

# How we approach our performance review process

REPORT ON OUR CONSULTATION  
August 2021



## About the Professional Standards Authority for Health and Social Care

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. We oversee the work of 10 statutory bodies that regulate health professionals in the UK and social workers in England.

We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise. We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards. To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of [right-touch regulation](#).

We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce. Our organisational values are: integrity, transparency, respect, fairness and teamwork. We strive to ensure that our values are at the core of our work. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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## Executive summary

### The performance review process

The Authority has a duty to report to Parliament each year how well the regulators we oversee are protecting the public.<sup>1</sup> We fulfil this duty by assessing the performance of these regulators against our [Standards of Good Regulation](#). These Standards set out the outcomes we expect regulators to achieve. We call our assessments ‘performance reviews’ and conduct them on a rolling 12-month cycle for each regulator.

We have been running our current process of performance reviews since 2016, although we updated our *Standards of Good Regulation* at the end of 2019. In the last five years, and reflecting on feedback from stakeholders, we have identified a number of areas which we think could be improved. We decided that it was time to look again at our approach to performance review to ensure that our process remains appropriate in the light of the new Standards and continues to be proportionate and effective.

### The consultation and responses

The consultation on our approach to performance reviews ran from 10 December 2020 until 4 March 2021. We asked 14 questions and received 34 responses, including from regulators we oversee, government organisations, members of the public, registrants, and a range of other organisations including charities that support patients and service users, trade unions and professional bodies, defence organisations and registrant support groups.

We sought stakeholders’ views on how we could improve our performance review process. We asked what our reviews should cover, their timing, how we can best identify risk, and about the system we use for assessing performance. We also asked whether we should do more to support improvement including through thematic reviews and how we can best take account of stakeholders’ views.

Respondents to the consultation supported a more agile and flexible process, as well as more transparency about the decision-making process, which we will take forward in our development work. There was support for increased engagement with the regulators, which may help enhance the transparency of all of our processes.

Respondents agreed that our performance reviews should be risk-based and proportionate, and argued that they should recognise that the regulators face different challenges and operate in different contexts.

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<sup>1</sup> Paragraph 16 (1A)(b) of the NHS Reform and Health Care Professions Act 2002, as amended states that the Authority must prepare a report on the exercise of its functions each financial year which states ‘how far, in the opinion of the Authority, each regulatory body has complied with any duty imposed on it to promote the health, safety and well-being of [users of health care, users of social care in England, users of social work services in England and other members of the public]’.

We asked stakeholders whether we should continue to look at every Standard every year; the response we received was mixed with some saying the current approach should continue and others supporting a change.

Most regulators considered that a review every five years would be reasonable, but other organisations felt this was too infrequent and that a review every two to three years would be more appropriate. Any cycle longer than our current annual process will require some form of monitoring in intervening years that allows us to confidently fulfil our duty to report annually on the performance of the regulators.

There was support from all groups of respondents for more stakeholder engagement. This included more focused and regular conversations with the regulators, engagement with registrants, more structured questionnaires to gain feedback about profession-specific risks and more participation of patients in the process.

We asked whether we should adopt a new approach to replace the current 'met' or 'not met' binary system to assess performance. There was support for us to provide greater clarity and detail about performance against standards. Most respondents were in favour of changing the current system but there was no clear consensus on an alternative system.

Respondents supported us changing our approach so that we identify and share areas of good practice and do more to encourage and support improvement, for example through seminars and sharing learning.

Most respondents were in favour of us conducting thematic reviews, but were also wary of the resource implications for regulators. Respondents suggested that we could use thematic reviews to identify areas of good practice or emerging risks. However, there were reservations that highlighting areas of good practice from one regulator would imply that this forms a recommendation for other regulators to adopt.

Some respondents highlighted the impact of our overall proposals on regulators' resources and that they might increase costs to registrants. They added that stakeholder engagement needed to be inclusive and accessible, and that less frequent reviews might impact some groups with protected characteristics if, for example, fitness to practise or equality, diversity and inclusion Standards were reviewed less frequently.

## **Next steps**

The responses have provided valuable support and new ideas, as well as making us aware of possible limitations to the changes we have proposed. We have considered them all to ensure that we make the right changes to our performance reviews that best protect the public.

From January 2022, we will make changes to our performance review processes to areas that we and others have identified as requiring improvement in the past. They will also help to make our assessments more robust and the outcomes clearer and more accessible. We will:

- ▶ Amend our processes so that we do more work in year and engage more regularly with regulators, with the aim of publishing our reports within 3 months of the end of the period on which we are reporting
- ▶ Engage with a broader range of stakeholders
- ▶ Make our reports clearer, more concise and more helpful in promoting improvements in regulation
- ▶ Develop our understanding of risk including profession-specific risks and use this to inform the scope of our reviews.

Alongside this, we will develop the details of a more targeted approach whereby we would focus our resources more proportionately on areas of risk and concerns. This could involve a detailed review of a regulator's performance in the first year of a three to five year cycle, followed by annual risk-based monitoring, which would allow us to undertake targeted reviews where the need for these was identified. We would continue to report to Parliament each year on each regulator's performance, and consider that this approach would allow us to be confident in our reports while ensuring our resources are more focused on the areas of greatest risk. We envisage that such an approach would enable us to use some of our current resources to undertake more improvement work.

This new approach requires further development and planning. We will be working on the details of this approach and consulting on during the remainder of 2021 with a view to introducing the changes in April 2022.

We have considered in detail the merits of moving away from our 'met/not met' binary system of decision making for each Standard. This is not an easy decision and there is no single 'right' answer. The majority of respondents were in favour of moving to a more nuanced approach which reflected our view of the regulator's 'direction of travel'. However, we consider that the binary approach provides a clearer outcome and is easier for stakeholders to understand. There are strong advantages in a clear signal about whether performance meets the threshold or not. We note that, on its own, a more nuanced rating system may not provide greater clarity about direction of travel, including improvements and emerging concerns. We believe that improvements in our reports, processes and engagement will make the reasons for our decisions clearer and also make improvements or emerging concerns clear and readily identifiable for regulators and other readers. If a Standard is or is not met, we will very clearly explain why and will highlight, where appropriate, good practice, direction of travel and areas for further improvement.

