A review of the Standards of Good Regulation

Consultation paper

June 2018

professional standards authority

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care[1] 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 regulation.[2]
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 wellbeing 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, (2015). *Right-touch regulation.* Available at: www.professionalstandards.org.uk/what-we-do/improving-regulation/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 proposals contained within this consultation are 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.

Contents

Chief Executive's foreword

Last year we began an exercise to review our Standards of Good Regulation. These are the Standards that we use to assess and report on the performance of the nine regulators that we oversee. The present Standards have been in place since 2010 and regulatory practice has moved on significantly since then. We wanted to make sure they were up-to-date.

We received 29 responses to the first consultation and held a number of events to discuss individual aspects of our proposals. We are grateful to all those who contributed to this exercise. As a result of this, we were able to take a view about the best way forward. I am pleased that we have reduced the number of Standards that we will apply to the regulators without compromising on the quality of our work or our ability to assess their performance. We have achieved what we hope will be a more flexible approach.

We are now consulting on the detailed wording of the Standards and the evidence that we will need to assess whether regulators are meeting them or not. This is the second stage of our work and is crucial if the new Standards are to be implemented successfully.

I very much hope that all of those who have contributed to our work so far will be able to assist us in continuing this work so that our Standards will be relevant and helpful to both the regulators and to the public.

Harry Cayton
Chief Executive

1. Background to this consultation

Introduction

1.1 The Standards of Good Regulation are the tool that the Authority uses to report on the performance of the nine regulators that we oversee. We are required to report to Parliament on how each of the regulatory bodies has complied with its duties to promote the health, safety and wellbeing of patients.

1.2 In order to comply with this duty, we undertake annual performance reviews of each regulator. Those reviews assess performance against each of the Standards.

1.3 The present Standards have been in place since 2010 and, in 2017, the Authority decided to review them to ensure that they remained appropriate given the changes in regulatory practice in the meantime. Our principal concerns were:

- The Standards were based on the individual activities of the regulators – standard-setting, education, registration and fitness to practise – and did not assess other areas, such as effective governance or equality and diversity, which could affect performance
- The Standards were repetitious in places
- The concentration on individual activities could mean that the Authority concentrated less on the wider performance of the regulators
- Regulatory practice had developed but this was not reflected in the existing Standards.

1.4 In June 2017, we undertook a consultation on potential changes to the Standards. The consultation considered the following areas:

- What areas of the regulators' work should be considered in the revised Standards
- Whether new Standards should be adopted
- Whether the Standards should be rationalised to remove some areas of duplication or where Standards may no longer be necessary or useful
- Whether the presentation of the Standards should be changed
- Whether the 'met/not met' approach to assessing performance against the Standards remained appropriate.

1.5 As part of the consultation exercise, we held meetings with the regulators and others to discuss the various aspects of the Standards. We received 29 responses to the consultation. Our summary of these is available on our website. In the light of these responses, we reached a view on the most appropriate way forward.

1.6 We decided that:

- While the Standards should continue to assess the key activities of the regulators, there was scope for rationalisation

- A Standard based on governance was not appropriate, but the Standards should consider some aspects of governance
- There should be a new Standard in respect of equality and diversity
- We should use our Principles of Good Regulation in informing our approach to assessing performance
- The 'met/not met' approach should be retained, with a clear narrative for each Standard on whether performance is declining or improving.

1.7 The draft Standards discussed in the next section have been developed following these decisions. We now seek views on:

- The detailed wording of the Standards
- The evidence that we should consider in assessing those Standards
- The implementation of the Standards.

1.8 We would be grateful to receive responses by **Monday 10 September 2018**. We will then analyse the responses and consider whether any of our proposals should change. We will publish a summary of the results of the consultation. We aim to publish the new standards in the autumn of 2018.

2. The revised Standards and Evidence

2.1 We now discuss our proposed revised Standards. We are keen to ensure that the Standards are flexible enough to enable regulators to innovate, while maintaining key aspects of transparency and public protection.

2.2 We propose to adopt five groups of Standards instead of the existing four, but to reduce the number of Standards within each group. The groups are:

- General Standards which cover those elements of the regulators' governance and behaviours that affect performance, together with activities which cross the range of the regulators' functions and which subsume a number of the individual standards
- Standards covering the regulators' work in respect of standards and guidance for the registrants
- Standards covering the regulators' work in respect of Education and Training
- Standards covering the regulators' work in respect of registration
- Standards covering the regulators' work in respect of fitness to practise.

2.3 We set out at Annex B the evidence framework document to support the revised Standards. This document sets out some of the factors we will take into account when making our assessment as to whether a regulator is meeting the Standards, as well as providing examples of evidence that regulators could provide to show how they meet the Standards.

2.4 The examples are not intended to be exhaustive, and because the regulators operate within different contexts, the relevance of different types of evidence will vary from regulator to regulator. For that reason, we have not prescribed how each regulator can demonstrate that they are meeting each Standard.

2.5 We are keen to ensure that the evidence we seek is proportionate and will enable regulators to demonstrate that the Standard is being met.

General Standards

2.6 We have developed five new Standards that relate to all aspects of how the regulator delivers its regulatory functions. These Standards are as follows

Standard One	The regulator provides accurate, easily accessible information about its registrants, regulatory requirements, guidance, processes and decisions.
Standard Two	The regulator is clear about its purpose and ensures that its policies are applied appropriately across all its functions and that relevant learning from one area is applied to others.

Standard Three	The regulator understands the diversity of the registrant population and its service users and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics.
Standard Four	The regulator reports on its performance and addresses concerns identified about it.
Standard Five	The regulator consults and works with employers, regulators and other stakeholders across all its functions to identify and manage risks to the public in respect of its registrants.

2.7 The intention of these new Standards is to set out our expectations of the regulator across all of its activities. We will examine all aspects of the regulator's work in order to assess whether the Standards are met.

