

Response to Professional Standards Authority's consultation 'A Review of the Standards of Good Regulation'

Introduction

This response reflects our submission to the pre-consultation in December 2016. We welcomed the Professional Standards Authority's (PSA) stated intention to review the Standards, but felt unable to settle on a way forward with the level of information provided. We are therefore pleased to see the consultation further develops the proposals contained in that document, and that it references points raised we raised in our response.

Our response is based on our knowledge of nursing education and training, and through direct experience of representing members through Nursing and Midwifery Council (NMC) Fitness to Practice (FtP) legal cases.

We support a principles based approach

The RCN's key objective in respect of the Standards is to ensure that they enhance the ability of our professional regulator, the NMC, to perform its duties in an effective, equitable and proportionate manner; whilst being agile enough to meet developments that occur in the way in which members of the profession are educated, employed, and deployed, across the evolving health and care system.

Having taken the time since the pre-consultation to consider the matter further, we believe that adopting a principles based approach will afford better outcomes for our members and the nursing profession than undertaking a revision of the existing standards. We believe this approach is more likely to support the regulators in discharging their prime duty, ensuring the delivery of safe and effective care by the regulated professions.

Our answers to the consultation questions are detailed further in the response, but for ease of understanding we would first like to highlight a number of key issues (drawn from our experience of the regulator that we know best, the NMC) that we believe clearly illustrate how current practice does not demonstrate the PSA's stated aim for its work: to support the delivery of better and safer care.

As we noted in our response to the pre-consultation, we have been concerned for some time about the impact of the PSA's approach to overseeing how professional regulators manage FtP cases. Our experience is that the NMC's interpretation of the PSA's oversight is sometimes leading to overly zealous prosecution, which is in turn unduly impacting our members and adding to the risks of a defensive blame culture developing.

The NMC has justified such tendencies by referring to the risks of being seen by the PSA of under-prosecuting, which has undermined its confidence in making common-sense and proportionate decisions at times. There is also a focus on the individual practitioner, which obscures any systemic issues. We would hope that adoption of a principles-based

approach, underpinned by the overriding purpose of protecting patient safety, would enable the regulators to focus on the best way to deliver that protection.

To demonstrate these concerns we hope that the following illustrations will be helpful:

1. **Prosecutors and investigators focussing upon securing a sanction by whatever means:** We have seen reflections and admissions proffered by registrants to demonstrate engagement then used to form the basis of fresh charges, or used as evidence to assist prosecution. This is well illustrated in the appeal case of Lusinga (judgement attached as appendix), where the attempts by the registrant to admit to dishonesty (incorrectly, as it turned out, through misunderstanding the test for dishonesty) were then turned against the registrant by the NMC case presenter who described the clarification as an aggravating feature because the nurse had changed his story.

The danger is that an unduly prosecutorial approach prevents the registrants and their representatives from fully engaging in the process, for fear of creating additional sticks to be beaten by, when more engagement is likely to improve the outcomes for everyone involved.

2. **Investigations not covering all the circumstances of the incident:** There have been occasions (some historic) when an investigation has been stopped as soon as there has been sufficient information to support a 'case to answer' finding without, for example, interviewing all the available witnesses, which may then point to a different picture and provide sufficient evidence for a defence.
3. **Adding dishonesty to charges when there is no evidence to support this:** For example, we see registrants routinely accused of dishonesty simply because a clinical record was changed incorrectly, even though there is no benefit in doing so for the registrant, and there is clear evidence that no attempt was made to cover up an error. For example, in a recent case, a dishonesty allegation was made when a drug had been recorded as given when it had not been administered. This was despite the more obvious explanation being that the record of administering the drug had been completed before the drug round was started, which is poor practice but not dishonest.
4. **Disproportionately utilising resources to demonstrate the impact of alleged errors which do not add insight to the fitness to practise of the practitioner:** there is a new focus by the NMC upon whether or not the actions of an individual 'contributed to' a particular outcome for a patient (often in fatal cases). The NMC said that they require this causation evidence in order to demonstrate to the PSA that the issues have been fully explored. We are now seeing increasing time and resource spent on establishing, through expert evidence, the cause of the patient's medical outcome rather than focussing on what went wrong.

