regulator investigations.

267. We recognise that timeliness is a key component of delivering good justice in the public interest and protecting the rights of registrants. However, it should always be balanced against the complexity and circumstances of the individual cases and the primacy of external investigations and legal proceedings. We therefore ask that you give consideration, within the final dataset, as to how delays related to the primacy of external investigations and legal proceedings can be excluded from measuring regulators performance related to timeliness.

268. In data set 15 we would suggest that you better explain what is meant by 'regulatory action'.

269. Collecting 62 data items on a quarterly basis will have a disproportionate impact on the regulators in terms of resource and in many instances will not align with data already collected.

270. We are disappointed that there is a disproportionate focus on fitness to practise issues within the proposed data set and a more limited focus on the preventative work of regulators; particularly work in education and the promotion of adherence to professional standards.

271. We would prefer an option whereby the PSA sets a very limited number of KPIs that are essential for its analysis of performance related to public safety with clear criteria and explanation for cross regulatory comparison on a quarterly basis and considers performance data collected by the regulators in the running of their businesses on an annual basis to inform assessment decisions.

272. Overall, we do not agree.

273. We consider that the amount of data that the Authority is proposing to request from each and every regulator every quarter is disproportionate. The proposals if implemented would add 32 more data items to the requirements. In some cases, it is unclear how the data would help the Authority in its assessment of the regulators. In others we can see a good reason why they may wish to request this data from regulators when undertaking one of the types of review (change, targeted and detailed) or as part of a targeted request for further information as part of the stage one assessment, but not why the Authority would request this data on a regular basis from every regulator.

274. Should the Authority decide to request this additional data, we would have no difficultly in providing it, however. In many cases this information is available in

regular reporting to the Council, the Executive Management Team and/or in our annual reports.

275. No. We do not consider that there has been an appropriate rationale put forward for a large number of elements contained in the dataset.

276. We further disagree that the production of this additional and more regular dataset will have the supposed outcome quoted at paragraph 6.34 that 'members of the public to draw genuine comparisons between the regulators across key areas of their performance'. It has clearly been the case for many years that the dataset does not allow genuine comparisons to be made as a result of the various legislative frameworks that each regulator works under and as the interpretation of the various indicators varies across each regulator.

277. For example, the GCC's performance on FTP cannot be exactly compared with other regulators since, unlike many others, the GCC's legislation requires all allegations of fitness to practise to be referred to an Investigating Committee. This process is bound to take longer than referring cases to case examiners.

278. There will be an increased burden on each regulator to give commentary on changes in data on a quarterly basis in order to give a meaningful interpretation. For many small regulators, such as the GCC, the quarterly variances in some of the data may be particularly stark due to the small numbers involved and therefore this would lead to increased burden of reporting. The purpose of quarterly management reporting is that it allows management to make appropriate changes, as required. These changes can take some months to take effect and therefore would require additional reporting over that period. As such, there seems no reason why the current method of annual reporting is still not appropriate with relevant commentary to explain changes.

279. No. we do not consider the rationale behind the entire dataset has been made out. We think that the Authoirty needs to be mindful of the second data protection principle which, although applying to personal data, suggests that data should only be collected when there is a clear purpose to its use. We make further comments on individual measures in response to Question 10 below.

280. We are also concerned that by identifying certain data as 'key indicators' the Authority is taking on too much of a role in relation to the performance management of regulators. It should be for the individual regulators to agree their own key performance indicators not the Authority to produce a de facto set of their own.

281. In paragraph 6.3 it is stated that 'it is difficult for any member of the public to draw genuine comparisons between the regulators across key areas of their performance'. It is not obvious to us that the proposed 'key indicators' will solve

this problem because of the considerable degree of interpretation that will still need to be applied to them.

282. In addition the quarterly provision of such a large volume of data is likely to be a burden on small regulators. This is not just because of the need for regulators to collate the data but also to supply the Authority with the accompanying commentary that will be necessary for them to interpret the data in any meaningful way.

Q10: Are there elements that you believe should not be included? If so, please explain your specific objections.

283. As per our response to question eight, we believe the onus is on the Authority to evidence how the information requested will be used and how it can inform their view of performance. We believe that further clarification would be helpful with regard to:

- The relationship between the key indicators and the broader dataset. How will each be used?
- It would be useful to have a clear understanding of how raw data will be used to compare regulators as the caseloads and in some cases the nature of work [volumes and complexity] vary so significantly. It may be easier to compare datasets as a percentage of the caseload or total number of decisions in order to be meaningful.
- The utility of the shortest and longest cases. These tend to be outliers and therefore unlikely to provide useful data. We believe that adjusted measures should also be considered, for example, to account for cases where timescales are beyond our control due to dependencies on third parties.
- In paragraph 10, please clarify the term 'application renewal'.
- In paragraph 13, please clarify whether this would include data regarding unlicensed practice in addition to unregistered practice.
- In paragraph 16, please clarify whether 'concerns raised by students' should include concerns raised by doctors in training and other individuals involved in training.
- In paragraph 18, please specify the time period for which the number of institutions visited would be submitted.
- It would be helpful to understand how data about the enquiry source in paragraph 38 will help the Authority to measure how proactive regulators are. We are concerned about the conclusions that could be drawn by regularly comparing this data and that these conclusions may lead to unintended behaviours. For example, if the number of complaints from the public increase, this could be evaluated as either a positive or negative change.
- In paragraphs 9 and 41-45 the utility of data about volumes of admin erasure and voluntary erasure.

- In paragraph 51 and 52, how data about referrals back to CE after referral to a panel will be used.

284. We do not believe the following aspects of the dataset to be proportionate:
    - Paragraph 27, seems to add little value as we believe that the more meaningful measure is captured in paragraph 28.
    - In paragraph 39, we would not close a case because a complainant is anonymous but sometimes we might because we have been unable to collect sufficient evidence to progress the case and this may be due in part to the complainant being anonymous. For this reason data about anonymous complaints per se is unlikely to be a useful measure of performance.
    - In paragraph 46, data about consensual disposal is unlikely to be a proportionate way of measuring performance. The Authority has shared its views about regulators' policies on consensual disposal but it is difficult to see how data about volumes of consensual disposal will provide a useful measure of performance. It is difficult to determine appropriate conceptual disposal from data alone, without further information to add context. We would emphasise that the purpose of the fitness to practise proceedings is not punitive, but rather its aim is to protect patients and the wider public interest.
    - In paragraph 59, we do not feel that it is appropriate for the Authority to raise differences of opinion about policy matters in the performance review process.

285. We have no specific exclusions to propose but have noted in our responses to Question 9 where we require clarification or where the data set requested is not relevant to the GDC.

286. We agree that there should be a common high level set of key data (for example 10 to 15 indicators) to enable meaningful comparisons of performance across regulators, which is publically available and accessible across all regulators.

287. However we view the enhanced dataset as too large and have provided some feedback in relation to the specific data items where we believe the data set could be reduced or tightened, including:
    - 18 data items which we consider are not clearly linked to the assessment of our performance in relation to the outcomes, timeliness or quality of outcomes and so should not be classed as performance indicators and measured on a quarterly basis. We view these data items as non-performance management information which provide context to the assessment of performance, and recommend these should be either

gathered as an annual data set, or on an annual basis outside of the performance review process;

- Six data items where we are concerned about the absence of clear methodologies, without which there will remain inconsistencies in the data provided and in the Authority's measurement of performance as a considerable degree of interpretation will need to be applied. In particular, we would like there to be a consistent approach which is applied to all regulators in relation to the time taken to progress FTP complaints, which we understand is not currently the case. We believe this will limit the effectiveness of the review process;
- Ten data items where our sample will be negligible, therefore providing data on a quarterly basis would not be meaningful due to the volatility of the data. We calculate such data on a rolling annual calculation basis, which enables trend data to be analysed but reduces fluctuations caused by low numbers and recommend the Authority considers this approach; and
- Eight data items where we require clarity of rationale in order to understand how the data will provide a meaningful indication of our performance in relation to the outcomes, timeliness or quality of outcomes and so should not be classed as performance indicators and measured on a quarterly basis.