2.8 Previously, elements of these Standards were included in each of the four areas. This led to some duplication, which these general Standards aim to remove. We describe the purpose of these Standards below.

Standard 1: The regulator provides accurate, easily accessible information about its registrants, regulatory requirements, guidance, processes and decisions.

2.9 This Standard covers matters such as the register itself, information about qualification routes, professional standards and about fitness to practise decisions. It is not intended, at this stage, to impose higher expectations. We would expect to evidence this through examination of the regulators' websites and other public material.

Standard 2: The regulator is clear about its purpose and ensures that its policies are applied appropriately across all its functions and that relevant learning from one area is applied to others.

2.10 This Standard is new. We want to examine:

- Whether the regulator is maintaining its focus on its key purpose of protecting the public when deciding on its activities
- How it implements policies consistently across its activities, so that, for example, new standards are reflected in its approach to fitness to practise cases and continuing fitness to practise
- Whether it applies learning in considering new guidance or new training requirements.

2.11 We expect to assess this Standard by looking at the documents considered by the regulator's council, together with evidence that we can see from, for example, the fitness to practise cases that we examine or from feedback from third parties. Regulators will be welcome to provide information themselves which is not publicly available which demonstrates how they meet the Standards.

Standard 3: The regulator understands the diversity of the registrant population and those registrants' service users and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics.

2.12 This is a new Standard. We recognise that each regulator faces different issues in respect of diversity. Many of these are outside of its control. However, we consider that the regulator ought to be aware of the diversity of its registrants and aware of the particular needs of particular groups of their patients or service users. We would expect regulators to examine their processes and outcomes to establish whether or not there is evidence that might suggest that some individuals with protected characteristics are disadvantaged by any aspect of its rules or processes. We would expect the regulator to consider how it can address those matters which are within its control and whether it can take action to ensure that it does not make problems which are outside its control worse. We would expect to see the evidence of this from the general statistics on diversity produced by the regulator, from its Council papers (particularly impact assessments) and, where appropriate, from changes to its processes and procedures.

2.13 In our discussions with regulators, the question was raised about whether the Standards should go further and test the regulators' performance of all their duties under the Equalities Act, for example, the duty to promote diversity. We considered that it was inappropriate for the Standards to extend this far at this stage. This is because the Equality and Human Rights Commission has this remit and it is not for us to step into its shoes if there are concerns about the wider issues of diversity. In our view, our first steps should be to examine the areas where there are key concerns about fairness and public protection.

Standard 4: The regulator reports on its performance and addresses concerns identified about it.

2.14 This is a new Standard and seeks to encourage regulators and their councils to be transparent and to address concerns about their performance directly. It is important that regulators should monitor their performance and take action to address concerns at an early stage. It assists transparency if they are publicly seen to do this. We would expect to see councils seeing reports on performance, audit reports and the Authority's own performance reviews and addressing any information that suggests a decline. We would expect it also to be aware of and address concerns from third parties, such as the Information Commissioner, other regulators or the courts.

2.15 We expect to assess this Standard by considering information provided to councils and assessing how councils address it.

Standard 5: The regulator consults and works with employers, regulators and other stakeholders across all its functions to identify and manage risks to the public in respect of its registrants.

2.16 In this Standard we seek to assess how far regulators are, in practice, working with others. The modern environment in health care requires regulators to work with employers and other regulators to address issues at the earliest possible stage. We expect this to cover all areas of the regulators' work so that standards and education requirements are informed by information from employers and others, and fitness to practise processes take full account of information from employers and, where appropriate, involve employers.

2.17 In assessing performance against this Standard, we would look at the regulator's approach to consultations, protocols with other regulators and third parties and how these work in practice. Regulators may well find it helpful to produce their own statements of their practice in these areas to demonstrate how they approach this Standard.

Questions

1. Do the new Standards appropriately reflect the areas the Authority should be considering across the regulators' functions?
2. Is any of the wording of the general Standards unclear or inappropriate? Please suggest changes.
3. Do you anticipate any particular difficulties for regulators in providing evidence to demonstrate performance against the general Standards?
4. Are there particular points about the general Standards where you would welcome further clarity?

Professional standards and guidance

2.18 We have reduced the number of Standards in this area from four to two. The draft Standards are as follows:

Standard Six	The regulator maintains up-to-date standards of conduct and competence which are kept under review and prioritise patient and service user centred care and safety.
Standard Seven	The regulator provides guidance to help registrants apply the Standards and ensures this guidance is up to date, addresses new and developing areas of practice, and prioritises patient and service user centred care and safety.

2.19 These Standards rationalise the previous four Standards and retain the focus on the regulator providing registrants and others with information so that they can understand what is expected of them, and review these expectations in light of changes to the environment. We would expect to examine similar evidence to that for the equivalent existing Standards. We also propose to seek more targeted information from third parties – for example, employers, academics and other regulators – so that we can be sure that the regulator's standards remain up-to-date.

2.20 It has been suggested that the words 'patient and service user centred care and safety' are cumbersome and that it might be appropriate to replace this with the statutory objective of ensuring patient safety, maintaining professional standards and maintaining public confidence. Others have argued that the present wording focuses on the core purpose of the Authority in concentrating on the interests of patients and services users, but we welcome views on this.

Questions

5. Do the revised Standards governing standards and guidance appropriately reflect the outcomes of this area of the regulators' work?
6. Does the reference to 'patient and service user centred care and safety' remain appropriate? What other words would you suggest?
7. Do you have any views about the evidence requirements in respect of the Standards about standards and guidance?

Education and training

2.21 We have reduced the number of Standards in this area from four to two. The draft Standards are as follows:

Standard Eight	The regulator maintains up-to-date standards for education and training which are kept under review, and prioritise patient and service user centred care and safety.
Standard Nine	The regulator has a proportionate and transparent mechanism for assuring that the educational providers and programmes it oversees are delivering students and trainees that meet the regulator's requirements for registration, and takes action where its assurance activities identify concerns either about training or wider patient safety concerns.