In one case several nurses were accused of making the same error, and experts were called to advise on the extent to which the errors of the different practitioners contributed to the death in question. This led to the unpalatable possibility that nurses who had made an identical error might be given different sanctions. Causation evidence is often contradictory and always expensive, and this development seems to

us to be leading to illogical outcomes and a distraction from the proper focus on current and future safety.

- 5. A focus on the errors of the front-line practitioner, while missing the opportunity to analyse and learn from the systemic issues:** the well-publicised cases of the Ebola nurse volunteers demonstrate this issue well. Their cases revolved around whether they had intentionally mis-recorded a raised temperature in the volunteer Pauline Cafferkey, when she was being checked at the airport upon her return to the UK.

Many hours of hearing time at the NMC and GMC were spent upon what exactly was said by whom during the few minutes in question. However, it was alleged in all the coverage that Public Health England had failed to plan for and provide a safe homecoming for the volunteers, which had led to volunteers mingling with the public and having to take each-others temperatures in unsuitable surroundings after a long flight. We are aware of no report of any lessons being learnt from these obviously systemic failings.

We handle high numbers of cases from the independent sector involving registered home managers of troubled nursing homes. Typically, the registrant faces charges that they have 'failed to' ensure that various systems are in place for the residents in the home. However the underlying issues are often the same: that they have been in post for a relatively short time; their efforts to introduce change have been undermined by the scale of the problems; the owners are unwilling to invest in the service; and they have great difficulty in retaining sufficient staff. The focus however is invariably on the registrant's individual shortcomings. This all too often leads to very well qualified nurses leaving the profession, and completely misses any opportunity to examine the underlying systemic issues responsible for the problems.

We also see cases involving large numbers of practitioners from a single workplace where problems have arisen. These can be very long running cases where each individual faces a few allegations. Logic suggests that systemic issues have led to high numbers of staff falling foul of their regulator, but the continually such cases tend to focus upon each individuals' failings.

- 6. Public and employers using the NMC to pursue 'vendetta':** we sometimes see the NMC allowing themselves to be used to appease complainants rather than confidently and robustly asserting their role as the upholder of standards; meaning that there can be lengthy and distressing investigations that appear to us completely unmerited.

We recently saw a case involving ten registrants, who each underwent a very lengthy investigation resulting from a complainant who had herself been the subject of an NMC case, and so had motivation for causing difficulties for her colleagues. However, there was a reluctance by the NMC to take the complainant's credibility into account.

While acknowledging the PSA's role is not to directly manage the regulators it oversees, we do want to see its approach to regulatory oversight encouraging better outcomes for those subject to the professional regulators' actions. In the case of our members, this must cover the full spectrum of activities the NMC undertakes, even to the extent of ensuring that those contravening their professional codes are subject to swift but robust action.

We would also like to see the PSA support a healthcare system that is better able to achieve system improvement. For example, regulators should examine the whole scenario when there is a public protection concern, if the Standards are to ensure 'good regulation can lead to improved outcomes in patient protection'. This step-change also needs to support a move away from the blame culture that exists in too much of our health and care system, replacing it with one that is able to make use of data and intelligence that comes from failure (individual and system) and transform it into the valuable learning opportunity that it should be.

Ultimately we would like to see the PSA support the regulators it oversees to move the health and care system to one that encourages openness and learning, and in turn enhances patient safety, outcomes, and experience.

Responses to questions

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

We agree that the Standards should cover the regulator's performance in respect of standards and guidance.

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

We would like to see a clear differentiation between standards and guidance, and their purpose. We would expect regulators to have clear guidance around regulatory issues, e.g. registration processes; interpretation of regulatory standards and guidance and a mechanism to address these with their registrants.

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

We agree the Standards should cover the regulators' performance in education and training, so that in addition to ensuring a proportionate process for the quality assurance of education programmes, they also provide assurance around achievement of programme outcomes required for registration.

We also support the proposals to consider fairness in outcomes, and to include feedback from students and trainees, and provide further detail on this in our response to questions 8 and 9. However, we would not wish these to be overly prescriptive, and would like to see more information on how effectiveness and proportionality will be tested.

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

We would like the focus to be on quality assurance, rather than content and delivery.

We would also like to see the Standards broadened to cover more than just approved education institutions, and to include practice partners/ providers, so that they encompass how the infrastructure for practice based education (as a significant proportion of health programmes) is supported and quality assured against required outcomes.