We consider that there is a role for the Authority to provide an overview of individual problems within the sector and providing guidance. There is a range of tools that we can use to achieve this. These include performance reviews, projects on individual issues (for example our recent Virtual Hearings Guidance) and thematic reviews. We will aim to adopt the most suitable and proportionate process for each issue.

Since our consultation closed, the Government has published its White Paper setting out legislative changes for a Health and Care Bill on 11 February 2021. On 24 March 2021, it published a consultation on proposals to reform the regulation of healthcare professionals. We will work with Government to ensure that our longer-term process

adapts to the reforms and ensures that regulators properly fulfil their duties to protect the public and addresses the risks associated with change during the reform period.

## Who responded?

We launched our consultation on 10 December 2020 and it ran until 4 March 2021. We asked 14 questions and received 34 responses to the consultation, including from regulators we oversee, government organisations, members of the public, registrants, and other organisations. The other organisations we heard from were charities, government health organisations, a law firm, trade unions/professional bodies, registrant support groups and defence organisations. The breakdown of the responses is as follows:

- ▶ Regulators – 10 responses
- ▶ Members of the public – 8 responses
- ▶ Other organisations – 16 responses
  - Two charities that support patients and service users
  - Two government health organisations
  - One law firm
  - Six trade unions/professional bodies
  - Three registrant support groups
  - Two defence organisations

## What respondents told us

### ***Question 1 – Are there other concerns about the current performance review process that we have not identified here?***

- 1.1. In our consultation document we outlined the current performance review process, which was introduced in 2016. We described the feedback we received through a pre-consultation engagement exercise and the findings from our desk-based review of other schemes. This information shaped the questions we asked in the consultation. We also identified areas for improvement in the current process and. We asked whether we should continue to undertake annual reviews, and for views about our use of the data we collect, engagement with regulators and other stakeholders, a greater focus on outcomes, a more nuanced approach to describing performance, and sharing our views on good practice. We asked whether there are other areas of our current process which could be improved.
- 1.2. Twenty-five respondents identified aspects of the performance review process they think could be improved. Many regulators considered that we should be more transparent about how we make decisions, including the criteria we use and evidence we rely on to determine whether a Standard is met. Regulators also told us they would like us to engage with them more often to resolve lower level issues and strengthen our relationship.

- 1.3. Respondents also said that our performance review processes should be flexible and agile; a point which has been highlighted by the pandemic. They pointed out that the length of time taken for us to publish reports does not support learning as these are often published long after the end of the review period. Several respondents thought we should improve how we collect and use stakeholder feedback in our performance reviews and that we should use a wider range of feedback and collect it in a more structured way.
- 1.4. Some respondents stressed the importance of recognising the differences between regulators and the contexts in which they operate. Some also commented that the tone of our reports could be improved to make them more accessible.

***Question 2 – Do you have any comments on our role or the broad approach that we take to performance review as we have set out here?***

- 2.1. Regulators thought that the focus of performance reviews should be on outcomes rather than processes and that risk and proportionality are important factors. Some reiterated their support for more frequent engagement with the Authority throughout the year. They also sought greater clarity about the purpose and aim of the performance review process beyond the statutory duty.
- 2.2. This question prompted regulators to highlight again the differences between them, that an approach taken by one regulator may not be suitable for another and that regulators operate in different contexts. We also heard views that what is a priority for one regulator may not be for another.

***“each regulator is best placed to tailor its regulatory systems to the professions it regulates and the risk they pose. This is vital due to the different contexts in which healthcare is delivered and by whom, which results in varying risk profiles for the professions” (GOC).***

- 2.3. We received some feedback from regulators about the evidence gathering process. One regulator felt that there was an overreliance on data to inform assessments and another commented that improvements could be made to the evidence gathering at early stages of the process to enable regulators to share good practice.
- 2.4. Organisations also supported us taking a risk-based approach, being clear on the contexts in which the regulators work and increasing engagement with regulators.

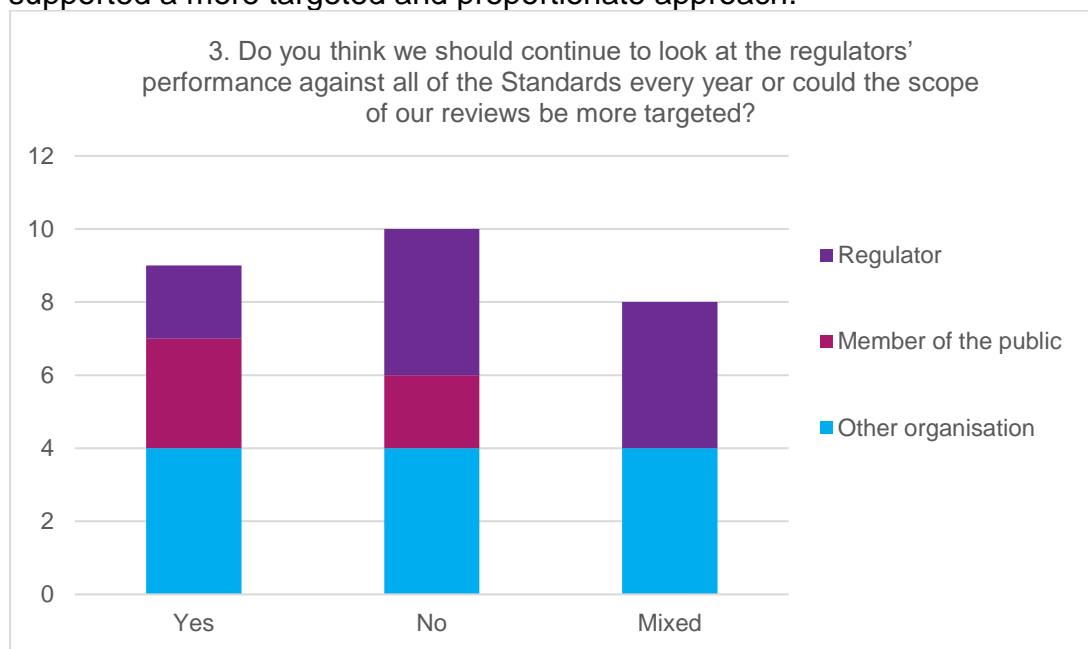
***“Frequent engagement may reduce the overall timeframe of the performance review, as the PSA would have a wider set of data to work with and would be able to address areas of concern prior to a second review stage.” (HEE)***



2.5. In addition, one respondent noted that some perspectives are missing from the performance review process, for example from registrants and representative bodies. Other respondents suggested we should consider a broader range of evidence.