2.22 These Standards rationalise the previous four Standards in this area. As with the previous Standards, focus is retained on the two aspects of the education function; development and maintenance of standards for training, and the quality assurance of the programmes and places that provide training to potential registrants. We have also included an explicit element taken from the Francis Report into the concerns at Mid-Staffordshire, that there is a role for students in identifying poor practice.

2.23 In assessing whether the regulators meet these Standards, we would expect to look at similar evidence to our current requirements. We will, however, seek additional information from third parties as described in paragraph 2.16.

Questions

8. Do the revised Standards in respect of education and training appropriately reflect the outcomes of this area of the regulators' work?
9. Are there other aspects in respect of education and training work which ought to be included?
10. Do you have any views about the evidence requirements in respect of the Standards about education and training?

Registration and continuing fitness to practise

2.24 We have reduced the number of registration Standards from six to four. The proposed Standards are as follows:

Standard Ten	The regulator maintains and publishes an accurate register of those who meet its requirements including any restrictions on their practice.
Standard Eleven	The process for registration, including appeals, operates proportionately, fairly and efficiently, with decisions clearly explained.
Standard Twelve	Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner.
Standard Thirteen	The regulator has proportionate requirements to satisfy itself that registrants continue to be fit to practise.

2.25 These Standards have been reduced to remove duplication, with some aspects of the previous Standards moved to the general Standards. We

recognise that some regulators also have roles in respect of businesses. Although this is not explicitly mentioned in the Standards, we would expect, in particular, Standards 10 and 13 to cover the regulators' work in respect of businesses, though we would be grateful for views as to whether more explicit wording is needed here. We do not expect to expand the existing evidence base in respect of these Standards.

2.26 We have retained a separate Standard (Standard Twelve) to consider how the regulator deals with issues of illegal or unregistered practice, as well as protection of title matters. We recognise that this problem does not apply to all regulators and that the approach taken by others will vary. We will be seeking to assess whether the regulator has a policy for dealing with this issue, that it concentrates on public safety and is followed. We would expect to see similar evidence to that provided by the regulators under the equivalent existing Standard.

2.27 We have revised the drafting of the Standard relating to continuing fitness to practise. We have deliberately drafted this Standard widely. We do not consider that there is a consensus on how to ensure continuing fitness to practise and we do not wish to limit regulators' approaches in this area. We seek views, however, on whether it is too wide and whether there should be some explicit link to public protection and patient safety. As part of the evidence supporting this, we would expect to see regulators regularly reviewing the proportionality and effectiveness of their requirements.

Questions

11. Do the revised Standards about registration and continuing fitness to practise appropriately reflect the outcomes in this area of the regulators' work?
12. Are there other aspects in respect of registration and continuing fitness to practise which ought to be included?
13. Does Standard Thirteen provide an appropriate level of protection for the public while ensuring that regulators have the flexibility to develop arrangements which are suitable for their registrants and service users?
14. Do you have any views about the evidence requirements in respect of the Standards about registration and continuing fitness to practise?

Fitness to practise

2.28 We have reduced the number of Standards in this area from ten to five. The proposed Standards are below:

Standard Fourteen	The regulator enables anyone to raise a concern about a registrant.

Standard Fifteen	The regulator's process for examining and investigating cases is proportionate, deals with cases as quickly as is consistent with a fair resolution of the case and ensures that the best available evidence is considered for decisions at each stage of the process.
Standard Sixteen	The regulator ensures that all decisions are made in accordance with its processes, are proportionate, consistent and fair, take account of the statutory objectives, the regulator's standards and the relevant case law and prioritise patient and service user safety.
Standard Seventeen	The regulator identifies and prioritises all cases which suggest a serious risk to the safety of patients or service users and seeks interim orders where appropriate.
Standard Eighteen	All parties to a complaint are kept updated on the progress of their case and supported to participate effectively in the process.

2.29 These Standards continue to focus on outcomes relating to the various aspects of fitness to practise, including risk management, timeliness, decision-making, and communication with the parties. We have rationalised the Standards to remove duplication, as well as moving some aspects into the general Standards. In particular, the old Standard relating to information breaches will now be considered as part of the regulator's general approach to concerns about its performance. The aim of the Standards is to be flexible so that regulators can innovate where they wish to do so.

2.30 Standard Fifteen aims to cover all aspects of the investigation of complaints and referrals, including the initial consideration of information or a complaint even if formal action is not taken. As regulators are increasingly delegating decisions about such matters to lower levels, it is important that the process ensures that important concerns are not missed.

2.31 Standard Sixteen is intended to cover all decisions, including those to progress complaints, those made by committees and case examiners as well as those of panels.

2.32 We do not expect the evidence that we require to assess performance in respect of these Standards to differ from the evidence required in respect of the existing Standards.

Questions

15. Do the revised Standards appropriately reflect the outcomes of the fitness to practise area of the regulators' work?
16. Are there other aspects of fitness to practise work which ought to be included?
17. Are the Standards appropriately flexible to enable regulators to adapt their fitness to practise processes where necessary?
18. Do you have any views about the evidence requirements in respect of the Standards about fitness to practise?

3. Measuring performance and implementation

Measuring Performance

3.1 In our consultation paper we invited views on whether the present ‘met/not met’ approach to performance was appropriate. We were keen to balance the need to provide a clear statement of the regulator’s performance while ensuring that the picture reflects all aspects of that performance. Frequently the question is not clear cut: a regulator may well fail a Standard despite having made improvements over the year or may meet a Standard despite a decline in performance. We were concerned that the simple ‘met/not met’ approach might mean that nuances of that sort were not properly reflected and that a more graduated approach might be appropriate.