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

We agree that the Standards should cover the design and delivery of continuing fitness to practise schemes, since they were only consulted on in March 2017 and it therefore makes sense that these remain.

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

We support the Standards focusing on increasing transparency, for instance ensuring in the case of Higher Education Institutions that any declaration the programme lead makes

to the regulatory body on the health and character of the student includes information on any proceedings that have occurred with a student.

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

We agree that the Standards should cover the delivery of the registration function as set out in the proposals:

- only registering professionals who meet their standards;
- placing on the Register any action taken against a registrant that limits their entitlement to practice;
- making the Register publicly available;
- ensuring that the Register is accurate, accessible and clear for anyone wishing to use it.

Holding a Register is a key part of the regulators' role, as well as being fundamental to registrants' experience of entering and practising in their chosen profession.

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

We would like to see the Standards focus on ensuring that the Register is accessible, which necessitates that it be accurate and easy to understand. It is also vital that the Register is accessible to the general public, so that they can easily check whether someone is on the register and whether they have any conditions applied to their practice.

The Standards should enable analysis that can support 'workforce intelligence', for instance ability to meaningfully analyse data from the Register, with time from application to registration offering a benchmark, including international applications (EEA and overseas). Further to this point they should also support the generation of information about any barriers to registration, and how they are being addressed by the regulator.

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

We believe it imperative that the Authority continues to monitor regulators' activities in preventing illegal or unregistered practice, and would like to see this remaining as an explicit requirement, as it is a vital function to ensure patient safety, and by extension maintaining the public's trust in the regulated professions. However, any activities should be demonstrable proportionate to the risk being managed (See 5c)

Further to this point, we would like to see a distinction made between risky unregistered practice and unintentional lapsing due to clerical error, towards which the NMC, in our view takes, an overly rigid approach. At the NMC we are seeing a mixture of a punitive approach towards inadvertent lapsing and a slow process for appeals against failed re-registration applications that is leading to registrants suffering prolonged absences from their livelihoods, yet almost invariably being returned to the register, which seems disproportionate and a poor use of resources.

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

- *Whether the regulator has appropriate methods for identifying those case which pose a risk of harm to the public;*
- *The proportionality of decision-making according to the regulator's assessment of risk;*
- *How effectively the regulator liaises with other relevant authorities.*

We believe the areas given in the consultation, to be sufficient to meet the core objective of ensuring, as far as is reasonably practicable, the safety of the public.

In particular, we agree that the focus should be upon the cases which pose a risk of harm and proportionality.

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

We would like to see any work focused on how well the regulators are identifying instances of illegal or unregistered practice, and on how well they then work with other relevant authorities, as these are both key to reducing the overall level of abuse.

We note that there is little hard evidence about the overall level and impact of malicious unregistered work¹, (which is not to say that it is not a potential risk) and so we would want this activity to be commensurate with the level and risk posed by unregistered or illegal practice.

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

We agree that the Standards should cover fitness to practise, as this is a core component of the Regulators' role, being vital for the protection of the public, and fundamental to securing the trust of both those being regulated, and the general public.

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

We would like the Standards to give sufficient priority to fairness and proportionality. The current Standards give, rightly, prominence to protection of the public. In our experience, there can be a failure to balance the impact on the registrant, even when to do so would not reduce the protection of the public, for example by willingness to adhere to the spirit of the rules on proper disclosure, to respect the information proffered by the registrant as an effort to engage and not to then add additional charges on the basis of the information volunteered, to show flexibility about scheduling, and to keep the registrant updated.

The registrant can come across as the secondary party in the process, which can have an adverse effect on the effectiveness of the process if the registrant is made to feel as if they have already been found at fault before a fair hearing. We would like to see Standards that give the regulator confidence to make proportionate decisions that make them more

¹ The PSA's predecessor, the Council for Healthcare regulatory excellence, was only able to list 1 case in relation to nursing in its report in 2010 'Protecting the public from unregistered practitioners' – Available at <http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/tackling-misuse-of-protected-title-2010.pdf>

confident to ascribe responsibility to systemic issues in a healthcare setting, rather than become overly focussed upon the individuals involved.

A particularly good example of this tendency is the new NMC focus upon whether or not the actions of the individual 'contributed to' a particular outcome for a patient (often in fatal cases). The NMC said that they require this causation evidence in order to demonstrate to the PSA that the issues have been fully explored. We are now seeing increasing time and resource spent on establishing through expert evidence the cause of the patient's medical outcome rather than focussing on what went wrong and why, which could supply useful learning to prevent repetition.