288. We request the Authority reconsiders the enhanced data set to ensure that only data which is proportionate and is required to make an assessment of performance in terms of outcomes, timeliness and quality of outputs, are included for collection on a quarterly basis. Other non-performance, or non 'key' data could be collected on an annual basis, or outside of the performance review process if relevant to do so.

289. We consider the additional data items 7 and 8 (as well as current data items 1, 2, 3) as management information, which provides context to the assessment of performance and therefore may have a place in a performance report. However we do not believe they provide information (direct or implied) about the outcomes, timeliness or quality of our performance in respect of registration and so should not be collected on a quarterly basis.

290. For data item 5 (Proposed key indicator 1) (number of registration appeals where no new information was presented) we would appreciate clarification of the methodology in particular a definition of what constitutes 'new information'.

291. For data item 6 we would appreciate clarification as to whether the time taken for processing initial registration applications (particularly from international applicants) is from the start of the application process to registration or from the completion of the recognition/assessment process to registration. We are aware of this being an inconsistency in the current dataset between regulators and therefore poses difficulties in comparability of performance.

292. Data item 12 (median time to reach a decision on a registration application where there are FTP concerns being investigated) will result in volatile data as we have very few per quarter and so recommend measuring on a rolling annual or annual only basis.

293. It is not clear what data item 13 (closure of unregistered practice illegal practice cases) is trying to measure. It is not possible to identify a closure rate for such cases without knowing how many were opened.

294. We consider the current data item 14 (Number of education institutions the regulator is responsible for quality assuring) as management information, which provides context to the assessment of performance and therefore may have a place in a performance report. However we do not believe this provides information (direct or implied) about the outcomes, timeliness or quality of our performance in respect of education as so should not be included as an indicator of performance collected on a quarterly basis.

295. Data item 15 (Proposed key indicator 3) – 'the percentage of educational quality assurance visits where concerns are raised resulting in the regulator taking regulatory action.' We are unclear as to how this would provide a meaningful indication of our performance (or even the performance of the educational institutions) and how this should be measured in relation to what constitutes 'taking regulatory action' and therefore would like further clarity from the Authority.

296. For the majority of the visits we conduct we impose conditions, which we do not necessarily view as a negative issue and may not be classed as 'regulatory action'. Some conditions may be as a result of universities changing their course, to be innovative or to address an issue, and as a result we need to keep an eye on the changes. Therefore if conditions are included as 'regulatory action' this may not be an indicator of performance of the educational institutions. In addition, by imposing conditions, we are fulfilling our responsibilities, and therefore are unsure whether a high percentage is an indication of a vigilant and well-performing regulator. We do not undertake many visits and therefore the percentage figure for this indicator could vary widely quarter by quarter, so should not be included.

297. Data item 16 (The number of cases of 'student whistleblowing' i.e. the numbers of concerns raised by students to the regulator) – We are unclear as to the methodology for calculation and how this would provide a meaningful indication of our performance and therefore would like further clarity from the Authority. The term whistleblowing has specific definitions attached to it – for example they are concerns raised by 'workers' relating to suspected wrongdoing at work.

298. Please clarify whether this relates to concerns raised by students about our visit, as part of the quality assurance process, or generally about their educational institution, and whether this relates to concerns about the GOC, educational institutions or the fitness to practise of other students or registrants.

299. Depending on the methodology, if it is specifically whistleblowing cases, this may be useful data to collect in order to promote whistleblowing. However it is not clear how this could measure our performance in relation to our quality assurance of educational institutions. Alternatively, if it relates more to general concerns of students about the educational institutions, it may be better to phrase the indicator as 'number of concerns about educational institutions raised by students to the regulator'. If this indicator does relate to whistleblowing it is not clear why this is limited to education.

300. Data item 19 (Percentage of total institutions visited against regulator's agreed visit schedule) – We are unclear as to the methodology for calculation and how this would provide a meaningful indication of our performance in relation to our quality assurance of educational institutions and therefore would like further clarity from the PSA. Our visit schedule is a combination of planned visits, visits which are required as a result of changes by educational institutions and re-visits. Apart from the planned visits, our visit schedule can change during the year when visits or revisits are identified as being required during the year.

301. We are aware that there is some inconsistency of methodology amongst regulators in relation to calculation of this data, for example it would be good to have clarity on data item 21, whether cases concluded means cases closed (i.e. not referred to a hearing) or cases completed (the sum of those closed or referred, i.e. not 'open'). We understand that some regulators do not count the period of time a case is not progressed due to the impact of a third party. In addition there seems to remain inconsistency amongst regulators as to when to start counting the time taken to conclude a case. We understand this to be the date on which a complaint is received, but understand that other regulators count from the date on which a case is opened, which can be some months after receipt. Without clarification of methodology for all indicators, the effectiveness of the review process relating to moderation between regulators will be limited.

302. There are a number of data items on which we are not clear how they measure the outcomes, timeliness or quality of our performance in respect of FTP, for example data items 20, 21, 22, 23, 38, 39, 40, 48, 50, 53 and 54. Without clarity of rationale, we do not think these should be included in the data set. We consider these as non-performance information which we report on annually in our FTP annual report, which provides context to the assessment of performance of each regulator, but not necessarily across regulators and therefore may have a place in a performance report. We do not think there is merit in reporting this data quarterly.

303. Data item 25 appears to be included in data item 49 and so could be removed to avoid duplication.

304. The rationale provided for data item 38 (number of FTP cases opened in a range of categories), that it provides 'an indication of the effectiveness of our awareness raising, and how we manage whistleblowing and anonymous complaints' is not clear and so we do not think it should be included. Increases in the number of cases opened could be as a result of many other external factors over which we do not have control. In addition the number of cases in each category could be low each quarter and therefore there could be volatility in a quarterly data set.

305. We currently do not have the ability within our FTP Rules for voluntary erasure or consensual disposal and so our submissions in respect of 41, 42, 43, 44, 45 and 46 will be zero.

306. We are unclear whether data item 47 (Proposed indicator 7) relates to consensual disposal. It would be helpful for this to be clarified, particularly the use of the term 'CPD' which can have alternative meanings. If it does relate to consensual disposal our submission will be zero – see paragraph 49.

307. Data item 49 seems to include the same data required under 25. The rationale for including a mean measurement in addition to the median is not clear and so we do not think it should be included.

308. We are unclear as to how data item 58 (Proposed key indicator 9) (number of data breaches reported to the Information Commissioner) is an indicator of our performance and do not think it should be included. We are clear that data breaches are serious issues and we should have a performance indicator, but wish to ensure that any indicators do not undermine our approach to dealing with such issues. For example, this indicator may subconsciously lead to fewer reports being made to the ICO. We suggest a better indicator is one which focuses on any adverse findings from the ICO.

309. We are not clear of the rationale for the categories of organisation complaints in data item 59 and how this is a measure of management of risk. This would need a clear rationale in order to be included.

310. We view staff turnover as an indicator of organisational health, however we do not think this should be included as a performance indicator (we have it as a comparison indicator). In addition providing data on a quarterly basis would not be meaningful due to the volatility of data based on a small sample. We calculate turnover on a rolling annual calculation, which enables trend data to be analysed

but reduces fluctuations caused by low numbers. This may be an approach the Authority should consider.

311. We do not agree that the case for the significantly increased dataset has been made. We feel the Authority should engage with the regulators to clarify the intended purpose of the proposed data items and agree a core dataset with agreed definitions and consistency of reporting by the regulators.

312. MPS has no comment on this question.

313. We have concerns about the seventh bullet point under point 6.6 on page 13 of Annex 2. This is an area that needs to be dealt with carefully, as the scope for error is high as is the likelihood of the regulator falling foul of right-touch regulation. Guidance from the Authority on this issue might be useful.

314. No.

315. We consider that the Risk dataset bears limited correspondence to the proposed risk standard which brings into question the efficacy of both the standard and dataset.