3.2 Having considered the question carefully, our view is that the existing approach is the most satisfactory one. We considered that, in fact, it was possible to identify declining and improving performance in our discussion in the review and that there is a public benefit in being clear about our assessment of whether a Standard is met or not.

3.3 We propose therefore to retain the ‘met/not met’ approach.

Implementing the new Standards

3.4 We propose to decide on the new Standards and evidence base in the autumn of 2018. We expect to report on regulators’ performance against those Standards in our performance reviews from January 2020. We believe that this will give the regulators enough time to prepare the different information and evidence that we will require to assess their performance.

3.5 We recognise that some of the new Standards may require new forms of data collection and reporting. We will take this into account in our initial assessment of the Standard.

3.6 We will invite some regulators to work with us in piloting some of the new Standards in the 2019 performance review round. This would have the advantage of enabling the Authority and the regulators to identify any concerns or problems and address them before the new Standards come into full effect.

Questions

19. Do you have any concerns about our proposal to implement the new Standards in the performance reviews beginning in 2020?
20. Would you support a pilot process in 2019? If you are a regulator, would you be willing to take part in the pilot?

4. Impact assessment of the proposals

4.1 We discussed the impact of the proposals in our previous consultation paper. We were and are keen to ensure that we understand any impact or burden that our proposals are likely to create so that we can consider any changes that may be appropriate.

4.2 Our initial view was:

- The regulators may find an initial burden in developing ways of addressing the new Standards and there may be an additional continuing burden in providing information that has not been previously required. However, we think that it is unlikely that the additional burden will be great, particularly as there has been an overall reduction in the number of Standards and have recently reduced some of our information requirements.
- We expect to deliver our parts of this work within our existing resources.

4.3 The responses to the consultation paper did not suggest that there were any concerns about this assessment, though regulators and others were keen to point out the importance of this ensuring that the burden of supplying information was kept as low as possible. We would be grateful for thoughts on the likely impact of the detailed proposals set out in this paper.

4.4 We also considered whether there are significant equality and diversity implications, either positive or negative, for our stakeholders. We have not identified any significant negative equality or diversity implications from our proposals and expect there to be a positive benefit for patients, service-users and the public by the improved scrutiny of regulators that updated Standards will provide. Indeed, if diversity is included within our Standards, we would expect some positive impacts.

4.5 No comments were received from the consultation which cast doubt on this view, but we continue to welcome any feedback to ensure we consider all relevant issues. We would welcome any comments about the impact that these proposals will have.

Questions

21 Do you have any evidence about the impact of these proposals on the regulators and any likely increase or decrease in the burden on them?

22. 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:
    - Age
    - Gender reassignment
    - Ethnicity
    - Disability

- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify).

If yes to any of the above, please explain why and what could be done to change this.

5. Consultation questions

Summary of questions

5.1 We set out below our summary of the questions asked in this consultation paper.

1. Do these new Standards appropriately reflect the areas the Authority should be considering across the regulators' functions?
2. Is any of the wording of the general Standards unclear or inappropriate? Please suggest changes.
3. Do you anticipate any particular difficulties for regulators in providing evidence to demonstrate performance against the general Standards?
4. Are there particular points about the general Standards where you would welcome further clarity?
5. Do the revised Standards governing standards and guidance appropriately reflect the outcomes of this area of the regulators' work?
6. Does the reference to 'patient and service user centred care and safety' remain appropriate? What other words would you suggest?
7. Do you have any views about the evidence requirements in respect of the Standards about standards and guidance?
8. Do the revised Standards in respect of education and training appropriately reflect the outcomes of this area of the regulators' work?
9. Are there other aspects in respect of education and training work which ought to be included?
10. Do you have any views about the evidence requirements in respect of the Standards about education and training?
11. Do the revised Standards about registration and continuing fitness to practise appropriately reflect the outcomes in this area of the regulators' work?
12. Are there other aspects in respect of registration and continuing fitness to practise which ought to be included?
13. Does Standard Thirteen provide an appropriate level of protection for the public while ensuring that regulators have the flexibility to develop arrangements which are suitable for their registrants and service users?
14. Do you have any views about the evidence requirements in respect of the Standards about registration and continuing fitness to practise?
15. Do the revised Standards appropriately reflect the outcomes of the fitness to practise area of the regulators' work?
16. Are there other aspects of fitness to practise work which ought to be included?
17. Are the Standards appropriately flexible to enable regulators to adapt their fitness to practise processes where necessary?
18. Do you have any views about the evidence requirements in respect of the Standards about fitness to practise?

19. Do you have any concerns about our proposal to implement the new Standards in the performance reviews beginning in 2020?
20. Would you support a pilot process in 2019? If you are a regulator, would you be willing to take part in the pilot?
21. Do you have any evidence about the impact of these proposals on the regulators and any likely increase or decrease in the burden on them?
22. 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:
    - Age
    - Gender reassignment
    - Ethnicity
    - Disability
    - Pregnancy and maternity
    - Race
    - Religion or belief
    - Sex
    - Sexual orientation
    - Other (please specify)

If yes to any of the above, please explain why and what could be done to change this.

How to respond

5.2 You can respond to this consultation paper by emailing: david.martin@professionalstandards.org.uk, or by post to
David Martin
Professional Standards Authority
157-197 Buckingham Palace Road
London SW1W 9SP

5.3 If you have any queries, or require an accessible version of this document, please contact us on 020 7389 8030 or by email at david.martin@professionalstandsards.org.uk

5.4 Please return your response to us by **10 September 2018**.

Confidentiality of information

5.5 We will manage the information you provide in response to this discussion paper in accordance with our information security policies which can be found on our website (www.professionalstandards.org.uk).

5.6 Any information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA) the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

5.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.

5.8 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.

5.9 We will process your personal data in accordance with the DPA and in most circumstances, this will mean that your personal data will not be disclosed to third parties.

