
Performance Review Process

November 2017

The Professional Standards Authority

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

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

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation². We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce. We are committed to being independent, impartial, fair, accessible and consistent.

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

Our aims

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

Our values

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

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

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

² Professional Standards Authority. 2010. Right-touch regulation. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

Right-touch regulation

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

The process contained within this document is based on the principles of right-touch regulation as set out below:

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

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1. Introduction

Strategic purpose of the performance review

- 1.1 We promote the health, safety and well-being of patients, service users and other members of the public by reporting to Parliament on the performance of the regulators.
- 1.2 Each year, we check how effective the regulators are in protecting the public and promoting confidence in health professionals in the UK and social workers in England³.

Values and principles of the Performance Review

- 1.3 To support our strategic aim of promoting the health, safety and well-being of patients, service users and other members of the public, our performance review is based on our corporate values and the established principles of good regulation.
- 1.4 We will carry out the performance review process in line with our values. We are committed to being
 - Focussed on the public interest
 - Independent
 - Fair
 - Transparent
 - Proportionate
- 1.5 Additionally, we will base the performance review process on the principles of right-touch regulation as set out below:
 - Identify the problem before the solution
 - Quantify and qualify the risks
 - Get as close to the problem as possible
 - Focus on the outcome
 - Use regulation only when necessary
 - Keep it simple
 - Check for unintended consequences
 - Review and respond to change.

Legislative framework

- 1.6 Under section 26(2) of the NHS Reform and Health Care Professions Act 2002 and Schedule 7 of the 2002 Act as amended by section 114(6) of the Health and Social Care Act 2008, we have powers to investigate, compare and report on the performance of the regulatory bodies.

³ The Health and Care Professions Council have assumed responsibility for the regulation of social workers in England only. Consequently we have oversight of the regulation of social workers in England.

Section 26(2) of the 2002 Act gives us the power to carry out the Performance Review:

‘(2) The Council may, for example, do any of the following—

(a) investigate, and report on, the performance by each regulatory body of its functions,

(b) where a regulatory body performs functions corresponding to those of another body (including another regulatory body), investigate and report on how the performance of such functions by the bodies in question compares,

(c) recommend to a regulatory body changes to the way in which it performs any of its functions.’

Section 114(6) of the Health and Social Care 2008 Act states that our Performance Review report must include.

‘(1A) The report must state—

...

(b) how far, in the opinion of the Council, each regulatory body has complied with any duty imposed on it to promote the health, safety and well-being of such persons.’

2. How we review the performance of the regulators

Standards of Good Regulation

- 2.1 Our Standards of Good Regulation ('the Standards') cover the regulators' four core functions.
- 2.2 These are:
 - Guidance and Standards
 - Education and Training
 - Registration
 - Fitness to Practise.
- 2.3 The Standards are the basis of our performance review process. They describe the outcomes of good regulation for each of the functions. They also set out how good regulation promotes and protects the health, safety and well-being of patients, service users and other members of the public.
- 2.4 Each year we will gather evidence of how each regulator meets the Standards. We will gather this evidence from the regulator itself, from other interested parties, and from the information that we collect about them in the other work we do.
- 2.5 In order to help us (and others) decide how the regulator is meeting the Standards, we will produce examples of how the regulators can demonstrate that they are satisfactorily achieving each of the Standards. These examples may change over time.
- 2.6 Once we have gathered the evidence, we use the Standards to:
 - Assess whether the regulator has met the Standards
 - Identify where we may need to ask more detailed questions to understand how a regulator is performing
 - Following our review of performance, identify each regulator's possible areas for improvement
 - Where we think it appropriate, identify good practice that can be shared
 - Where it is possible and appropriate, compare the performance of each of the regulators.

Our approach to the Performance Review

- 2.7 For each of the regulators we oversee, we will conduct an initial analysis of the data and information that we collect. We will use this to form an initial **assessment** as to how the regulator meets each of the Standards.
- 2.8 We will then make a recommendation to our decision-making panel about the extent of performance **review** that should be undertaken, using our assessment.
- 2.9 The extent to which we need to review the performance for each regulator will be assessed once every 12 months. Both the assessments and performance reviews

will take place in accordance with a schedule that we will publish. This schedule may be revised from time to time.