316. In particular we think it inappropriate for the Authority to request that regulators report the number of data breaches reported to the Information Commissioner. There is a danger that taking into consideration the potential to be marked down by the Authority in a performance review for reporting data breaches to the Information Commissioner, regulators will be more reluctant to report data breaches. The number of data breaches reported to the Information Commissioner is of limited significance, a more appropriate question – in line with right-touch regulation – would be: what regulatory action has the Information Commissioner taken against you in the last year. We consider that the Information Commissioner is the right and proper organisation, which has the necessary levels of expertise, to decide upon the actions to take in relation to any data breach reported to it.

317. We further question the collection of data which does not relate to critical business processes – see paragraph 9.8.

318. Please see our answer above. We would request that the Authority looks again at the enhanced data sets and ensures that it only requests additional data on a regular basis where this is proportionate and helps it to make an assessment about the performance of the regulators in terms of outcomes, timeliness and quality. We do, recognise, however, that there may be areas

where the Authority will need to ask for information about inputs or outputs in the absence of other suitable outcome measures of performance.

319. We have highlighted some of the data items that we consider should not be included below, but this is not intended to be exhaustive.

320. Data items 7 and 8 (number of registrants by route to registration and number of applications by route to registration). These data items may be relevant if the PSA wishes to include descriptive statistics in an individual regulators' report, or in its overview report. However, they are not data items which give the Authority any information (direct or implied) about outcomes (as opposed to outputs), timeliness or quality.

321. The additional data listed for education appears to be based on a model whereby regulators undertake a cyclical programme of approval visits. As the Authority is aware, we visit and grant open ended approval to programmes. They are then monitored via the annual monitoring and major change processes which can trigger a fresh visit. As a result, for example, our visit schedule (data item 19) will normally consist of visits to new programmes and triggered visits as required, rather than a set schedule, the failure to adhere to which might be an indicator of poor performance.

322. Data item 15 (number of visits where concerns are raised resulting in the regulatory taking regulatory action) may need clarification to ensure that its scope is clear. We assume that the Authority intends that this data item will include visits where a programme is not approved; ongoing approval is withdrawn; or where conditions are attached to approval or ongoing approval. The majority of programmes we visit are approved or re-approved subject to conditions; therefore our answer to data item 15 is very likely to be almost 100% on each occasion.

323. Data item 16 (number of cases of student whistleblowing). We would suggest that it might be clearer to refer to 'number of concerns about programmes raised by students to the regulator'.

Fitness to practise

324. Data item 38 (number of cases opened by category). We routinely collect his data and report information in our annual fitness to practise annual report. However, we do not think there is a clear rationale as to why the Authority would need to routinely request this information every quarter.

325. The rationale given is that this data provides an 'indication of the effectiveness of the regulator's awareness raising, as well as information relation to how a

regulator manages whistleblowing and anonymous complaints'. We fail to see how this data would help the Authority to do that. An increase in the number of complaints from members of the public, for example, might be an indication of effective awareness raising; or ineffective awareness raising in that the regulator is receiving an increased number of complaints which do not fall within its remit; or could simply reflect the profile and nature of the practice of the professions regulated by that regulator and wider societal issues which drive increased reporting.

326. Other data items proposed in the area of fitness to practise do not appear sufficiently linked to outcomes, timeliness or quality – for example, data item 53 (breakdown of cases by outcome).

327. We make no specific reference to the dataset as it is for the Authority to seek information in order to assure itself that the regulator is 'fit for purpose' The only comment we would make is that both 27 and 28 are indicators which are subject to external influences, such as police investigations, and therefore can fluctuate dramatically from one year to the next. As these are matters outside of the regulator's control, the question should be reworded to reflect actions specifically required of the regulator once information is known or where the prosecuting authority confirms that this will not hinder their investigation.

328. We do not consider that the current range of data collected is used in a meaningful manner at present, other than for consideration of timeliness. There seems to be insufficient rationale for increasing the burden by requesting more data.

329. Proposed key indicator 3 – 'the percentage of educational quality assurance visits where concerns are raised resulting in the regulator taking regulatory action'. It is unclear what this means and what it would tell the Authority. Would 'taking regulatory action' include placing a condition on the recognition of a course? Is imposing such a condition a good thing or a bad thing, as presumably to take such action is indication of a vigilant and well-performing regulator? Given that for us in most quarters the number of quality assurance visits will average less than one; this figure may fluctuate between 0% and 100%. What will this tell the Authority?

330. Proposed key indicator 9 – 'number of data breaches reported to the Information Commissioner'. While we share the Authority's view that data breaches are serious issues, is this indicator likely to improve reporting to the ICO or lead to fewer reports? Surely the 'key indicator' here, if one is necessary at all, should be adverse findings from the ICO?

331. Data item 6 – clarification is required as to whether the time taken for the processing intimal registration applications (particularly from international

applicants) is that from the start of the application process to registration or from the completion of the recognition/assessment process to registration. We are aware of this being an inconsistency in the current dataset between regulators.

332. Data item 9 – the issue of registration lapsing while a registrant is under investigation is closely related to voluntary erasure while under investigation (data item 45) and it may be helpful to bring these together in the fitness to practise data section.

333. Data item 12 – it is not clear to us what the value is in this data item, particularly for a small regulator where such concerns arise with very low frequency.

334. Data item 13 – this data item appears to be meaningless without knowing how many concerns or complaints have been opened.

335. Data item 14 – we do not quality assure education institutions we quality assure courses, the number of which varies between institutions.

336. Data item 15 – see comments on key indicator 3. We are also unsure why one of these is a percentage and the other a number.

337. Data item 16 – clarification is required as to whether this is (a) as part of the quality assurance process or otherwise, and (b) whether this relates to educational or fitness to practise concerns.

338. Data item 19 – it is not clear to what the value is in this data item, particularly for a small regulator undertaking a small number of visits.

339. Data item 21 – clarification is required as to whether cases concluded means cases closed (i.e. not referred to a hearing) or cases completed (the sum of those closed or referred, i.e. not 'open'). We are aware of this being an inconsistency in the current dataset between regulators.

340. Data item 25 – this data appears to be included in data item 49.

341. Data item 47 – we assume that this data item relates to consensual disposals but this is not clear.

342. Data item 49 – see comment on data item 25. It is not clear why the Authority is introducing a mean measurement in addition to the median.

343. Data item 54 – we are not clear as to the purpose of measuring the number of hearing days. It might be more useful to consider mean or median case lengths which may be an indicator of effectiveness rather than volume of cases.

344. Data item 55 – we are not clear as to the purpose of measuring number of days lost in this way. It might be more useful to consider the proportion of hearings that go part heard which may be a better indicator of effectiveness.

345. Data item 56 – a change to data item 55 might make this item redundant.

346. Data item 58 – see comments on 'key indicator' 9.

347. Data item 59 – the rationale for choosing the categories of organisational complaints is not clear.

348. Data item 62 - while we agree that staff turnover may be an important indicator of organisational health, in a small regulator the percentage figure may be extremely misleading.

Q11: Is there additional data that you believe should be included in the dataset in order for us to gain a clearer understanding of the performance of the regulator?

349. Whether it is part of the dataset or not is not the most relevant consideration, but we believe the revisions to the overall process should have done more to draw a greater degree of value from the third party feedback process.

350. This is an opportunity for us to receive independent, regular feedback. It could, in a structured and repeatable approach, enable us to learn across regulators about the experience of both patients and members of the profession. There is an inherent challenge that in many instances either a complainant or the doctor will be aggrieved by the outcome of an investigation. Objective feedback on the timeliness and politeness of interactions, the clarity of process, and the degree of empathy shown to the parties would be valuable feedback in assessing (and improving) performance.

351. The current approach tends to draw a similar spread of feedback annually, reflecting the extremes of productive working relationships and complainants or doctors that feel aggrieved by the outcome of a case. Without a significant review, this will continue to attract a small, self-selecting sample that doesn't contribute as much value to the review as it may otherwise be able to deliver.

352. Fitness to Practise dataset: the GDC reports on the time taken to triage a case. Whilst we are aware that not all regulators have a specified 'triage' process, we regard this as an important measure as to how quickly a case receives preliminary scrutiny. A measure along the lines of 'median time between receipt and first review of case' would be a useful indicator of patient focus.