6. Our consultation process

6.1 Our consultation process is based on the current Cabinet Office principles on public consultation, *Consultation principles: guidance*.[3] When conducting public consultations on aspects of the Authority's work we aim to:

- Be clear about both the consultation process and what is being proposed. This gives respondents the opportunity to influence our thinking and consider the advantages and disadvantages of our proposals
- Consult formally at a stage where there is scope to influence the policy in order that consultations have a purpose
- Give enough information to ensure that those being consulted understand the issues and can provide informed responses. We include assessments of costs and benefits of the options considered
- Seek collective agreement before publishing a written consultation particularly when consulting on the new proposals
- Consult for a proportionate amount of time, taking a judgement based on the nature and impact of the proposals. Consulting for too long will unnecessarily delay policy development and consulting too quickly will not give enough time for consideration and will reduce the quality of responses
- Ensure our consultation is targeted to consider the full range of stakeholders, bodies and individuals affected by the policy and include relevant representative groups. Consider targeting specific groups if necessary
- Consider consultation as an ongoing process, not just about formal documents and responses
- Analyse responses carefully and explain the responses received and how they have informed the policy. Give clear feedback to participants following the consultation. Publish responses to the consultation within 12 weeks or explain why that it is not possible
- Allow appropriate time between closing the consultation and implementing the policy.

6.2 If you have concerns or comments which you would like to make relating specifically to the consultation process itself, please contact us:

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christine.braithwaite@professionalstandards.org.uk

[3] Cabinet Office. (2016) *Consultation principles: guidance.* Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

Annex A – the proposed 2018 Standards of Good Regulation

General Standards	
Standard one	The regulator provides accurate, fully accessible information about its registrants, regulatory requirements, guidance, processes and decisions.
Standard two	The regulator is clear about its purpose and ensures that its policies are applied appropriately across all its functions and that relevant learning from one area is applied to others.
Standard three	The regulator understands the diversity of the registrant population and its service users and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics.
Standard four	The regulator reports on its performance and addresses concerns identified about it.
Standard five	The regulator consults and works with employers, regulators and other stakeholders across all its functions to identify and manage risks to the public in respect of its registrants. 6.3
Guidance and Standards	
Standard six	The regulator maintains up-to-date standards of conduct and competence which are kept under review and prioritise patient and service user centred care and safety.
Standard seven	The regulator provides guidance to help registrants apply the Standards and ensures this guidance is up-to-date, addresses new and developing areas of practice, and prioritises patient and service user centred care and safety.
Education and Training	
Standard eight	The regulator maintains up-to-date standards for education and training which are kept under review, and prioritise patient and service user care and safety.
Standard nine	The regulator has a proportionate and transparent mechanism for assuring that the educational providers and programmes it oversees are delivering students and trainees that meet the regulator's requirements for registration, and takes action where its assurance activities identify concerns either about training or wider patient safety concerns.

Registration and Continuing Fitness to Practise	
Standard ten	The regulator maintains and publishes an accurate register of those who meet its requirements including any restrictions on their practice.
Standard eleven	The process for registration, including appeals, operates proportionately, fairly and efficiently, with decisions clearly explained.
Standard twelve	Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk-based manner.
Standard thirteen	The regulator has proportionate requirements to satisfy itself that registrants continue to be fit to practise.
Fitness to Practise	
Standard fourteen	The regulator enables anyone to raise a concern about a registrant.
Standard fifteen	The regulator's process for examining and investigating cases is proportionate, deals with cases as quickly as is consistent with a fair resolution of the case and ensures that the best available evidence is considered for decisions at each stage of the process.
Standard sixteen	The regulator ensures that all decisions are made in accordance with its processes, are proportionate, consistent and fair, take account of the statutory objectives, the regulator's standards and the relevant case law and prioritise patient and service user safety.
Standard seventeen	The regulator identifies and prioritises all cases which suggest a serious risk to the safety of patients or service uses and seeks interim orders where appropriate.
Standard eighteen	All parties to a complaint are kept updated on the progress of their case and supported to participate effectively in the process.

Annex B – the evidence base

The Standards of Good Regulation (the Standards) describe the outcomes of good regulation for each of the regulator's regulatory functions, as well as across all aspects of their regulatory work. The Standards prioritise the core role of regulators in:

- Protecting patients and reducing harms
- Promoting professional standards
- Maintaining public confidence in the professions.

The Standards are informed by the Authority's principles of good regulation which state that regulators should act in a way which is:

- Proportionate
- Consistent
- Targeted
- Transparent
- Accountable and
- Agile.

The table below sets out some of the factors that we take into account when assessing whether a regulator is meeting the Standards, as well as providing examples of evidence that regulators may use to demonstrate their performance against each Standard. The examples are not meant to be exhaustive, and because the regulators operate within different contexts, the relevance of different types of evidence will vary from regulator to regulator. For that reason, we do not prescribe how each regulator can demonstrate that they are meeting each Standard.

Further information on the Standards and how they help us oversee the work of the health and care regulators, can be found on website at www.professionalstandards.org.uk