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

We agree that the Standards should cover the governance activities of the regulators, as this will help to provide assurance that they are providing effective stewardship of their resources, and discharging their responsibilities effectively.

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

We agree with the four elements proposed in the consultation document, that the regulator:

- Is demonstrably independent from registrants, government and other special interests;
- Has transparent processes, which are available for inspection by the PSA;
- Has adequate and good quality processes to ensure its Council with information sufficient to monitor its performance and compliance;
- Has a Council that is effective in its ability to understand that information.

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

We would like the PSA to develop a mechanism that would enable professional bodies, such as the RCN, to trigger a formal governance review. Whilst this would only be triggered in exceptional circumstances, we believe that its existence would provide assurance to registrants that a route existed for their experiences of poor practice to be addressed, if found to be sufficiently uniform across the profession being regulated.

Formal assessment of governance against the Standards would also offer the regulator an additional mechanism for review of Council effectiveness and appropriate action planning to be recommended, with a view to enhancing a regulator's performance.

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

We support the creation of a new Standard that will require regulators to gather information from students and tutors on compliance with minimum standards, and would welcome the opportunity to work with the PSA in developing this in relation to nursing.

We would also like to see this widened to include those involved in supporting and assessing students in practice settings, as they are a vital part of the education and training infrastructure and assurance system.

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

We support the proposal to adjust the wording, on that basis that we believe it unnecessary for the PSA to replicate quality assurance processes around delivery of education programmes, but vital for it to focus on how the learning assessments ensure that the outcomes required for registration are met. This will require the Standard to apply in both academic and practice settings where educational assessments take place.

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

We agree with the Standard being expanded to cover both the scheme's efficacy and the regulators processes. We would like processes that are as transparent as possible in their operation, and ones that produce meaningful data that can be efficiently and effectively used to inform learning and secure quality improvement.

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

We support the introduction of a Standard to cover this part of the process, on the basis that if the PSA is to have oversight of FtP that it should be throughout the process. It is only through properly drafted allegations and properly evaluated evidence that a registrant can be assured of having a just hearing.

However, we have been aware of the NMC citing the role of the PSA as placing pressure upon them to become more prosecutorial. An example of this has been the far greater likelihood that a charge of dishonesty will be added to other clinical charges simply on the basis that a clinical record has been altered, even if there is no other evidence that the motivation might have been a dishonest one. Often, such charges do not succeed at the hearing, but they cause immense distress to registrants.

Even the wording of this consultation focusses upon 'under-prosecution'. The Standards need to focus upon even-handed and balanced prosecution. In our experience, the role of the PSA has been experienced in one direction by the NMC, leading to more heavy handed prosecution. It is less easy to challenge 'over-prosecution', so it is being incentivised. In most cases, over-prosecution does not end up in an appeal, because the panels do not always agree with the case presented to them and appeals are expensive and difficult.

A good example of 'over-prosecution is the reported case of 'Lusinga' (previously referenced) where the case presenter did persuade the panel that a nurse who had wrongly admitted to dishonesty (because the nurse had misunderstood the technical explanation of the word), was then accused of changing his story at the hearing, and struck off for the inconsistency. The judge who heard the appeal was struck by the tactics employed.

The point to be made here is that the effect of PSA oversight has been an incremental anxiety about under-prosecution leading to an overzealous approach, without a counter-weight to guard against the equally pernicious effects of over-prosecution with the risks of unfairness. This is a real danger for organisations that are both prosecutor and adjudicator, and can lead to a loss of trust among their membership. We would look to the new Standards to redress the balance, and to put fairness to registrants on an equal footing with other priorities.

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

We support this proposal on the basis that we support a new Standard to cover the portion of the FtP process between the IC/case examiner decision and the final panel

Logic suggests that oversight of all outcomes by the PSA is sensible. The introduction of alternative mechanisms for disposal have been a very positive development, allowing there to be fair disposals with much more effective use of resources and no loss of public protection and are much more humane for registrants.

The distress caused by requiring a nurse to face a public hearing and aggressive prosecution for making mistakes should not be underestimated. We would also not want to see any change on this process lead to regulators becoming risk averse or resort to hearings as a means to avoid criticism, with all the consequent disadvantages of inappropriate hearings continuing.