353. The education dataset does not include any indicators relating to continuing fitness to practise.

354. No.

355. MPS would like to see some further additions to the data set to ensure they have scrutiny over the impact of the regulator on the professions. We are concerned that the current data sets are focused too much on speed and not enough on the quality and consistency of outcomes. Further tests are required regarding the quality and accuracy of the processes/decision making.

356. This could include data such as:

- The proportion of cases where all allegations not admitted by the registrant are proved by the regulator at hearing
- The number of investigations that are closed with no further action
- The number of hearings that are closed at half time, with a finding of no misconduct and a finding of no current impairment (and the average length of these hearings)
- The number of hearings where the Practice Committee has determined that a lesser sanction or less adverse outcome should be given, compared to that sought by the regulator
- The number of cases where interim orders are not made by a convened interim orders panel, as a percentage of referrals
- The average length of
- all fitness to practise investigations
- all hearings, including a note of the number that were part-heard
- Results of an annual survey of registrants regarding their experiences of, and satisfaction with, the processes and procedures of the regulator.

357. An effective system of regulation is based on both public confidence and confidence of the profession that it seeks to regulate. Data should be captured to show the number of cases where the outcome of a hearing results in a sanction that is less than that sought by the regulator. This data should also be published as part of the Authority's review together with their recommendations on any areas for improvement. It will be apparent whether or not the Regulator is correctly assessing each case as the end of the case approaches, the facts having been determined.

358. We would also like to see a more formal inclusion of third party feedback.

359. Perhaps the regulator could disclose how many complaints it has itself received about all aspects of its performance on an annual basis and evidence about how (and how quickly) they were resolved. It is important to capture what third parties have reported to the regulator, as well as what the third parties report directly to the Authority.

360. Please see our comments about complaints and judicial review proceedings. We would also like to see the dataset published in its entirety.

361. No.

362. See paragraph 9.8

363. No.

364. The education dataset relates entirely to quality assurance of courses while the Standard itself also encompasses continuing fitness to practise.

Q12: Do you agree with the indicators that we have set out in annex three?

365. We believe the introduction of a targeted number of indicators, measured in the same way, will enable more meaningful cross-regulator comparison than the current dataset. We think the number of indicators proposed is proportionate to the purpose and that it is more likely the data can be applied to each regulator and across the whole sector.

366. We believe that there would be value in the Authority providing accurate comparison data for each standard and indicator to enable regulators to understand both benchmarks for good practice and judge materiality. On the specific indicators we believe the Authority needs to assure itself that these will not motivate any unintended behaviour. Performance indicators by their nature motivate specific types of activity that have been determined to reflect improving performance. Because of this the Authority must be assured that the indicator genuinely reflects the behaviours that are better practice.

367. In this context we are not convinced of the value of the following proposed indicators:

3. The percentage of educational quality assurance visits where concerns are raised resulting in the regulator taking regulatory action. We are unsure of the objective of the indicator. Is it showing a) how proactive we are b) the effectiveness of our quality assurance/quality management processes or are the PSA trying to assess whether the education/training of doctors is producing greater concerns than other regulators?

368. We think this indicator puts an undue emphasis on the identification of concerns and not on the quality or timeliness of addressing areas for improvement. We believe that the median time taken for the redress of a concern would more meaningfully demonstrate the effectiveness of improving education and training quality.

369. *7. Number of cases disposed of by: undertakings; CPD agreement reviewed by an FtP panel; other consensual agreement.* We think this indicator is lacking any context of total volumes of complaints or severity of concern. All of these numbers could increase over time but potentially reflect a smaller proportion of total outcomes. It is also unclear as to the value the Authority places on this indicator (are all increases reduced performance and all decreases improved performance?). We believe that the timely investigation and closure of cases that reflect lower patient safety risks is an improvement and this measure doesn't allow for that context.

370. On the median times for key fitness to practise processes, we believe that these results can be misleading if these figures include cases that are subject to an ongoing police investigation. The final presentation of the information should be explicit about whether these cases are included in the calculations or not with appropriate caveats as to whether this indicates variation in the regulators individual performance.

371. 12.1. We support the intention of developing a common set of key measures, but we do not believe that the PSA should impose 'Key indicators'. Key indicators could be confused with the setting of Key performance indicators which ought to be a matter for each regulator.

372. See responses to questions 9 and 10.

373. If the Authority plans to report on key indicators to compare performance across the sector it is essential that there are clear definitions and consistency of reporting by the regulators.

374. It is unclear why this particular set of indicators has been proposed or what they are intended to demonstrate. In addition, please see our comments above

about how the Authority intends to use the data and the need for clear criteria/decision frameworks.

375. We have concerns about two of the proposed indicators in particular:

376. Key indicator No. 3: '% of QA visits where concerns raised result in regulatory action' – it is unclear what judgement will be made on the basis of this. Also, if a regulator has only carried out one visit in a quarter the result might be 100% - would that be good or bad?

377. Key indicator No. 10: Data breaches reported to ICO – there is no indication as to what an 'acceptable' level would be. If the Authority wants to scrutinise/monitor data breaches, it should focus on any action taken by the ICO rather than how many incidents have been reported. It is 'regulatory overlap' for Authority to be monitoring (indeed holding up as a key indicator) issues we have reported to the ICO.

378. MPS questions whether all of the data requested can achieve the stated aims of the PSA. Much of the data requests relate to numbers of cases, which absent any objective analysis, would not provide sufficient information to assess the quality of the process/decision making.

379. Yes. We also welcome the use of median times.

380. Yes. All indicators are concise and easy to understand.

381. Based on our answer to Question Nine, we are content that numbers 4-8 of the key indicators pertain to the critical business processes of regulators. 1-3, 9 and 10 appear not to do so.

382. As stated above greater clarity is needed with regards to when a clock should begin to run in relation to Fitness to Practise cases and how consideration will be given to exceptional circumstances or the impact the primacy of external criminal and health investigations has over the timeliness of regulator investigations. We contend that when an investigation cannot progress because of an external body's involvement, the clock should stop and the only question should be whether there were adequate measures in place to protect the public e.g. Interim Orders or voluntary arrangements. For regulators with relatively small numbers of Fitness to Practise cases a number of Interim Orders can cause significant changes to average and median results, in relation to timeliness. Interim Orders are used to protect the public and in this regard Regulators should be encouraged to use them appropriately.

383. A precedent has already been set by the UK Government with regards to dealing with timeliness issues which are beyond the control of the Registrar. The introduction of the suspension to time limits under the Mutual Recognition of Profession Qualifications (MRPQ) Directive, in order to implement the Health Care and Associated Professions (Knowledge of English) Order 2015 is demonstrative of the same principle we would like to see introduced for Fitness to Practise cases subject to Interim Orders or external investigations.

384. Overall, yes, but with two exceptions.

385. The first indicator reads 'The number of registration appeals upheld where no new information is presented'. This appears to be a fair indicator in that the Authority should legitimately be interested in cases where a decision made by a regulator has been found at appeal to be flawed or inappropriate in some way.

386. However, the difficulty with this indicator lies in how the regulators can consistently determine what constitutes 'new information'. In order to appeal, an applicant or registrant has to submit their grounds of appeal. In many cases, new information not previously available is submitted. In others, however, arguably, the registrant does not provide any information which is materially different than that they previously submitted. We would suggest that the Authority would need to be clear about what constitutes such 'new information', particularly if it wishes to make, or allow others to make, legitimate comparisons between the regulators.

387. The seventh indicator includes number of cases disposed by 'CPD agreement reviewed by a Fitness to Practise Committee'. We assume this relates to consensual disposal agreements. We would suggest that the Authority should avoid using this acronym, to avoid confusion with its common use to refer to 'continuing professional development'.

388. See our answer to question ten for our comments on the third indicator.

389. See responses to questions 9 and 10. Our concern is less about the data but the implication that the Authority is introducing 'key indicators' which should be a matter for individual regulators.

Q13: Are there other indicators from the dataset that we should include?