General Standards		
	Factors to consider	**Possible evidence**
Standard One The regulator provides accurate, fully accessible information about its registrants, regulatory requirements, guidance, processes and decisions.	• The regulator ensures that it provides easily accessible information about its regulatory activities to all who need to access it • The regulator displays information about its registrants clearly and accurately, in a way that is helpful to those who need to access it • the regulator regularly reviews its information to ensure it remains up-to-date and useful to those who access it	• Information on availability and accessibility of information about regulatory activities; distribution plan to stakeholders, availability in other formats/languages, Plain English campaign certification • Evidence that feedback from users about accessibility of the register is regularly gathered and reviewed • Documents and guidance for staff on what information is publicly available, and what should not be disclosed, and any disclosure policies and guidance
Standard Two The regulator is clear about its purpose and ensures that its policies are applied appropriately across all its functions and that relevant learning from one area is applied to others.	• The regulator clearly articulates its purpose, and can demonstrate that all its activities are undertaken to support this • The regulator can demonstrate how the outcomes of its work in one area is, where appropriate, used to inform and improve outcomes in other activities it undertakes	• Links between FTP and Registration to ensure that registrants remain appropriately registered. • Explanation of how the register is updated with FTP information • The regulator has a clear mission, and articulates how this relates to its statutory purpose as set out in its legislation • Evidence about how the regulator embeds new standards or processes across its functions
Standard Three The regulator understands the diversity of the registrant population and its service users and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics.	• All of the regulator's processes and guidance are demonstrably fair, and regularly reviewed to ensure that they continue to be so • The regulator understands and complies with its responsibilities in relation to equality and diversity, and where appropriate reports on its activities in this area	• Details of how the regulator ensures that its processes are free from bias, including data collection methods and other processes that ensure fairness and objectivity • Information available to and collected by the regulator about registrants • Research or other activities undertaken by the regulator to inform itself about issues relevant to diversity • Actions taken by the regulator to address concerns about its processes

Standard Four The regulator reports on its performance and addresses concerns identified about it.	• The regulator has a transparent, easily accessible process for concerns to be raised about its performance by anyone who engages with its work • The regulator regularly ensures that information about its performance is made available, and that it explains changes to that performance	• Papers and information to Council about the regulator's performance • Details of processes for informing Council of concerns • Annual reports and other publicly available information demonstrating transparency
Standard Five The regulator consults and works with employers, regulators and other stakeholders across all its functions to identify and manage risks to the public in respect of its registrants.	• The regulator understands the environment in which it works, and has well developed relationships with organisations that influence its work, or the activities of those on its register • The regulator shares information with other organisations in order to ensure that risks posed by those on its register are appropriately managed • The regulator gathers and uses information from other organisations to manage any risks arising from the information posed by those on its register	• Information on stakeholders' feedback about the efficacy of the engagement process around the revision/development of standards and guidance
Guidance and Standards		
	Factors to consider	**Possible evidence**
Standard Six The regulator maintains up-to-date standards of conduct and competence which are kept under review and prioritise patient and service user centred care and safety. **Standard Seven** The regulator provides guidance to help registrants apply the standards and ensures this guidance is up-to-date, addresses new and developing areas of practice, and prioritises patient and service user centred care and safety.	• The regulator has a process for ensuring that standards are reviewed and amended where appropriate based on changes to practice and legislation. • The regulator gathers feedback from registrants and other relevant parties (such as patient and service user representatives) about the standards and can demonstrate how this feedback is taken into account • The regulator can demonstrate how the standards reflect patient and service user care and safety • The regulator can demonstrate how they ensure and evaluate the accessibility of the standards • There is a clear evaluation strategy for the standards • There is a clear process for the development,	• Links to current standards of competence and conduct, and any supporting material • Information on how the regulator reviews the efficacy of the standards of competence and conduct and the scheduled frequency of such reviews • Information on how feedback is gathered relating to the standards and how it is taken into account in deciding when to revise their contents and in deciding whether additional guidance should be issued • Details of the time since the last revision of the standards, and information about the way in which that review was carried out • Any other information relevant to the current achievement of this Standard

	implementation and evaluation of additional guidance released in support of the standards • There is a clear governance and quality assurance framework for standards development	
Education and Training		
	Factors to consider	**Possible evidence**
Standard Eight The regulator maintains up-to-date standards for education and training which are kept under review, and prioritise patient and service user care and safety.	• The regulator can demonstrate how its standards for education and training link to its standards for registrants, and prioritise patient and service user centred care • The regulator's standards of education and training require the standards for registration to be included as part of the programme curriculum • The regulator's standards of education and training provide for patient, service user and /or carer involvement in education and training programmes • The regulator has a process in place for periodically reviewing its standards of education and training. It applies any learning gained about its education function, identifies any relevant external developments and makes any necessary revisions or updates to its standards in a timely manner • The regulator takes account of any trends and learning from student FTP outcomes where appropriate when revising its standards and guidance • The regulator publishes or otherwise makes available guidance for education and training providers to help them understand and meet the regulator's standards	• Breakdown/mapping of how the standards for education link to the standards for registration • Any formal process for review of the educational standards and information about the frequency and outcome of reviews • Any evaluation of the effectiveness of the guidance and standards development/review process, in particular in relation to the account taken of stakeholders' views and of quality assurance outcomes • Guidance given to students with disabilities to ensure that they do not face unnecessary barriers to successful careers in health • Guidance documents for education and training providers, and for students/trainees, published on the regulator's website • Any evaluation of the effectiveness of the standards and guidance development/revision processes • Evidence of how learning from student fitness to practise cases is used in the education process • Any other information relevant to the current achievement of this Standard
Standard Nine The regulator has a proportionate and transparent mechanism for assuring that the educational providers and programmes it oversees are delivering students and trainees that meet the regulator's requirements for registration, and takes action where its assurance activities identify concerns either about training or wider patient safety concerns.	• The regulator can provide evidence of its quality assurance (QA) activity, any concerns or trends identified and follow-up action taken (e.g. where approval is subject to conditions) • The regulator shares any good practice identified through its QA process with education providers, and can demonstrate how it works collaboratively with them • The regulator periodically reviews/evaluates its QA process in order to ensure that it is working effectively	• Description/process documents/guidance relating to the accreditation process • Description/process documents/guidance relating to the inspection/visit process • Process relating to the appointment/training/appraisal of visitors/inspectors • Information on how feedback from educational institutions, students and other stakeholders is gathered, and how this feedback is used, alongside evidence of how such feedback has been used in practice • Links to published reports into the outcomes of the quality assurance process, and any other associated documentation • Information about how any concerns identified have been assessed, addressed, and followed up during inspections or by