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

We agree with this proposal. It is essential that all registrants feel confident that the regulatory function is able to appropriately counter and effectively design out the impact of systemic or institutional forms of discrimination. Central to this proposed Standard is the need for regulators to demonstrate their basic compliance with all aspects of the public sector equality duty as a minimum. This should also include ensuring that the duty to make reasonable adjustments, particularly at the pre-registration stage, is properly implemented and monitored.

This will need to be supported by robust data, but once established will enable comparisons across regulators to help inform and learn re issues for health care professionals.

We believe that this may help with addressing the disproportionate number of BME registrants that are referred to the NMC by employers and subject to FtP cases².

Additionally we would also like to raise the need for standards around disability. Due to the need to show good health at the point of re-registration, some registrants who cannot revalidate due to ill-health are being treated unfairly rather than being supported.

To illustrate this point, the RCN is currently taking a case on behalf of a member resulting from the NMC refusing to re-admit a nurse who had lapsed because the NMC itself wrongly advised her about the revalidation process, on the basis of her inability to demonstrate current good health. The employer then stopped paying the nurse on the

² See: <https://www.nmc.org.uk/news/news-and-updates/research-on-bme-representation-in-fitness-to-practise-process/>

basis that she was unregistered, even though we all hope that she will recover and return to work.

We believe that this should be a strongly emphasised Standard, requiring the regulators to make reasonable adjustments and not to resort to rigid interpretations of their rules that then disadvantage those with disabilities.

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

We agree with the proposal to remove the duplication across the two sets covered: the development of standards and guidance, and the provision of accessible information.

However in rationalising them it will be vital to ensure that the essential provisions of each individual Standard are not lost, and we would welcome an opportunity to assist with this process.

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

We have no further areas to add to those already proposed for rationalisation.

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

We would like to see further evidence about the benefits and impacts that such an inclusion might bring.

A key consideration must be to ensure no duplication arises as a consequence of similar demands being levied by different regulators. One way to prevent this would be the creation of an MOU between the PSA and the Information Commissioner's Office, to ensure information about regulators' information governance arrangements, and in the event of their occurrence any failings, is shared in a timely manner.

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

We agree with the assessment, that it would be easy to adjust to the changes but doing so would not address concerns that the current standards are not outcome focussed, and do not take account of how the different regulators work.

We have no additional considerations to add.

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

We agree with the assessment made by the PSA.

Advantages

- Allow account to be made of the differences amongst the regulators, and encourage them to address risks in a way which works for their particular community;

- Encourage regulators to look at their performance and behaviours across regulatory functions and encourage innovation;
- Less process-driven, giving greater focus to regulator' behaviours of regulators;
- Avoid the duplication found in the existing approach
- PSA reports able to address important behaviours not easily covered by current Standards.

Disadvantages

- Lack of clarity about the how issues fall under each principle, possibly necessitating guidance, which could reduce their flexibility;
- Realty that any new Standards will look at very similar activities, creating little difference in practice for the regulators;
- New reports will be inconsistent with previous reports, impacting on the ability to make clear year-on-year comparisons of performance;
- Significant adjustment time need to 'bed-in', causing extra burdens and uncertainty.

We have no additional further considerations to add, and on balance believe the advantages outweigh the disadvantages.

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

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

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

We are answering questions 19 to 21 together.

The principles in Right-touch regulation do encompass the principles that would support the PSA to more effectively assess the regulators' performance, in our view, in preference to retaining the existing framework of standards.

We think that the freedom to interpret principles will free the regulators to consider the wider implications of the actions they take for protecting the safety of the public and enhancing the delivery of patient care.

In relation to Fitness to Practise, the prominence given to proportionality will enhance the ability of the NMC to consider the entirety of a case beneath the overarching objective of public protection. The concerns that we have about an overly narrow focus on securing a sanction could be resolved with this approach.

We consider that it is critical that 'Fairness' should be added separately as a principle that balances public protection and the treatment of the registrant within the process. The catch-all principle of 'Consistent' in the right-touch principles, within which 'fairness' is included, whilst important, does not give sufficient force to 'fairness' within it, as it implies that equal application of the rules is sufficient to discharge this duty.