390. Please see our response to question ten.

391. No.

392. No.

393. No.

394. MPS would like to see some further additions to the data set to ensure they have scrutiny over the impact of the regulator on the professions. We are also concerned that the current data sets are focused too much on speed and not enough on quality outcomes. Further tests are required regarding the quality and accuracy of the processes/decision making. This could include data such as:
- The proportion of cases where all allegations not admitted by the registrant are proved by the regulator at hearing
- The number of investigations that are closed with no further action
- The number of hearings that are closed at half time, with a finding of no misconduct and a finding of no current impairment (and the average length of these hearings)
- The number of hearings where the Practice Committee has determined that a lesser sanction or less adverse outcome should be given, compared to that sought by the regulator
- The number of cases where interim orders are not made by a convened interim orders panel, as a percentage of referrals
- The average length of
- all fitness to practise investigations
- all hearings, including a note of the number that were part-heard
- Results of an annual survey of registrants regarding their experiences of, and satisfaction with, the processes and procedures of the regulator.

395. The number of complaints about the regulator's customer service approach and/or the quality of information provided to individual enquirers.

396. No.

397. See answer at 9.8

398. No.

399. No

400. No.

Q14: Do you agree with the proposals that the dataset should be collected from the regulator on a quarterly basis?

401. Quarterly collection will place a significant burden on regulators. As highlighted in question 8, we are not convinced that the information being requested as part of the quarterly dataset will add more value to the review process than the compliance costs of compilation and submission on a routine basis. We believe there is still a case to be made to demonstrate the value of the individual elements of the dataset proposed for collection. Without understanding the value and insight they would provide to the PSA in their role, we are unable to assess if the compliance costs are justified.

402. We are concerned that changes to the dataset within short periods of time could lead to knee jerk reactions as in many cases a longer term view would provide a more proportionate view of short term fluctuations. Again, we would seek clear performance criteria against each line of the dataset with thresholds to clearly define what constitutes good practice from the PSA to avoid a short term view diverting focus from a long term strategic outlook.

403. Within the current process regulators are given very tight deadlines to provide supplementary evidence when requested at the mid-year and end of year data submission points which leave insufficient time for adequate data collection, analysis and sign off. If the same data were to be collected on a quarterly basis we envisage this issue being compounded.

404. We would welcome consistent feedback at each point that data is collected. We have experienced instances of failure to raise concerns with the mid-year data submission that are then referred to at the end of year submission, leaving us insufficient time to address concerns.

405. We agree with the proposal to collect the dataset on a quarterly basis, which will help to give the Authority visibility of ongoing performance. We would appreciate knowing the timing of seeking the first dataset as this would enable us to prioritise any CRM development/reporting development in light of other IT initiatives running in 2015.

406. We have identified some elements of the dataset where we would need to undertake some work either to: amend our CRM System to start to collect data that is not currently stored on the system, amend classifications to align our recording to provide splits that are requested as part of the new dataset. We would require some transitional arrangements (either publishing what we hold along with caveats, or temporarily not submitting data in certain areas) if quarterly reporting is to commence in advance of this work being completed.

407. In principle we have no objection to providing data on a quarterly basis where there is a clear rationale to do so in monitoring the outcomes, timeliness or quality of our performance related to ensuring public benefit. We have identified a number of indicators where we believe that it would be more proportionate, and have less of an impact on resources (both for ourselves and the Authority), if the data were collected annually.

408. We have there are a number of data items where our sample will be negligible, therefore providing data on a quarterly basis would not be meaningful due to the volatility of the data. In our performance reporting, we are moving towards a rolling annual calculation for such figures, which enables trend data to be analysed but reduces fluctuations caused by low numbers. This may be an approach the Authority should consider.

409. Providing such a large dataset on a quarterly basis would substantially increase the burden on regulators. In addition, the data collected from the regulators is not always comparable due to differences in definitions used.

410. We would also question whether the Authority has the capacity to analyse and interpret such a large volume of data from all the regulators on a quarterly basis.

411. The proposed dataset has 62 items, rather than the 15 collected previously, which will add to the burden considerably, particularly as not all the data requested is automated. In addition, the data may require context/narrative or prompt questions from the Authority which will also add to that burden.

412. MPS agrees that it is advantageous for the dataset to be collected on a quarterly basis but we are concerned about the Authority relying on the regulator to disclose data before a decision is reached on whether the Authority will 'audit' as part of a 'targeted review'. We think audits ought to be routinely undertaken, randomly by the Authority, at specified periods. Regular objective scrutiny of the evidence is crucial to build confidence in the outputs.

413. We are not persuaded that the Authority has made a case for this, we remain unclear what would be achieved by collecting data this frequently and how the data would be used.

414. We fully support the principle of moving to a more proportionate, targeted and risk based approach to performance review.

415. Critical to the success of this will be clarity about, and confidence in, the methodology used to reach any assessment of the extent of further performance review to be undertaken. The lack of detail provided in the consultation about the

criteria that will be used to determine this remains a concern. We have previously encouraged the Authority to consider seeking external input to validate any methodology it proposes to adopt for this purpose and consider that there would still be value in doing so.

416. In cases where a full performance review is proposed following initial assessment, it is unclear how this will vary from the current process. We would therefore welcome reassurance that the introduction of this additional initial stage assessment will not simply add a further layer onto an already resource intensive and time-consuming process.

417. More generally, we would strongly encourage the Authority to give fuller consideration to how it could apply a more proportionate approach to the way in which it conducts the whole range of oversight activities. This includes for example, moving towards a more targeted, risk based approach to the review of final fitness to practise cases; generation of 'learning points'; and revisiting its approach to initial stages audits. We believe there is scope for greater added value and helping identify performance improvements by adopting such an approach.

FTP and Registration audits

418. As indicated, whilst we welcome the proposals for combining any 'audits' within a single performance assessment process, we would urge that the opportunity be taken to revisit the methodology used for existing FTP initial stages audits and to ensure that a proportionate approach is taken in developing a registration audit.

419. Currently the methodology employed by the Authority does not accord with any recognized 'audit' standards. We note that the consultation is silent on the content of the registration audit and would be keen to understand how it is envisaged that such audits would be conducted, the criteria to be used, and how these will help regulators enhance public safety.

420. The existing Standards of Good Regulation have been in place for some five years. Whilst much of the content is laudable, the Standards vary widely in nature and scope and are repetitious in parts. In some cases there is undue focus on inputs at the expense of outcomes; some are of limited relevance to certain regulators but important to others, such as that relating to 'protected titles'; others such as information security, duplicate the work of other regulators, in this case the Information Commissioner.

421. We are therefore disappointed that the opportunity has not been taken to review the currency and relevance of the Standards. Both for the above reasons and to ensure that these are future proofed to take account of the changing nature of the healthcare landscape, for example, the greater emphasis on collaborative working from a wider public protection perspective.

422. In common with other regulators, we are seeking to rebalance our approach to regulation towards promoting professionalism and maintaining standards, rather than addressing the consequences of failure through fitness to practise activity.

423. The emphasis within both the current Standards of Good Regulation, with ten of these relating to FTP, combined with the focus on FTP measures within the proposed expanded dataset, seems out of tune with this approach.

424. This consultation does not clearly put forward the argument for collecting data so regularly and it should be considered further as part of an impact assessment.

425. A six monthly process initially to gather comparative data, followed by annual returns may be more proportionate.

426. If the Authority does decide to collect data quarterly, it will need to ensure it has the resources in place to do so effectively.

427. Yes.

428. It seems a good proposal however with so many different regulators, it may become a tiring process getting the required details from each regulator every quarter. The Authority could start off with collecting the data every quarter but it may become a cumbersome process so a switch to bi-annual may be more effective in the long run.

429. We have no substantive concerns about the Authority collecting data on a quarterly basis beyond the resource implications for us in doing so and for the Authority in analysis; however, we are concerned at the limited explanation provided as to how the quarterly data will be used to analyse performance. For example, if the collected quarterly data will be used to improve accrued understanding of performance over time, then we are content to collect relevant data quarterly.

430. However, if the data will be used to judge performance from one quarter to the next, we would have reservations about this approach, not least because the

small numbers involved in some areas will result in high volatility rendering quarter on quarter analysis largely meaningless. We further note the trend amongst financial regulators and businesses to move away from a process of reporting on quarterly profits and performance as it focuses organisations on a short-term reactionary agenda and does not tell the regulators or shareholders a significant amount about the underlying health of the organisation.