	• The regulator applies any learning gained about its education function in order to continuously improve the QA process • The regulator can demonstrate that it provides training and guidance to its QA panels • The regulator takes account of any trends and learning from student FTP outcomes where appropriate as evidence for the QA process • The regulator can demonstrate how its QA process for education and training is proportionate and avoids unnecessary duplication for education providers • The regulator allocates its resources to target the highest risks when carrying out its QA activities • The regulator's QA panels include a non-registrant/lay visitor • The regulator can demonstrate how its QA process is focused on confirming that providers are producing students and trainees that meet the standards for registration • The regulator obtains and uses feedback from employers about the competence of newly registered professionals • The regulator can provide evidence of the outcomes of its QA activity • The regulator has a publicly available process for raising concerns about education providers or programmes • The regulator can provide evidence of the number of concerns received about education providers or programmes and how those concerns have been addressed	requesting further information from the institution • Process/criteria for deciding how to assess, address and follow up any concerns. • Evidence of action taken in respect of concerns raised about education/training programmes which are not addressed by means of inspection visits/requests for information from the relevant institution, including the monitoring of any themes • Any evaluation of the effectiveness of the education providers' success in producing students and trainees that meet registration standards. • Links to information on the regulator's website about how to raise concerns • Any other information relevant to the current achievement of this Standard, including any other evidence of the outcomes of the regulator's quality assurance activity and actions taken
Registration and Continuing Fitness to Practise		
	Factors to consider	**Possible evidence**
Standard Ten The regulator maintains and publishes an accurate register of those who meet its requirements for registration including any restrictions on their practice. **Standard Eleven**	• The regulator can demonstrate that its standards for registration are appropriate to the context and risks of those they regulate • The standards for registration are applied consistently, and that the regulator has a process for decision-making in relation to registration that is demonstrably fair, transparent to all, applied	• SOPs process documents that describe the assessment process for applications for registration, restoration and renewal, and associated forms/template letters • Descriptions of the different processes, timescales and criteria for different applicant types (i.e. UK graduates, EEA applicants etc.) • Description of the factors that have to be considered when deciding whether criteria for registration are met. Where relevant, the legislative basis that underpins these criteria

The process for registration, including appeals, operates proportionately, fairly and efficiently, with decisions clearly explained.	equitably, and clearly documented • There is clear information or all applicants for registration (including in timescales for registration) and this information meets the needs of each type of applicant • The regulator has quality assurance mechanisms in place to ensure the accuracy of the register and prevent errors in the registration process • Registrants, applicants and others are clear about the standards for registration, how these are applied, and how the regulator decides on admission to the register • The process for appeal is clearly and transparently set out, in line with the regulator's rules and processes, and consistently applied • Where there is a potential concern relating to an application for registration, there is a clear process for investigating this concern • The register is easily accessible, and contains information that is relevant to those who access it, in accordance with the regulator's rules and processes • The regulator has clear rationales for the information it displays and the time this information it is available, and this includes information relating to fitness to practise	• Guidance for decision-makers, and applicants, that describe the process for making decisions on applications/appeals • KPIs and SLAs that set out timescales for decision and processing of applications/appeals • Forms and guidance that provide information on the registration process for applicants • Explanation and process for updating the register • Quality assurance of the register, including the checking of data accuracy • Description of how the register, what it is for, how to check it and what it contains (and what types of information it does not display) is publicised • Any other information relevant to the current achievement of this Standard, including information about the reasons for any recent changes to the policy about the types of information displayed or the length of time it is available
Standard Twelve Risk of harm to the public and of damage to public confidence in the profession related to non-registrants using a protected title or undertaking a protected act is managed in a proportionate and risk based manner.	• The regulator has in place guidance for itself and others on how concerns relating to illegal or unregistered practice are dealt with, including a process for understanding the risks of the concerns raised • Decision-makers within the regulator understand the basis and process for making decisions relating to misuse of title or the carrying out of restricted functions • The regulator has in place a strategy to communicate its role, and the role of others, in relation illegal or unregistered practice. This includes working with other agencies where it is appropriate to do so • The regulator can demonstrate how its activities in this area are proportionate to the risks of illegal of unregistered practice it identifies	• SOPs/process documents outlining how the regulator deals with illegal practice allegations • Legislation that underpins this approach • Criteria and SLAs for decision-makers • Links to information on illegal practice for the public and other stakeholders • Any evaluation of the consistency of decisions made in relation to complaints about taking action with regard to illegal/unregistered practice • Any evaluation of the effectiveness of the regulator's activity e.g. monitoring of compliance with 'cease and desist' letters • Information that the regulator publishes to its registrants about action it has taken in respect of illegal practice and about their responsibilities • Any other information relevant to the current achievement of this Standard