**Question 3 – Do you think we should continue to look at the regulators’ performance against all of the Standards every year or could the scope of our reviews be more targeted?**

3.1. We received 27 responses to this question, including from all regulators. Nine respondents thought that the current approach should continue, including some regulators, members of the public and other organisations. Ten respondents from different groups did not think we needed to continue to look at the regulators’ performance against all the Standards every year. All groups supported a more targeted and proportionate approach.



3.2. Two regulators argued that we should continue to look at their performance against all the Standards every year, four were of the view we should not and four gave a mixed response. Many regulators expanded on their responses by providing further feedback and ideas.

3.3. The regulators that supported our continuing with the current approach of reviewing all Standards should be reviewed every year thought that the scope and extent of the reviews should be risk-based and proportionate, with further information should only be requested if needed. One also told us that a change to the current approach might mean issues are not identified in a timely way and that if reports only focused on those Standards where there were concerns, the reports might be overly negative and risk damaging public confidence.

- 3.4. The four regulators that supported a change in approach thought reviews should be more targeted and proportionate. One said that due to the time needed for them to change, looking at all Standards every year does not leave sufficient room for improvement. Another supported less frequent examinations of all the Standards, but that it would need more information about the approach. Some regulators thought that a change to the current approach may make it less burdensome for regulators and could free up resources for other work.
- 3.5. Other regulators' views were more mixed. They suggested that reviews may be needed where there are indications of a change in risk and that reports should make it clear that Standards that are not subject to a full review have been met. Another regulator commented that while a targeted approach would be more proportionate, it could result in the review focusing on risks that the regulator is already aware of, rather than identifying new risks.
- 3.6. Views were split amongst other respondents. Those that thought we should continue to review all Standards every year told us that a change in approach should be evidence based, that there is a need for regular oversight, and there was support for a more targeted approach that takes into account historical performance. One respondent said we should review all Standards every year, at least where a regulator has not met all Standards in the previous year. There was concern that if there was a reduction in scope, emerging risks might be missed, and that we should consider the impact of a potential change in approach and whether previous performance reviews have suggested that risks could have been missed if not reviewed annually.

***“Reducing the scope of reviews may miss emerging risks or lead to the Authority becoming less familiar with the work of the regulators.”***  
**(Unite)**

- 3.7. Further suggestions included a more targeted approach, with Standards that are not met being looked at the following year, a targeted approach but with full reviews every few years, and identifying areas of risk to assess whether a full performance review was required.

***Question 4 – If we were to change our approach, are these the right factors for us to consider in determining the scope of reviews? Is there anything else we should be considering?***

- 4.1. In our consultation document we explored what a different approach might look like. We listed factors that might indicate a lower level of review:
- Evidence that the regulator is aware of and addressing emerging risks in respect of the profession
  - Evidence that the regulator is accurately reviewing its own performance regularly and taking action against concerns
  - The regulator is meeting appropriate key performance indicators and adhering to its business plan

- The regulator has not made any significant changes to processes or policies
- The dataset supplied by the regulator does not suggest serious adverse variations in performance
- Information from stakeholders does not suggest serious concerns
- The previous performance review did not identify concerns in respect of the relevant Standards.

4.2. We also outlined factors that might indicate a closer review:

- New or significant risks arising from registrants' practice or the health care environment, particularly where these do not appear to be being addressed
- Evidence that the regulator was not meeting appropriate key performance indicators or other targets (such as work set out in its business plan)
- Evidence of decline in performance against the Standards, such as evidence of specific concerns, or where a regulator is failing to meet its own targets (such as those set out in its business plan)
- New processes and procedures in areas relevant to our Standards
- Serious concerns raised by stakeholders
- Concerns identified in previous performance reviews.

4.3. We asked respondents whether these were the right factors to consider and whether there were any additional factors that should be taken into account. We received 20 responses to this question, including from all the regulators. Two respondents agreed with the factors we described, 16 agreed but said that there was more to take into account and two provided mixed responses.

4.4. Seven regulators told us there was more to consider. Some agreed with the broad approach but felt that more detail is needed, for example, there might be good reason for a regulator failing to meet its own targets. Several regulators cautioned against creating 'perverse incentives', stating that change or innovation might be discouraged if it were to trigger a review. Another argued that a change implemented by a regulator should not necessarily require a review, and another noted that changes in performance would not necessarily indicate concerns and that the judgement needs to be proportionate.

4.5. Another regulator told us that it agreed that the Authority should assess how regulators monitor risk, but that this should be distinct from the role of the Council, which holds the regulator to account. Two regulators questioned how the Authority would obtain the evidence needed to make such assessments, with one noting the resource impact on the regulators and the thresholds for determining whether a review is necessary.

- 4.6. Several organisations suggested areas for further consideration. One organisation agreed that identifying change as a reason for a review could prevent changes and innovation. Others thought that broad sector-wide risks, as well as regulator-specific risks, should be considered. Suggestions for other factors to consider included considering how regulators engage with staff, how regulators respond to concerns and engage with stakeholders and how a regulator uses its influence to address cultural and organisational issues. Another organisation noted that in light of regulatory reform, regulators may have a more agile and flexible approach in the future, and that a wider range of evidence should be used, including using stakeholder feedback to determine the scope of reviews.