431. Will analysis be based on trends and averages accrued from the baseline of when data is first collected? In this sense it will be a rolling comparison with previous years and previous quarters. Or will the data be analysed on an accrued rolling 12month period? Or will analysis be based on changes within a confined calendar year or some other period (see also the comment at answer 14.1)?

432. Answers to these questions are extremely important as to whether we support the collection of data on a quarterly basis.

433. This is especially important for regulators with relatively small numbers of Fitness to Practise cases as a small number of delays can significantly impact on average times and increase volatility of data.

434. No. Although we understand the reasons for moving to this approach, we do not consider it necessary to ask for the whole of the proposed data set every quarter (see our previous comments about the length of the data set proposed).

435. We would suggest the Authority gives consideration to requesting the key indicator data set and/or the existing data set every quarter but only requests some of the other additional data items when an assessment indicates they are necessary, or at least on a less frequent basis.

436. As stated above, we do not agree that data should be provided on a quarterly basis as we do not believe that this would add any additional rigor to the Authority's performance review duty. In fact, it would be an additional burden both on all of the regulators and an additional burden on the Authority in seeking clarification on variances on a quarter by quarter basis.

437. In principle we have no objection to providing data on a quarterly basis. However, we have identified a significant number of data items where the response is likely to be 'nil' in most quarters and possibly 'one' in most quarters, or where for good reason the figures will fluctuate considerably. What will be critical is how the Authority chooses to interpret this data and how it engages with the regulators around this interpretation.

Section seven, and annex four

Q15: Do you agree with the proposed methods of assessment and review of each regulator? If you disagree with one or more aspects, please explain why.

438. As per our response to question ten, we believe that much more could be done to increase the value of the third party feedback element of the review and are sorry that it wasn't given more coverage as an area to improve, although a representative sample would be required to make the feedback reliable.

439. The consultation document notes a move to exception reporting for guidance and standards and education and training functions and concentrating on fitness to practise and Registration functions (2.5). While we agree that these are the 'sharp end' of patient protection they are in many aspects 'downstream' activities.

440. Registration occurs as an output of education and training and fitness to practise as an outcome of practise according to standards. There is some risk in this approach that the undue focus on these ends would miss emerging issues 'up–stream' and opportunities of identifying and sharing best-practice. This, in our view, is not dissimilar to the scenario outlined in the consultation document of only being able to identify a regulatory failing when regulatory risk performance has been defective. We are not necessarily of the view that these need to be covered in the review process itself, but any revision to the process that reduces opportunities for cross-organisation learning in these areas, might be an opportunity for the Authority to foster other inter-regulator learning fora that might consider these areas.

441. The blanket approach to all regulators seems at odds with the Authority's approach to right-touch regulation and we would expect this philosophy to underpin the performance review process. The focus on registration and fitness to practise appears slightly disproportionate and it might be more appropriate to place a targeted focus on different areas for each regulator; taking into account previous reviews and third party feedback.

442. We are unsure of the definition of 'significant' change and how this term would be universally defined across all regulators.

443. The points listed under section two of annex four; do not define the scope of the review in terms of the timeframe. If for example, a complaint were to be made today, about the service received over two years ago, would that be sufficient to warrant a full review (be it targeted or detailed) of the current operations of a regulator?

444. Overall we agree with the proposed method of assessment and review of each regulator. We support the intention to move away from a full performance

review each year and adopting a more focused approach. We are also supporting of having one performance report including audit reports. The inclusion of factors to be considered and how the Authority will evaluate the impact and consequences of risk and determine appropriate actions is helpful as it provides us with more clarity about how the Authority will reach its judgement of our performance. However we feel that there is a lack of detail about the criteria which will be used to decide at the initial stage whether or not any further review (change, targeted or details) is required, which will impact on the transparency of the process.

445. We would like the process to include more dialogue with us about the data set so that the Authority is clear about our interpretation of the data and any trends, before the Authority reaches any conclusions.

446. We welcome clarification on the scope of the proposed registration audits, including the criteria to be used, how these will help regulators enhance public safety and the legal basis upon which they will be conducted. We have an internal audit programme which includes work to audit our register and wish to make sure this is complementary and consistent with the Authority's proposed audit. We are also keen to ensure that audits undertaken are in line with recognised public sector/international audit standards.

447. In principle we agree with the approach as described. We do, however, have a number of concerns about how the process will be carried out.

448. The assessment stage, as described, does not indicate that there will be any discussion with the regulators before a decision is made as to the type of review that will be carried out. We would suggest that this would be a helpful step to add into the process.

449. As with the current performance review process, it is not clear from the proposals how judgements will be made. Conclusions are reached without an explanation of the criteria/metrics used. There should be greater transparency around these.

450. As discussed in answer to previous questions, MPS agrees with the principle behind the proposed changes, but has some suggestions to make them more robust. This includes the need to request more information regarding registrant experience and quality of outcome in the data set, greater use of third party information and the introduction of randomly selected audits.

451. See our response at paragraphs 30 to 32. We consider that any revisions of the process must be considered alongside the new funding arrangements for the Authority and that the overall costs of any revised process for both the Authority

and for each regulator in complying with the process should be contained within current parameters and not increase.

452. The Authority is right to expect regulators to carry out impact assessments when they are consulting on change, and we suggest these proposals would benefit from a full regulatory impact assessment.

453. In particular, we would expect to see a full cost-benefits analysis undertaken in relation to the proposals for collection of a considerably expanded data set on a more frequent basis than is currently the case, taking into account the costs to both the Authority of collecting and utilising this data and the costs to each regulator.

454. The new funding model places the Authority and the regulators under a shared obligation to ensure that regulation is proportionate, and the costs and burdens on the regulated, manageable. Given the expectation that the Authority's oversight should be proportionate to the risk, we would expect the costs of the performance review process both to the Authority, and to regulators in complying with the process, to reduce not increase. We would refer the Authority to our response to the separate consultation on the 2015-2016 funding requirement in this respect.

455. In general, the proposed review process is likely to be fine. However, in dentistry we are dealing with a failing regulator, and therefore we believe that in-depth review will be necessary for some time to come. We do not believe that a review of the early fitness-to-practise stages every five to six years is enough in this current case, as this is where the focus of its problems clearly lies.

456. To illustrate our concern, we would draw attention to the table in section 9 in annex 4. We believe that the GDC currently already is at a major or possibly catastrophic consequence level in some of its areas of activities, as we have been raising our concerns and loss of confidence for over a year. The inability of the Authority to comment on two fitness-to-practise standards in the latest report in relation to the GDC, pending ongoing enquiries, and one of which could not be commented on in 2014 either, is a clear indication that a detailed review should be carried out immediately under the new system.

457. We would also like to know if the definition of the word ‘groups’ used in the table is meant to include the profession.

458. All proposed methods of assessment that needs to be considered when assessing the scope of the review seem reasonable. The biggest concern is making sure that the Authority can get accurate and timely information from each of the regulars so that data can be compared and compiled appropriately.

459. In principle, we have no objection to the staged assessment methodology as outlined in Annex One and consider it to be a well thought out and reasonable process. We do, however, have a number of concerns around the implementation of the proposed methodology; the transparency of the process and the ability of regulators to appeal decisions made by the Authority.

460. Having published assessment criteria against the Standards, which provide a clear understanding of what is satisfactory and unsatisfactory performance would provide us with considerable confidence going forward. We support the approach to risk set out in our answer to Question Six, assuming similar information is available as to how it will be assessed.

461. As outlined in our answer to Question One, we have reservations concerning the potential impact the proposed methodology will have on the ability of organisations to operationally plan, unless dates are agreed around when an initial assessment review and subsequent change, targeted or detailed reviews (and associated audits) take place. We would urge the Authority to give this aspect of the proposed changes due consideration.

462. We consider that a meeting with the regulator after the initial analysis of data to check the factuality of the information should be included in the process and this should be extended to all audits. Ensuring constructive dialogue and, where possible, agreement on assessments is crucial to delivering a quality analysis and a productive performance review. In this regard we consider dialogue between the regulator and the Authority to be crucial to ensure consistency of decision making around changes to processes and policies and the thresholds which will lead to a change review, as set out in Section Seven of Annex Four. Similarly dialogue related to changes in the performance data will be vitally important, particularly when considering small data sets.