We would want the principles to give the regulators the opportunity to step back and look at the wider picture in relation to each incident that has given rise to an enquiry. An investigation can only be fair to a registrant if the whole circumstance is investigated, whether or not it enhances the likelihood of a sanction, and the regulator can only discharge its role as adjudicator fairly if it is rigorously neutral. It is difficult for registrants to challenge over-prosecution, as appeals are expensive and only succeed if certain

technical tests are met, so it is important that the PSA is able to challenge unfair behaviour as well as under-prosecution.

The principle of 'Fairness' also rightly draws attention to whether those with protected characteristics are being given fair treatment. We have seen examples of those with disabilities, for example, struggling with registration requirements and removing these hurdles should be given priority by regulators.

The principle of efficiency would also be a good addition to the principles. This should encourage resources to be focussed on those cases where there is a serious issue. The NMC has introduced different ways of disposing of less serious cases (consensual panel determination and undertakings) and this successful ambition to create less onerous yet safe processes would be supported by such a principle.

We would also like the PSA to consider the development of a principle that emphasises the overarching statutory objective of the regulator, i.e. the duty to enhance the protection of the public, to encourage learning that can avoid a repeat of an unsafe situation, and rather than the current situation which too often focuses on allocating blame.

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

We think that Annex B has good definitions for the principles. We would wish to be further consulted when the standards are considered further, but have some initial comments on the draft ones.

- Under proportionality, we particularly commend the requirement for timely outcomes across the board, as we find that the NMC has sometimes focussed upon those areas of its work that have particular KPIs whilst allowing other areas of the process to take longer (although we fully acknowledge that the NMC has made huge progress in reducing delay over the past few years).
- Whilst not mentioned under proportionality, we would ask that there is some inclusion of the need to take into account the impact on the registrant of all processes. For example, the NMC used to publish the charges against a nurse a week ahead of FtP hearings, and these charges were then frequently reported by local papers where the registrant lived, causing huge reputational damage. The NMC has discontinued this practice and if charges are found proven, then they can be reported, so transparency is not lost. However, taking the effect upon the registrant into account has meant that the harsh consequences of the publication of unproven allegations has been removed.
- Under 'Targeted' and proportionality we commend the requirement for collection of sufficient evidence for appropriate decisions. In the 'Targeted' section, this is expanded upon to suggest that the right level of evidence is that which addresses the seriousness of the concerns and then that the action taken will address the public interest, presumably so that there is a more serious sanction when there has been more serious harm. We suspect that it is this emphasis that lies behind the current perceived requirement to analyse what has caused the harm to the patient, and would suggest that this approach is has clear drawbacks when the same behaviour by different registrants can lead to different outcomes, depending on the outcome for the patient.
- We would also like to see an emphasis on the collection of sufficient evidence about all the factors involved so that the behaviour of the registrant can be set in context alongside systemic problems.

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

We consider that it may be easier for stakeholders that represent registrants to identify breaches of principle in relation to individual FtP cases and to raise them with the PSA, as part of the regular feedback exercise.

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

We support and would like the PSA to adopt the second option, of moving to a principles-based approach, and would welcome the opportunity to support their development and implementation.

We believe this would begin to address our concern that fear of non-compliance with Standards can lead to their overly rigid interpretation. We believe that the principles approach is more likely to enable, rather than stifle, innovation, and address proportionality in risk in a more balanced way.

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

We support an extension to the 'met/not met' performance measurement, where the narrative includes more information about why a regulator has not met a requirement, and what they are doing to address their failing on the metric.

We believe this would help build trust and confidence in the wider regulatory system, both for registrants and the general public. However, the statement re sufficiency in meeting the Standard needs to be simplified for greater clarity.

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

We would like to see consideration given to how the PSA engages with registrants of the regulators it is responsible for.

We are aware of the NMC's work to formally engage with registrations via sampling, and would like the PSA to explore how it might be gathering 'end-user' experience and insight to inform its activities.

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

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

The consultation document provides insufficient data to enable an informed judgement to be made about the impact on those registrants with protected characteristics.

On that basis we would expect to see a full 'Equalities Impact Assessment' being undertaken in the event of any changes being made to the Standards or to their use.

We would also like to see detailed equality analysis being undertaken periodically, to provide clear data about the impact of the Standards on the regulated workforces, to ensure any trends (positive or negative) are identified, and acted on where necessary.

With a membership of around 435,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

September 2017

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