Assessment Process

- 2.10 The stages of the assessment process for each regulator are as follows: Over the course of the 12 months before an assessment of the need for a performance review is to take place, we will gather evidence on the performance of the regulator from a number of sources.
- 2.11 These sources will include:
- Our scrutiny of final fitness to practise panel hearing decisions
 - Our consideration of information or concerns that are raised with us about the regulators
 - Checks on the information contained on their registers
 - Internal and external research and policy projects and reports
 - Our previous performance review reports, and the evidence the regulators submitted for those reports
 - The dataset we request from the regulators on a quarterly basis. More information about the dataset can be found in the performance review section of our website.
 - The information that the regulator publishes, such as council papers, consultation documents and policy statements.
- 2.12 We will use this evidence to form an understanding of how the regulator is meeting the Standards.
- 2.13 When considering information relating to the regulator's timeliness, we will consider carefully the data we see, and what it tells us about the regulator's performance over time. In addition to taking a judgement on the data itself, we will look at:
- Any trends that we can identify that suggest whether performance is improving or deteriorating
 - How the performance compares with other regulators, bearing in mind the different environments and caseloads affecting the work of those regulators
 - The regulator's own key performance indicators or service standards which they set for themselves
- 2.14 We will publish examples of what we view as evidence that may demonstrate satisfactory achievement of each of the Standards. These examples will be indicative only, and may change from time to time. They should not be treated as definitive, as each regulator's performance against some of the Standards of Good Regulation may need to be assessed within its specific context.
- 2.15 Once a year, we will collate all of this information and analyse it in order to make a recommendation to our internal panel of decision-makers about how we believe the regulator has performed against the Standards in the previous 12 months, and therefore the type of performance review that should be undertaken.
- 2.16 We can make the following recommendations:

- Where we identify no significant changes to the regulator’s practices, processes or policies during the performance review period, and none of the information available to us indicates any concerns about the regulator’s performance that we wish to explore in more detail, then we will recommend that a further performance review is unnecessary. If our internal panel of decision-makers accept that recommendation, the published report of that regulator’s performance will consist of a summary of the information provided to the panel and information about how the regulator has met all the Standards of Good Regulation.
 - Where there have been one or more significant changes to a regulator’s practices, processes or policies during the performance review period, but none of the information we have indicates any concerns or raises any queries about the regulator’s performance that we wish to explore in more detail, then we may recommend that the regulator should be asked to provide some additional information. This will allow us to assess the reasons for the change(s) and the expected or actual impact of the change(s) before we finalise our performance review report. If the further information provided by the regulator raises concerns, we reserve the right to make a further recommendation to the panel that a more detailed review is necessary.
 - If we consider that there are one or more aspects of a regulator’s performance that we wish to examine in more detail because the information we have (or the absence of relevant information) raises one or more concerns or queries about the regulator’s performance against one or more of the Standards, then we may recommend that a ‘targeted’ performance review is undertaken.
- 2.17 A review will be recommended where we consider that the information we have indicates a concern about the regulator’s performance in relation to a number of specific Standards. Such a targeted review is likely to involve us asking the regulator for some further information relating to the specific areas of concern about performance, as well as more general information about the regulator’s management of the relevant risks. It 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 identified.
- 2.18 Before we provide our recommendation to our internal panel of decision-makers, we will share it with the regulator so that they are aware of the preliminary view we have taken. The regulator will be reminded that the recommendation is subject to change depending on the panel’s consideration, and that they should not share any preliminary view externally in case that view changes as the process proceeds.
- 2.19 The recommendation and its supporting evidence will be presented to an internal panel of decision of makers at the Authority. That decision making panel will have a number of options open to it – to accept the recommendation, to reject the recommendation and reach a different decision about the type of performance review that should be undertaken, or to ask for more information to be gathered.
- 2.20 Once the panel has decided on the type of performance review to be undertaken, we will write to the regulator and inform them of the panel’s decision. If we need to undertake further work (such as asking the regulator further questions or

conducting an audit) then we will discuss with the regulator how we will take this forward with them.