***“We would prefer the PSA to be more targeted in its approach. It should be looking at profession-specific issues that arise from time to time and the responses of the relevant regulator” (RCN)***

- 4.7. The mixed responses we received were from regulators and included questioning whether we should use a dataset to determine variations in performance and cautioned against using key performance indicators as these are defined by the regulators. There was also concern that some factors may cause the Authority to look at areas relating to organisational performance that are beyond the regulator’s statutory regulatory remit, and that looking at wider evidence may increase resources and cost for the regulators.
- 4.8. One respondent suggested that the current approach should continue, but that the factors listed could inform the level of review of each Standard.

***Question 5 – If we implemented a system as described above, do you agree that there should be a presumption that the Authority should actively review all of the Standards at regular intervals? What do you think an appropriate timeframe would be?***

- 5.1. We recognised in our consultation document that if we do not look at performance against all the Standards regularly, there is a risk that emerging risk or poor performance may not be identified. We suggested that we could adopt a presumption that we should examine a regulator’s performance at regular minimum intervals. We asked respondents if they agree with this approach and what an appropriate timeframe would be. We received 23 responses to this question.
- 5.2. The majority of the regulators considered that a review every five years would be reasonable. One suggested that changes in the sector, profession and regulator could be considered in determining the timeframe for review. Another suggested looking at some lower risk Standards across all regulators through thematic reviews.
- 5.3. One regulator said that setting a review frequency might not be necessary if a targeted and risk-based approach is taken, but recognised that a scheduled

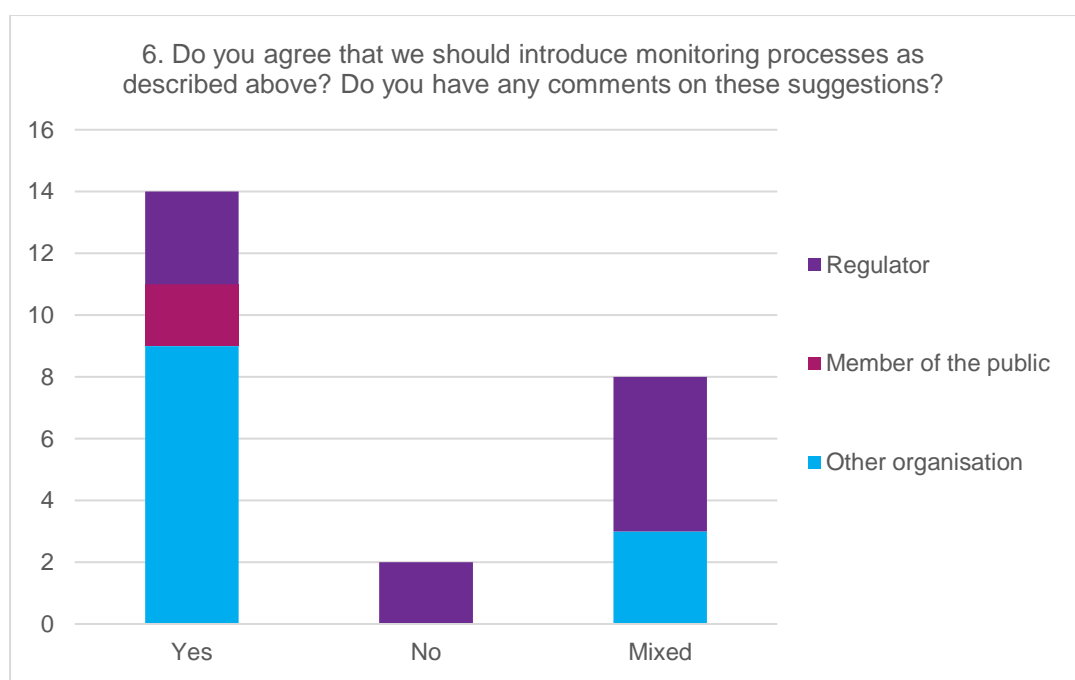
review could be helpful until such a model was well established. Another told us that a proportionate approach based on evidence is better than one with arbitrary timetables. We also heard a suggestion that there should be some assessment of lower risk areas year on year.

*“If the proposed targeted and risk-based approach works properly in the way described, and includes the appropriate safeguards..., then it would seem unnecessary to build in a regular review of all Standards. However we would still expect to see some review and assessment of the ‘lower risk’ areas year on year, to maintain a balanced picture of our overall performance.” (GPhC)*

- 5.4. The other organisations we heard from held mixed views. One thought that an evidence-based approach should be taken with some Standards being reviewed more regularly than others. Another suggested setting timelines for reviewing each Standard, determined by risk. One said that the process would need to be agile to respond to risk, and another said that the timeframe is an important consideration in retaining confidence in the regulator and the Authority. The overall view of the organisations we heard from was that all Standards should be reviewed at a minimum of every two to three years, and that five years was too long.

**Question 6 – Do you agree that we should introduce monitoring processes as described above? Do you have any comments on these suggestions?**

- 6.1. We noted in our consultation document that risks associated with a reduction in the scope of our reviews could be mitigated by a monitoring process, particularly where we are aware of significant and specific risks, and where we identify major risks to public protection.



- 6.2. Twenty-four respondents answered this question and the majority, from all groups, agreed with our proposal. Two respondents acknowledged that a monitoring process would mitigate the risks of less frequent reviews. Another respondent cautioned that introducing a monitoring process could move the work currently involved in performance review to another part of process.

***“We would support a monitoring process where serious risks have been identified, provided that it had clear aims and was designed proportionately to achieving those aims.” (GDC)***

- 6.3. We heard suggestions that monitoring could be determined by risk associated with the specific professions and previous performance. However, one respondent told us it did not think monitoring should be limited to previously identified failings.
- 6.4. Other feedback supported a monitoring process, but with a more systematic approach to gathering feedback and better engagement with registrants and professional bodies. One respondent also told us how a monitoring process could support continuous improvement.
- 6.5. Two regulators said they would not support a monitoring process, referring to the impact on resources for regulators.
- 6.6. Other respondents told us they understood the rationale for a formal monitoring process but needed further information on it would work. Two respondents noted that it was unclear how the process would differ from the current approach, and two noted the potential impact on regulators’ resources.