	• The regulator ensures that registrants and applicants are made aware of their responsibilities and legal obligations in this area	
Standard Thirteen The regulator has proportionate requirements to satisfy itself that registrants continue to be fit to practise.	• The regulator has in place a CPD (or equivalent system) that ensures continued fitness to practise (CFTP) • The regulator seeks feedback from registrants and stakeholders on the efficacy of its CFTP process, and considers that feedback when making changes to the system • The regulator regularly ensures that the CFTP system remains fit for purpose, taking into account changes to its standards, education and training, and the changing clinical and ethical context of its registrants • Where appropriate, learning from other parts of the regulator's work is used to inform and improve the CFTP process and outcomes	• Description of the process registrants must follow to demonstrate CFTP • The legislative basis for that process • SOPs/process documents that describe how CFTP is assessed by the regulator • Links to information for registrants and others on the CFTP process • Evidence that the regulator has targeted its CTFP system towards ensuring that regulators develop their skills in their areas of practice, and public protection • Evidence that the regulator identifies and uses the information it gathers on how registrants are undertaking CFTP to inform and develop its processes • FTP learning is used where appropriate in the development of CFTP • Any other information relevant to the current achievement of this Standard • Any information from registrants evaluating the effectiveness of the CPD/CFTP process • Any evaluation of whether registrants subject to FTP sanctions have recently complied with the CPD/CFTP requirements • Any other information relevant to the current achievement of this Standard
Fitness to practise		
	Factors to consider	**Possible evidence**
Standard Fourteen The regulator enables anyone to raise a concern about a registrant.	• The regulator ensures that timescales for each stage of the FTP process are actively monitored, and cases are managed efficiently and proactively to avoid delay • The regulator has documented and consistently applied process for each stage of the FTP process, and these are regularly and demonstrably reviewed • There is published and easily accessible guidance for all on how the FTP process is carried out, and this guidance is regularly and demonstrably reviewed • The regulator clearly sets out how it determines which complaints meet its threshold for investigation, and how this threshold is applied consistently, fairly, and in line with its standards, rules and policies • There is a clear, documented process for risk assessment and management of cases both at receipt and throughout the life of an investigation, that this	• SOPs/process documents that set out how the regulator manages the stages of the fitness to practise process, and associated forms/template letters • Relevant legislation, and how this relates to the way the regulator has constructed the FTP process • SLAs and KPIs related to each of the stages of the FTP process and evidence of how compliance is monitored; outcomes of the monitoring process and action taken in respect of non-compliance • Guidance for staff and decision-makers on assessing whether information/referrals received require FTP investigation. Evidence of quality assurance of a proportion of decisions taken not to investigate, and identification of any relevant learning. Details of how the regulator ensures that the process is demonstrably free from bias, particularly bias in favour of registrants • Storage and communication of information and documents to ensure that it is dealt with securely when appropriate, and details of the relevant information security policies and procedures. Information about how the regulator checks compliance • Any other information relevant to the current achievement of this Standard • Evidence of quality assurance of risk assessment decisions taken, and implementation of any learning identified
Standard Fifteen The regulator's process for examining and investigating cases is proportionate, deals with cases as quickly as is consistent with a fair resolution of the case and ensures that the best available evidence is considered for decisions at each stage of the process.		
Standard Sixteen The regulator ensues that all decisions are made in accordance with its processes, are proportionate, consistent and fair, take account of the statutory objectives, the regulator's standards and the relevant case law and prioritise patient and service user safety.		

Standard Seventeen The regulator identifies and prioritises all cases which suggest a serious risk to the safety of patients or service users and seeks interim orders where appropriate. **Standard Eighteen** All parties to a complaint are kept updated on the progress of their cases and supported to participate effectively in the process.	process is applied fairly and consistently, and that this process is regularly and demonstrably reviewed • There is clear guidance for decision-makers and staff on how to decide whether the risk assessment of a case requires a referral to an interim orders panel, and that this guidance is applied fairly and consistently. • The regulator can demonstrate how it works with other agencies to gather and share intelligence about its registrants, and that where appropriate cases are referred to those agencies through a process that is documented, consistent, fairly applied, and regularly reviewed • Fitness to practise decision-makers have clear guidance setting out the framework for decision-making. This guidance is published, and regularly and demonstrably reviewed • Decision-makers are appointed and trained through a process that is robust and transparent, and the regulator ensures these decision-makers keep their skills and knowledge up-to-date • The regulator ensures that the process for making a referral or a complaint is transparent, easy to understand, and guidance is available for those wishing to make complaint on the role of the regulator and its powers • The regulator ensures that all parties to a complaint are kept informed of the process of their investigation in a way that is timely, sensitive to the needs of those individuals, and flexible to take into account the changing nature of any investigation	• MOUs and agreements with other bodies, setting out the sharing arrangements for FTP information • SOPs/process for initial and continuing risk assessment of cases, as well as the process by which the regulator prioritises cases • Guidance for decision makers on criteria for IO referrals • Any other information relevant to the current achievement of this Standard • Evidence of actual referrals made to another professional/systems regulator or other relevant body, and evidence that the regulator shares its learning about these referrals with other bodies • Guidance, criteria and SLAs for decision makers and information about how frequently those documents are reviewed and the process for such review • Process for publication, and guidance on what should not be published • Process for communicating non-published information to relevant stakeholders (e.g. employers) as appropriate • Process relating to the appointment/training/appraisal of case examiners/IC members/panellists including the feeding back of any learning identified from the quality assurance of decisions • Process for, and outcome of, regular internal quality assurance of decisions made by decision-makers at all levels of the FTP process • Information about the number of upheld concerns raised/complaints made about the quality of FTP decisions, and actions taken in response • Any other information relevant to the current achievement of this Standard • Information about how the regulator communicates to registrants and to the wider public about the outcomes of its FTP activity e.g. by publication of statistical data and case summaries or an annual FTP report • Any evaluation of the frequency of repetition of FTP concerns by the same practitioners following the conclusion of the original FTP process • Any evaluation of the frequency of breach of conditions/suspensions • Links to information on how to make a complaint; information about any engagement activity undertaken to gauge and/or improve awareness of the regulator's FTP process Information available internally and to stakeholders on regulators' role, and what kinds of complaint can be dealt with • Guidance for staff about signposting complainants to other organisations, where appropriate • Information for participants in the process, such as guidance for witnesses • SLAs, SOPs and guidance for staff on keeping all parties up to date regularly; monitoring of compliance with those SLAs, SOPs, and guidance documents and prompt taking of remedial action and identification of thematic issues

		• Monitoring of complaints made/concerns raised/feedback received about timescales within the FTP process and about witness/informant experiences of the process, in order to identify areas where improvements are required • Any other information relevant to the current achievement of this Standard • Witnesses and informants are offered an opportunity to provide feedback on the process, and any feedback provided is reviewed and any relevant learning identified. • Information about training given to decision-makers about the appropriate considerations with regard to the evidence of vulnerable witnesses/informants

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