- 2.21 Once we have completed any further review, we will share the results of that review, and our further recommendation as to whether the Standards are met, with the decision-making panel. The panel will then make the final decision as to how the regulator has performed against the Standards.
- 2.22 We will share our draft performance review report with the regulator prior to publication for their comments. The report will set out the way in which we have reviewed their performance, and how they have (or have not) met each of the Standards. We will consider any comments made by the regulator about our draft report before we publish the final report on our website. We will publish the regulators' comments about the report if they ask us to do so, once we have finalised it following receipt of their comments.
- 2.23 Each year we will publish an annual report on the Authority's work, and we will include where relevant information from the individual performance reports in this document.

Third party feedback and other evidence

- 2.24 To gain a greater understanding of the regulators' performance we will aim to seek the views from those individuals and organisations likely to have had involvement with the regulators.
- 2.25 We will specifically aim to seek the views of:
- Public and Professional Stakeholder Network members
 - Groups representing public and patients' and service users' interests
 - Groups representing employers' interests
 - Groups representing registrants' interests (Royal Colleges, Professional Bodies and Unions)
 - Groups representing education interests
 - Other bodies such as the Care Quality Commission and the Equality and Human Rights Commission.
- 2.26 We will also provide an open invitation to anyone who wishes to give their views, on their involvement with the regulators, through our website.
- 2.27 In responding to the views provided by any third party, we will make clear that we will not take account of hearsay, but only feedback where the third party can provide clear evidence or examples to support their view. All those contacted will also be informed that the information provided will be shared with the regulators and is disclosable under the Freedom of Information Act 2000. Requests for non-disclosure will be considered on merit and, as necessary, in accordance with legal advice.
- 2.28 We will use the information we collate to assist our understanding of the performance of each regulator against the Standards alongside the data/information referred to at 2.11 above.

Investigation of serious concerns

- 2.29 If we have serious concerns about the performance of a regulator, at any stage in either the assessment or review process, we will complete a risk assessment to enable us to make a judgment on whether it is necessary to carry out an investigation. Further information about how we conduct investigations can be found on our website.

Performance Review report

- 2.30 We will publish on our website our report into each of the regulators once it is completed. Over the course of any 12-month period, we will expect to publish nine reports, one for each of the health and care regulators we oversee.
- 2.31 On an annual basis, we will report on our own performance to the UK Parliament and the Parliament and Assemblies in Scotland, Wales and Northern Ireland. We will share our annual report with a range of other stakeholders including members of public and professional stakeholder networks, representatives from patient groups and the Department of Health and the Department of Health, Social Services and Public Safety Northern Ireland. This annual report will also include an analysis of any themes and learning from each of the individual published performance reports over the previous 12-month period.
- 2.32 Our aim is that each of the regulator's individual performance review reports, as well as our annual report, are valuable to patients, service users, our stakeholders, and the public. We aim to provide sufficient information to enable patients, service users and other members of the public to understand how effectively the regulators are protecting the public and maintaining confidence in health professionals and social workers through the exercise of their regulatory functions.
- 2.33 We also want the performance review reports to be valuable to the regulators. In our annual report, we will endeavor to provide sufficient information to enable the regulators to learn from the experiences and activities of each other to drive forward real improvements in health professional regulation.
- 2.34 The individual performance review reports will not routinely include all of the dataset data on which our assessment of the regulator's performance is based, nor will the reports routinely include all of the other information we have gathered. We will however routinely include within the annual report the data comparators we believe are important for the health and care regulators.

Access to information implications

- 2.35 We are committed to operating transparently and to meeting all reasonable requests for information about our activities, including the performance review.
- 2.36 The regulators should note that information provided or gathered during the course of the performance review is likely to be disclosable under the Freedom of Information Act. Where the regulator would like us to consider any information they provide to us in confidence they should set out which exemption of the Freedom of Information Act they consider applies to the information as well as their justification for the request.
- 2.37 We will consider each Freedom of Information request on its merits and, where necessary, in accordance with legal advice.

Continuous improvement

- 2.38 On a timely basis, we will ask the regulators for their views on the performance review process and on their performance review report. We will consider these views as we conduct future cycles of assessment and review.
- 2.39 In order to check whether the reports are useful to patients, service users and members of the public, we will invite a group of our public stakeholder network members to review our communications, including the performance review reports, once a year to ensure that they are accessible.



Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London
SW1W 9SP
Telephone: **020 7389 8030**
Fax: **020 7389 8040**