***“We are supportive of the notion but are unclear how this differs from the current oversight of regulators provided by the current performance review and special investigation powers the Authority holds.” (GMC)***

***Question 7 – Have we identified the right areas of our approach that we need to develop in this area? Is there anything else we should be considering?***

- 7.1. In our consultation paper we considered how best to identify risks to public protection and public confidence through the performance review process. We outlined areas we thought were important to this, including engagement with stakeholders, improving our evidence base, developing our understanding of profession-specific risks, introducing thematic reviews and ensuring a focus on outcomes. We asked respondents to comment on whether we had identified the correct areas in this regard.



- 7.2. We received 26 responses to this question and 23 indicated that we had identified the correct areas, but the majority of these said that there were more to consider. There was support for us to develop our understanding of profession-specific risks.

***“We strongly agree that the PSA needs to understand profession-specific risks and the different context within which the various professions operate... This sector knowledge will be particularly important for effective PSA oversight of the less high-profile healthcare professions beyond medicine and nursing.”***  
**(Association of Optometrists)**

- 7.3. Some respondents commented on how risk should be identified and assessed. One respondent suggested there may be challenges to achieving this; another said we would need to consider how to weigh evidence from different sources in our assessment of risk and some reiterated the importance of considering risks around changes to professions. We also heard that timeliness, both in analysis and reporting, should be a focus when implementing processes to identify risk. One regulator noted that critical risks have emerged from the pandemic: the link between a professional’s wellbeing and the quality of patient care, and the impacts of inequality and discrimination on workforce sustainability and quality of patient care.
- 7.4. One regulator suggested that we consider how performance review might support a culture of safety and learning, and how it can best focus on outcomes using qualitative and quantitative evidence. It also noted that improvement could be supported by sign-posting good practice
- 7.5. There was support for us revising the dataset, there being more focus on vulnerable groups and accessibility, and a focus on outcomes, taking account of research evidence and intelligence. We heard support for more open and regular conversations across regulators and the need to consider professional bodies and registrants as stakeholders.
- 7.6. Some respondents provided further comments, for example that focusing on outcomes is not always appropriate because some problems have their origin in processes and highlighting such process issues can also support legislative change. We also heard suggestions that we should consider the trend for regulators referring cases back to employers for investigation, and that we should also look more closely at regulators’ governance. There were some reservations about the use of thematic reviews, how they would fit into the process and how they would add value.

***Question 8 – How could we best engage with stakeholders, to ensure that we are aware of key risks to public protection? Is there any other evidence that we should be seeking to inform our performance reviews?***

- 8.1. There was support for more stakeholder engagement from all groups of respondents. This included more focused, regular conversations with regulators, liaison with professional bodies to understand themes from

inquiries and concerns, feedback from a sample of registrants who have been through the fitness to practise process, engagement with registrants through events and more structured questionnaires to gain feedback about profession-specific risks. One respondent also supported more policy and research work.

- 8.2. Some respondents suggested that the Authority could assess how regulators work with stakeholders and another suggested the Authority could review the research regulators carry out with patients and registrants.
- 8.3. One regulator told us that the regulators have access to and a better understanding of their stakeholders, and that this could be used to develop the Authority's links with stakeholders. Conversely, one respondent said that engagement should be done independently of the regulators as there were risks around going through the regulators.
- 8.4. Several respondents commented that an important benefit of increased engagement would be greater visibility of the Authority and its role, and therefore increased confidence in the professional regulation system. One respondent suggested that raising awareness of the Authority's role could be achieved through stakeholder engagement meetings and consultations. Another respondent suggested that regulators should make the Authority's role clear to their registrants. We also heard that increased engagement could help clarify issues and identify opportunities for learning and improvement.
- 8.5. We heard that the views of patients and complainants seem under-represented and that their participation as well as of registrants is important.
- 8.6. Suggestions for other evidence we could use included collating data from regulators about risks posed by professions and other factors, engagement with patient groups to understand more about the data they hold, and more qualitative input from stakeholders in addition to existing quantitative evidence. Data relating to regulators' staff recruitment and retention, sickness absence and staff surveys may be useful as the culture of a regulator is an important factor in their performance.
- 8.7. We heard that our processes should seek participation from a range of stakeholders, including whistle-blowers, and that we should consider how to include those with communication needs and those in vulnerable groups.

***“Public protection and public confidence follow from effective, visible regulation. The PSA process must be rigorous and seek participation of all stakeholders including whistle-blowers and patients with experience of raising complaints.”***  
**(Member of the public)**