463. Consideration should be given to potential disagreements between the Authority and the regulators on the facts or the Authority's initial assessment.

464. We would ask that if agreement is not reached on the Authority's initial assessment:

a) The regulator is allowed to make a submission to the decision making panel; and
b) The decision making panel is held in open session (to the relevant regulator at least).

465. We would further suggest that an appeals process be included in the performance review against report stage findings and that regulators are given the right to include an unedited statement within the final report concerning aspects of the Authority's conclusions, which it disagrees with.

466. Yes, overall we agree with the proposed methods of assessment and review of each regulator, but with some reservations.

467. The overall process is clear and logical. The inclusion of factors to be considered (section seven of annex four) and how the Authority will evaluate the impact and consequences of risk and determine appropriate actions (sections seven to nine of annex four) is helpful. Whilst it is inevitable that there may on occasion be disagreements between the regulators and the Authority as to the judgements it has made, this does provide more clarity about how those judgements are reached.

468. The process outlines that a regulator which demonstrated satisfactory performance and no significant changes to practice would not need to undergo a more detailed review. In many circumstances, this is a sound risk-based approach. However we would want to ensure that the approach adopted by the PSA was capable of identifying a regulator that had not undergone significant change over a period of time and therefore had not undergone a more detailed review, but who's performance may have declined relative to other regulators (rather than in absolute terms). We would suggest that the Authority may wish to consider whether to undertake a detailed review of each regulator at least every five years, in keeping with its proposal about the initial stages fitness to practise audit.

469. The consultation document says that a targeted or detailed review 'may also involve an audit by us of aspects of either the fitness to practise or the registration process, depending on the nature of the performance concerns that have been identified' (paragraph 3.9). The Authority has previously undertaken audits of the initial stages of the regulators' fitness to practise processes, so its approach in this area is familiar. However, no information is provided about the proposed registration audits and what they might be likely to entail. Further, it would be useful to have information about the legal basis on which the Authority would conduct these audits.

470. We would further observe that it is important that the Authority is clear about what they consider to be a significant change in the new process to ensure that inadvertent under or over reporting by the regulators is avoided.

471. The proposed assessment method seems reasonable. However, there should be a clear and robust assessment process in order to ensure that regulators are treated in a consistent manner in determining the type of performance review that may be required.

472. A critical part of the assessment process appears to be analysis of trends from the dataset which as we have tried to identify above is likely to be difficult without dialogue with the regulator.

473. The proposed process at 7.3 and 7.4 does not envisage a dialogue with the regulator about the data but a post hoc discussion of the Authority's conclusions. It might be more helpful for the process to include the submission, with the final quarter dataset, of the regulator's interpretation of the data and any trends that may be evident to seek to avoid the problems that often arise in the current Performance Review process.

General

Q16: Are there any other possible impacts relating to these proposals that we have not considered?

474. One key issue that currently adds difficulty to the performance review process is that we are issued with very tight deadlines from the Authority at various stages that leaves us insufficient time for adequate data collection, analysis and sign off. We are concerned that this will continue with the revised process with the added pressure of additional data required on a more frequent basis. We would welcome a timetable of requirements with sufficient time to provide quality responses.

475. We would like to reiterate that we do not currently have processes in place to be able to provide all of the additional data requested. We can provide further detail if required.

476. We would question whether the key indicators incentivise the right areas and are concerned that they could lead to unintended consequences and behaviours. For example, an increase in the number of data breaches could be viewed as a positive change as result of breaches being logged more stringently.

477. We are also concerned that the datasets may not provide the Authority with sufficiently comparable data about each regulator as the nature of the work can vary significantly.

478. As the proposals stand, the regulators will be providing considerable data but this will not be accompanied by any narrative to provide interpretation or context of the data submitted.

479. No, although it is difficult to consider without an impact assessment.

480. As the regulators fund this activity we would be seeking clarity on costs and assurances that the overall cost of the process will not increase

481. We would also suggest that an impact assessment be carried out to assess the full impact of the proposed process on the regulators and on the Authority.

482. MPS has no comment on this question.

483. The process for third-party feedback is not explained.

484. No.

485. As outlined in our answer to Question One the uncertainty around timing and resource deployment inherent in the process will have a significant impact on our ability to operationally plan in the absence of sound procedures for agreeing timelines. Should a review or audit take place during a period of focused activity such as Retention, this will significantly impact on the organisation's performance.

486. The Chairs of the Audit Committees of each regulator did put forward a suggestion that there should be a regulatory impact assessment carried out, particularly in light of the additional information that is being proposed to be provided on a quarterly basis. We strongly support this approach.

487. We think it is important with the introduction of the Levy and the Authority's growing costs to ensure that the new Performance Review process is contained within the current budget, and that the overall cost of the process does not increase.

Q17: Are there any further comments you would like to make which are relevant to the proposals, and which you have not already covered?

488. We reiterate that the Authority does not currently provide adequate guidance on how data ought to be calculated, or benchmark standards for acceptable performance, meaning that we are unsighted as to how our performance will be viewed until the final report stage of the process. There have also been instances of inconsistency between the Authority's approach at the supplementary evidence and final report stages, where the Authority fail to raise concerns that are then referred to later in the cycle, leaving us insufficient time to allay any such anxieties. We are keen for the Authoirty to set out performance criteria against the dataset requested with material thresholds to make evidence of good practice very clear. Any such thresholds would need to be evidence based in terms of

ensuring they genuinely reflect appropriate standards of performance. We would also seek clearer instructions on how to calculate data to ensure that all regulators follow a consistent approach and the data is genuinely comparable.

489. It would be helpful for the GMC if the revalidation section of the Authority's evidence submission and report could sit within the registration section rather than the education section as this is where it sits in our organisational structure.

490. We would question whether significant weight should be applied to median time measures as the data should be considered in the full context of the fitness to practise standards, which emphasise timeliness relative to complexity, type and the conduct of the regulator and third parties. Evaluation should consider whether variations in total numbers are proportionate to case intake and whether regulators have robust processes in place that allow them to ensure that there is not unreasonable delay in their oldest cases. Again, we highlight that in some cases increase to the median time may be beyond a regulator's control due to dependencies on third parties.

491. We believe that the opportunity to set out clearly what a strong performing regulator looks like has been missed. Such a clear, unambiguous statement is necessary for the public and for the regulated sector. It would also benefit regulators. Such an express statement is missing from the current standards.

492. It is our opinion that the Authority should be considering the performance of each healthcare regulator against a generic model that clearly demonstrates what and how an effective regulator should look like. We believe that this model should base each regulator's performance against criteria that includes whether the regulator is financially stable and well governed to establish how they are performing. This model should be forward looking and seek responses from regulators in areas of weakness or failure regarding the proposed plan to address the area to ensure it is effective.

493. On the detail of the proposed process, we believe the performance review process would benefit from external, specialist expertise, particularly in identifying risk indicators in regulation to inform the initial assessment to be undertaken by the Authority. Other areas that would benefit from external expertise would be:

- Develop a scope for the performance review process that complies with generally accepted auditing standards, which is then published.
- Establishing the criteria for assessment, including scoping what 'good' looks like in a clear and transparent way.
- Undertaking an impact assessment, to assess the financial impact of the new performance review process on the regulators.
- Develop an effective, measurable risk standard.
- Develop a more suitable pre and post-implementation evaluation method – no entry/exit meetings are held, which is a common feature of other audits.

494. Standard two, education and training: the wording of standard two does cause some concern. The final bullet point of 3.4 (...demonstrate how you ensure that the Standards of education and training…are supported by additional guidance which helps education providers to apply the standards of education and training) could be problematic for us because we do not issue additional guidance. We have already tried to make sure that the Standards are clear enough so that providers understand what is required. It would be preferable if the requirement was '*to ensure that the providers understand what is required*' or similar wording.

495. An assurance that any data used in making a performance assessment is current and not older than, say, three months.

496. We welcome this review, particularly in relation to ensuring the process is proportionate and where possible less burdensome than the current process. However, we have concerns that the proposed changes in some respects will not be proportionate and consistent.