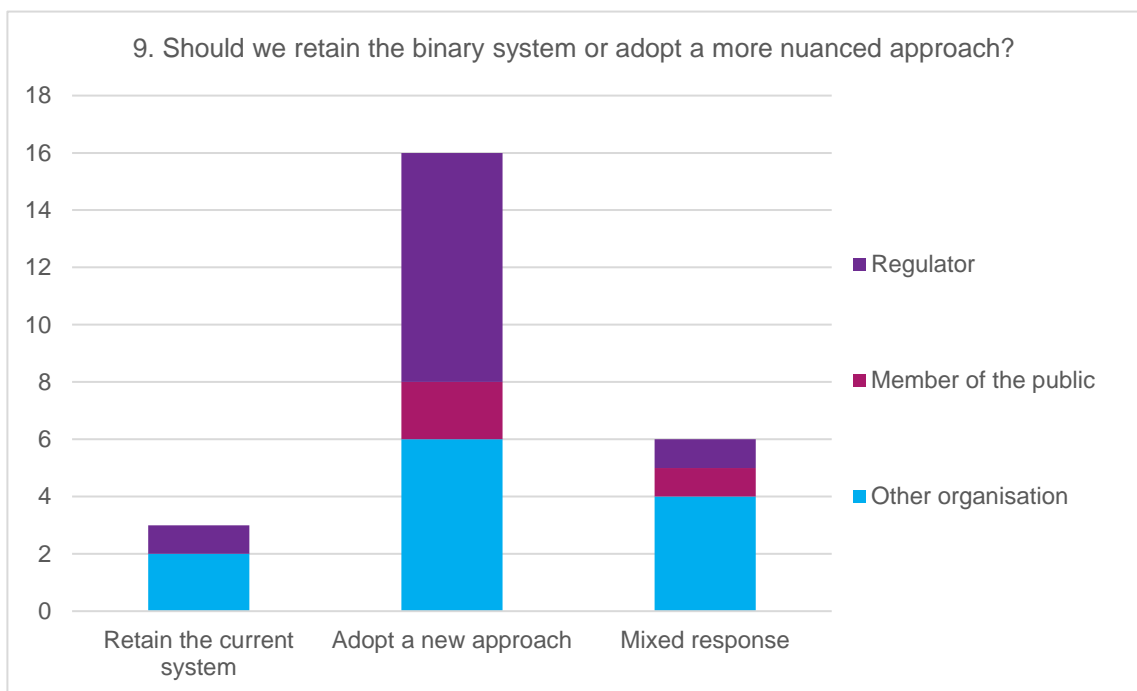
### ***Question 9 – Should we retain the binary system or adopt a more nuanced approach?***

- 9.1. We acknowledged in our consultation paper that while the current system, where we decide whether a Standard is met or not met, is clear, it can be a



blunt tool. We noted that the approach might not reflect the nuance of a regulator’s performance, such as whether it is improving or deteriorating, or when a Standard covers several aspects of performance. We recognised that this system can give a misleading impression of performance; all Standards being ‘met’ can suggest there is no room for improvement. We noted that the system can be used as a way of comparing regulators.

- 9.2. We received 25 responses to this question and the majority of respondents were in favour of adopting a more nuanced approach. One regulator and two other organisations were in favour of retaining the current binary system.



- 9.3. Those in favour of retaining the current system told us that it is clear, is supported by details in the narrative as to whether regulators are working above the level expected, and it allows comparisons between years.
- 9.4. Seven regulators advocated a change to a new approach. While acknowledging that the binary system is clear, and that detail is included in the narrative of the report, they argued that stakeholders might not pick up on the detail of our findings and that a more nuanced approach would support learning and improvement. Some wanted more transparency on our decision-making, including in understanding thresholds.
- 9.5. Other respondents supported a more nuanced approach. They suggested that a binary system can give a false impression about regulators’ performance, for example where a Standard is met but there are concerns, might suggest a

deterioration in performance that was masked by the assessment that the Standard was met.

***“A binary approach risks masking deterioration...If a Standard is marked as ‘met’, but months later its revealed that there were actually nuanced concerns about this Standard, there is an increased risk to public protection.” (The Challenging Behaviour Foundation).***

- 9.6. Some stressed the need for a balance between nuance and loss of clarity, as well as being clear to the public when a Standard is ‘not met’ or where the regulator is not performing to the level expected.
- 9.7. Two respondents praised the Snapshot we publish as a supplement to the report and suggested that the Executive Summary could be developed further.

***Question 10 – If we were to adopt a different approach, what alternative approach would you prefer and why?***

- 10.1. We received 27 responses to this question. Of these, 11 supported a ratings scheme of some sort. There was no clear consensus, however, about what this might look like. Some suggested a ‘red, amber, green’ approach, others a four-step approach and some a numerical scoring system. Respondents felt these would provide greater clarity, would be easily understood by the public and would reflect where performance is mixed, changing or there are areas for improvement. There was also a suggestion that a sliding scale may be useful, or a blended approach where some Standards are assessed using a binary system while others include a more in-depth narrative. Respondents also noted that regardless of the system introduced, methodology and thresholds must be clear and the language used should foster a culture of safety, learning and improvement.
- 10.2. Some respondents had no clear preference. One respondent said that it is important to note what each rating means, for example, whether a regulator is required to take action where a lower rating is decided. Others noted that there should be stronger powers to prevent ongoing failures, and that when a Standard is ‘not met’, it needs to be clear if the regulator is performing below the standard expected.
- 10.3. It was noted that the approach needs to reflect the purpose of the performance review and should drive the behaviours that the process seeks to achieve, for example protecting the public and supporting improvement. One respondent noted that understanding the audiences for the reports will be key to this.
- 10.4. Another respondent told us that they would not support a ‘red, amber, green’ system as this creates ambiguity where performance is assessed as at the ‘amber’ level, and the assessment must provide a view on the adequacy of performance. This respondent also told us that the transparency of thresholds or the burden of proof could be improved, and that a four tier model may be

appropriate if a clearer view of what amounts to 'met' or 'not met' cannot be provided.

- 10.5. One respondent told us that a new approach should provide improved information about areas of weakness and regulatory risk, and another said it should focus on areas of good practice and improvement.

***Question 11 – Would these changes support the regulators to learn from our work and that of other regulators, in order to better protect the public?***

- 11.1. In our consultation document we discussed how we can ensure our performance reviews enhance the work of the regulators and support improvement. We acknowledged that our performance review reports are largely descriptive and that our focus has been to identify whether the Standards are met, rather than to identify good practice.
- 11.2. We also noted that some regulators told us that we should be more proactive in identifying good practice and areas for improvement and we identified four ways in which we could address this:
- We could be more explicit about identifying strong performance of individual regulators. This would be a way of identifying good practice for the rest of the sector
  - We could make formal recommendations to individual regulators about ways in which they should improve processes
  - We could provide recommendations to the sector. These would be likely to be high level recommendations, probably around risks that cover the whole sector or problems that are common to a number of regulators. It is not clear to us that a performance review of a single regulator would be the most appropriate basis on which to make such recommendations, but we think that thematic reviews may provide us with an opportunity to explore sector wide risks and these could result in recommendations
  - We also consider that our role in identifying, sharing and supporting good practice could include a broad range of activities beyond noting good practice in our performance review reports. This could include, for example, supporting cross-regulatory working, engaging with the regulators through seminars and similar.
- 11.3. We received 23 responses to this question, and 16 respondents agreed that these changes would support improvement. Many regulators welcomed more work in this area and provided additional comments in response to the question. Several regulators, however, argued that they are best placed to identify how to improve performance, so recommendations should be open enough for the regulator to decide how to take them forward, and that recommendations should be framed as 'could', not 'should'. Some regulators thought the Authority should do more to support learning and improvement but did not think that issuing formal recommendations was the way to do this because regulators are best placed to determine how to improve.

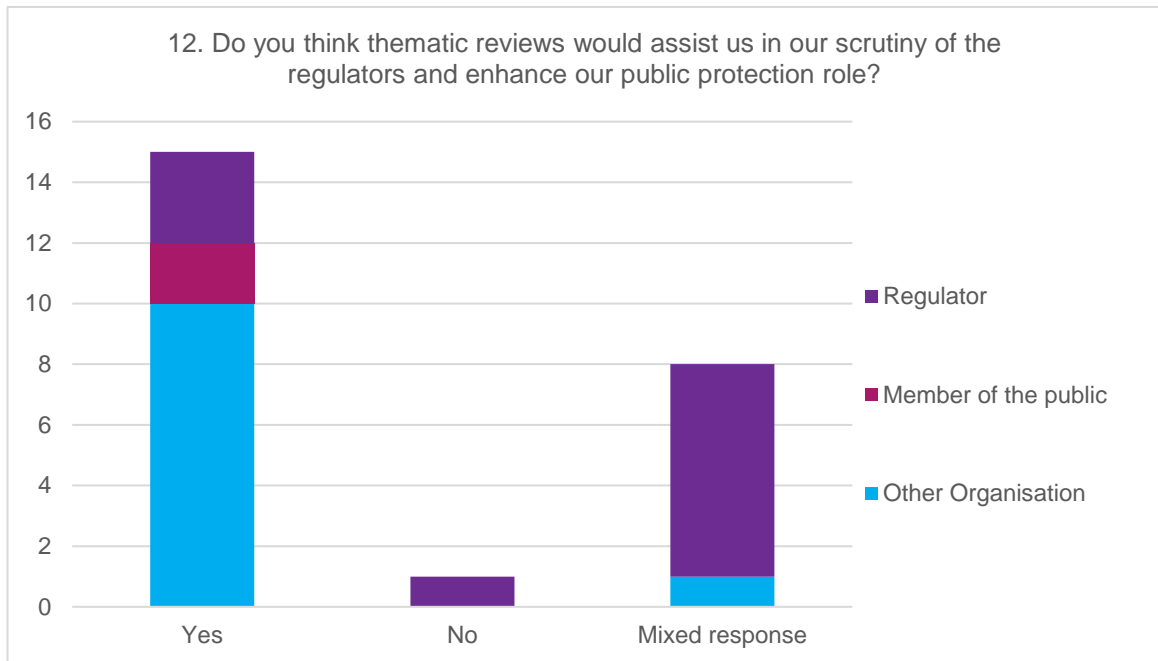
- 11.4. We heard from organisations that our suggestions would challenge regulators to improve, encourage learning and sharing knowledge and would improve consistency. However, some noted that the challenges and contexts the regulators are working in should be taken into account, and the differences between regulators accounted for.
- 11.5. One regulator did not agree that our suggestions would support improvement, and that there are better ways to do this than through performance review, such as using existing regulatory forums and having a focus on improvement and learning across the board.
- 11.6. Other feedback suggested that the lengthy timescales for our reports could be a barrier to supporting improvement, that making reports more accessible would support learning and that an overarching report drawing findings together could be useful. We also heard that the effectiveness of the suggestions would depend on whether the additional work involved would slow down reporting, and whether the Authority has the necessary expertise. One respondent also noted that leadership and governance are the factors that drive an organisation and its focus.

***Question 12 – Do you think thematic reviews would assist us in our scrutiny of the regulators and enhance our public protection role?***

- 12.1. We received 24 responses to this question and, as can be seen from the chart below, the majority supported thematic reviews. Three regulators, while supporting them, drew attention to the resource implications for them and that such reviews should take place in a ‘safe space’ and should not be part of the performance review assessment. It was also noted that an assessment of regulators’ responses to the findings of thematic reviews could be included in Standard 4<sup>2</sup> and that the Authority should consider its role in the cross-regulatory groups that already exist.

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<sup>2</sup> The regulator reports on its performance and addresses concerns identified about it and considers the implications for it of findings of public inquiries and other relevant reports about healthcare regulatory issues.



12.2. The other organisations we heard from told us that thematic reviews could be useful to assess responses to events such as the pandemic and Brexit, and that they could be particularly useful if staff at the regulators and members of the public are involved. We also heard that thematic reviews could be targeted to high risk areas and would link to a more nuanced approach to assessing the Standards, such as not looking at all Standards ever year or ‘ranking’ Standards. Like some of the regulators, other organisations highlighted the resource impact on regulators, as well as the time they might take to complete. One regulator said it would not support the introduction of thematic reviews because of the burden on regulators and because the benefits of thematic reviews could be achieved through the performance review process.

12.3. We also heard concerns about there being challenges assessing how the regulators work, given the differences between them and the contexts they work in, and a caution that thematic reviews cannot be used to replace the scrutiny provided by individual performance reviews.

12.4. Some topics for thematic reviews were suggested, such as the different approaches taken by regulators to improve consistency and fairness, unconscious bias and discrimination, and exploring how regulators work with other organisations, such as the Care Quality Commission.

12.5. The resource implications for the regulators was raised by other organisations as well as by the regulators. Respondents also raised questions about how thematic reviews would work given different performance review cycles, how the topics would be chosen and that the impact might be limited without powers to direct changes. We heard that thematic reviews could be used to gain assurance across regulators and to identify areas of good practice or emerging risks, but that there are pitfalls to avoid.