497. We were hopeful that this review would consider a number of wider issues relating to the Performance Review, its purpose, how it could be used to share best practice and improve performance and the Standards themselves. It would have been a great opportunity to look to make the standards more outcomes focused on protection of the public, to gain greater clarity about what is required to meet the standards and the criteria used by the Authority to make judgements on performance.

498. We were also hopeful that the data set would move some way towards indicators which assess performance in terms of outcomes, timeliness and quality of outputs. A large proportion of the activity we undertake is focused on public protection and the prevention of incidences where a registrants fitness to practice is called into question. We are keen to have indicators which measure our success in protecting the public via our work to promote and maintain standards. Therefore we feel the balance of indicators is focused on fitness to practise (37 out of 56 data items) disproportionately.

499. We use the performance review report as a tool to identify and learn from the good practice of other regulators, to help us improve for the benefit of the public. We are disappointed that this does not clearly come across as one of the reasons for the review process and it is not clear how best practice within and across regulators will be identified and disseminated.

500. We welcome the proposal to revise the current performance review process and would support the introduction of a two stage process involving different types of review based on an assessment of a range of information.

501. We support the aim of developing a comparative dataset, but this should be kept to a minimum and the Authority should be clear about the justification for the data it is proposing to collect. We do not consider that the case has been made for the revised dataset as outlined in the consultation document.

502. We produce performance monitoring reports for every Council meeting. The Authority has indicated that the revised process will include greater scrutiny of information produced by the regulators, including Council reports, as part of its assessments. We would suggest that using this information, rather than collecting large amounts of separate data on a quarterly basis, would be a more proportionate approach.

503. We would be happy to work with the Authority and other regulators to agree a core dataset comprising a small number of high level indicators.

504. The proposed review process involves judgements being made about performance and compliance with standards. Judgements would also be made at the assessment stage to make a decision on what type of review each regulator would be subject to. There is, however, no indication as to what methodology, criteria or frameworks would be used as the basis of these judgements. In addition, there is no indication that the assessment stage involves any engagement with the regulators, or any mention of an appeals process at any stage.

505. It is unclear from the consultation document how the Authority will judge the success of the revised process. It does not set out what it expects the process to achieve. The proposed emphasis remains on scrutinising fitness to practise processes. Whilst this is important, we would also like to see the process as a mechanism for identifying and spreading good practice that supports the regulators as they work to drive improvement and promote professionalism within their sectors.

506. MPS would like the approach of the Authority to move away from a reliance on data supplied by the regulator, and towards its own assessments on quality as opposed to quantity.

507. Please see our earlier comments about cost.

508. Secondly, where significant concerns exist that lead to special investigations which then make it impossible to report on the compliance or else with specific standards (see in particular the Authority's current inability to confirm whether or not the GDC has met standards 3 and 5 in fitness to practise) there is an

absolute need to report on such issues separately and swiftly. The current delays – for over a year – are totally unacceptable.

509. Will the Authority's ability to conduct special investigations be affected by the current proposals?

510. Resources: With this new approach - an annual report on each of the different regulators, the 'pushing' regulators for quarterly datasets etc, does the Authority have the right people and the right provisions in place to effectively run with this new proposal?

511. We do think the direction suggested in moving towards review of the Authority's approach is welcome, and particularly so in the availability of genuinely comparable data. However, we do think there is a great risk in the Authority being seen to require, through the imposition of a very detailed dataset, that organisations must have in place systems from which to retrieve this data. This seems quite an intrusive approach to take and one that seems to take little cognisance of the effect upon the organisations – although the Authority has mentioned an incremental approach it still seems to be overly prescriptive and may have considerable resource implications for the organisations being reviewed. The Authority could set out its need for general data requirements and then leaves it to the regulators to say how this can be facilitated – most usually it can be, but through a variety of different reports that they will already produce for their various governance meetings.

512. The notion of an earned autonomy (i.e. in reviewing organisations yearly on areas that they are achieving well) is one that has been adopted by other scrutiny organisations and is – in our eyes – seen to be a positive step so that the Authority, and the organisation being reviewed is not on a treadmill of evidence production. It does also allow room for change over time to be demonstrated, and gives organisations the space to demonstrate how change is being incrementally achieved, which is often difficult to do so on an annual basis. This approach does however require procedures for exceptions and the introduction of different levels of 'change, targeted and detailed' is noted. However reviews may bring notions of a failing organisation, or one that at least might be under greater scrutiny. This would have to be very carefully managed in terms of communications for a process which we imagine will be in the public domain? We've seen similar stories in the media of 'special' type reviews by other bodies such as the CQC and this does attract negative press coverage even prior to reports being published.

513. All these general points would need careful consideration.

514. Modernising audits to comply with best practice, for example the introduction of close-out meetings between the parties, greater dialogue and development of

understanding during audits and greater dialogue at the reporting section rather than exclusively written correspondence.

515. In moving to the new process, the provision of training and induction to both the staff team at Authority and the staff leads at the regulators to build a shared understanding of the process and its operation, would be a positive step to ensuring smooth implementation.

516. Building in measures to protect against double jeopardy – for example where there is a competent regulator like the Information Commissioner, the Authority accepts their analysis of incidents and reports on them accordingly.

517. We query the role of Authority's Council members in the decision-making panel. It is our view that Council members' function is to oversee the performance of the Authority in the application of its executive functions. Council members' participation in the decision-making panels, appears to be inconsistent with that role and again brings into question the separation of operational and governance roles. It may be more appropriate for Council members' involvement to be limited to dealing with appeals against decisions made by the Authority's Executive.

518. Having regard to our commentary in relation to the dataset, we are unclear as to the assessment criteria which might be used in the proposed registration audit. We would support audits which check the accuracy of the register, the accuracy of admissions and rejections, but are less supportive of customer service issues should they be included.

519. No.

520. We welcome changes that would make the performance review model fit for purpose. However, we feel that the performance review process would have been enhanced by seeking external review from a professional in the field of performance assessment.

521. This was a good opportunity to review the standards and more importantly the criteria upon which the Authority judges that a regulator has passed or failed a standard. This robustness of the decision making process is an element which should be improved in any new system.

522. We still encourage the Authority to consider commissioning an external review of the new proposed process within the next two years.

523. We welcome the refinement of the Performance Review model and consider it has potential in some areas to be less burdensome. We are less convinced that the process is fully fir for purpose and provides sufficient added value to the work of the regulators. We think that this proposed revised process is a lost opportunity to consider wider issues relating to the Performance Review and to review the

524. Standards themselves. Critically, there seems to be no new thinking which addresses the post-Francis world in which we should all as regulators be putting the patient at the heart of what we do

525. It is noteworthy that the key proposed new element of the process – analysis of the new dataset – is focused largely on fitness to practise with 37 out of 56 data items in this area. While fitness to practise performance is critical in any regulator, the activity itself is an expression of the failure of regulation and not its success. We detect that across the majority of the regulators there is a growing awareness of the relative importance of 'upstream' activity that is aimed at promoting and maintaining standards, and that there needs to be more of a balance struck with fitness to practise activity. This is not evident in the Standards or in the revised Performance Review process.

526. We are also disappointed that in this process the Authority appears to be stepping further away from promoting best practice. It is not clear within the process presented in Annex One how best practice within and across regulators will be identified and disseminated. As a regulator that regularly meets all the Standards, we find reflection on the strengths and best practice of other regulators to be the most useful part of the current process.

527. We would also like to see the Authority take this opportunity to include thematic reviews within the Performance Review process which could take a more qualitative cross-regulator approach to areas contained within the Standards.

528. We have commented in the past the Performance Review process gives a perverse incentive to regulators not to repot innovative changes to policies or processes. We remain concerned that this new Performance Review process as described in Section 3 may continue to reinforce this.

529. Finally, in Section 8.6 the Authority suggests that the initial stages audit process provides assurance 'about the ongoing quality of the regulators' day to day handling of fitness to practise complaints'. We think this is misleading as the audit activity relates only to a small proportion of complaints, all of which are by definition the least serious, and cannot be used to draw wider conclusions about overall fitness to practise process quality.