***“There is some risk that thematic reviews set a range of de facto recommendations on top of regulators’ existing commitments and improvement programmes by citing good practice from one regulator that becomes an implied recommendation to others to adopt.” (GMC)***

***Question 13 – Please set out any impacts that the proposals set out in this paper would be likely to have on your organisation or considerations that we should take into account when assessing the impact of the proposals.***

- 13.1. Most regulators highlighted the resource and cost impact. One regulator noted that we should balance the impact of having a system involving a standard review process, annual monitoring and thematic reviews.
- 13.2. A representative body told us that changes to the frequency of reviews and the decisions available may have an impact, because it uses the performance reviews to inform its own work. We also heard concern that a reduction in the frequency or scope of reviews could have an impact on the regulators’ performance, and consequently on registrants and complainants if, for example, the effectiveness and timeliness of fitness to practise work were to deteriorate.
- 13.3. One representative body told us that changes in approach could result in better engagement and allow more contributions to performance reviews and thematic reviews.
- 13.4. Some respondents suggested considerations we should take into account when assessing the proposals which included how the process could positively contribute to tackling inequality. We also heard that proportionality and engagement are important.

***Question 14 – Are there any aspects of these proposals that you feel could result in differential treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010?***

- 14.1. Four respondents highlighted the need to ensure that stakeholder engagement should be inclusive and accessible, and that it should be noted that some groups may need support to engage. The importance of reaching a range of stakeholders, beyond the typical demographics that are often involved, was also highlighted.
- 14.2. One respondent was of the view that the Authority should regularly look at its performance review processes, to ensure they are inclusive of all individuals, including those with protected characteristics.
- 14.3. Several respondents said that a reduction in oversight might affect individuals or groups. One respondent told us that less frequent reviews could mean less frequent checking of regulators’ processes in relation to equality, diversity and inclusion, and that this may be detrimental. We also heard that less oversight could affect regulators’ performance in fitness to practise, and this may in turn

impact some groups more than others, such as Black, Asian and Minority Ethnic groups who are overrepresented in fitness to practise processes. We also heard concerns about costs, and that an increase in resources required may impact registrants, possibly disproportionately across different groups.

## Next steps

### Immediate action to improve the process

- 15.1. The responses to the consultation showed clear support for speeding up the publication of our reports, improving our engagement with regulators and other stakeholders and making our reports clearer. There is also support for developing our understanding of risk.
- 15.2. We will therefore undertake further work so that we can introduce the following changes from January 2022. We will:
  - Do more work in year, with the aim of publishing our reports within 3 months of the end of the period on which we are reporting
  - Engage with a broader range of stakeholders
  - Make our reports clearer and more concise and, where appropriate, include proportionate recommendations
  - Develop our understanding of risk including profession-specific risks and use this to inform the scope of our reviews.

### Scope of reviews

- 15.3. We think that it will be possible to make more radical changes to the review process so that we target our reviews towards those areas of work and those regulators where we have evidence of concerns. This is likely to mean that if, after a full review of a regulator (which may be more detailed than our current reviews), we are satisfied that it is performing well, we would look in detail at their performance only where there was evidence of declining performance or other concerns or if there is a significant change in its processes which may need review. We would then undertake another full review after a predetermined time period, likely between three to five years. This would enable us to concentrate our reviews on areas and regulators where our detailed review identified concerns. We would, of course, continue to monitor the regulators' performance through our evidence base, which includes our dataset, the regulator's own work and information from stakeholders, and we would report annually on this to Parliament.
- 15.4. We consider that this is likely to enable us to concentrate our resources more proportionately and reduce the burden on well-performing regulators while maintaining oversight. We will need to undertake further work to establish how this will work in practice, the resource implications for us and the regulators and the best way to implement, given the forthcoming regulatory reform implementation.



- 15.5. We will, therefore, be developing a model of how the process would work. We aim to consult on it with stakeholders in the course of the autumn and take a decision on implementation in January 2022.

## **Decision-making**

- 15.6. We noted the feedback about our binary ‘met/not met’ approach to assessment and considered the options carefully. While we noted the concerns identified by stakeholders, there was no clear preferred alternative approach and that the alternative options would carry their own disadvantages including a lack of clarity and greater complexity in terms of decision-making. On its own, a more nuanced rating system may not provide greater clarity about direction of travel, including improvements and emerging concerns. There is no obvious ‘right answer’.
- 15.7. We therefore decided to continue with the ‘met/not met’ approach because it provides a clear statement as to whether a regulator has reached an acceptable level of performance. We will address the issues raised about this approach through further development work. We will update the structure of our reports to make the reasons for our decisions more explicit so that this is clear for all stakeholders. We will also make our processes more transparent so that how we make decisions is clearer. Within our reports, we will more explicitly identify any concerns we may have about deteriorating performance and make recommendations about potential improvements. We will also do more work to aid and share learning, including highlighting where regulators are performing well.
- 15.8. We consider that, in this way, we can be clearer about the detail of a regulator’s performance while providing clarity about our views about the overall level of performance.

## **Thematic reviews**

- 15.9. We consider that there is a role for the Authority in providing an overview of individual problems within the sector and providing guidance. There is a range of tools that we can use to achieve this. These include performance reviews, projects on individual issues (for example our recent Virtual Hearings Guidance) and thematic reviews. We will aim to adopt the most suitable and proportionate process for each issue as it arises.



## Further information/useful links

You can find out more about the consultation, our performance review process and the 10 regulators we oversee from our website:

- ▶ the consultation on how we approach our reviews had [a dedicated web page](#), including the consultation itself in both [English](#) and [Welsh](#)
- ▶ our [short leaflet](#) which explains more about our current performance review process
- ▶ read our [performance review reports](#)
- ▶ find out more about the [Standards of Good Regulation](#)
- ▶ find out more [about the regulators and our work with them](#).

You can find more about all areas of our work from our website

<https://www.professionalstandards.org.uk/>