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Committee on Standards in Public Life
Room GC.05
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Ethics for Regulators Review

The Professional Standards Authority for the Health and Social Care welcomes the opportunity to submit evidence to the Committee on Standards in Public Life's Ethics for Regulators Review.

About the Professional Standards Authority

As you may know the Authority promotes the health, safety and wellbeing of patients, service users and the public by raising standards in regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

As part of our work we:

- Oversee nine health and care professional regulators and report annually to Parliament on their performance
- Conducts audits and investigations and can appeal fitness to practise cases to the courts if sanctions are unduly lenient and it is in the public interest
- Conduct research and advise the four UK governments on improvements in regulation
- Promote our concept of right-touch regulation and publish papers on regulatory policy and practice
- Accredit voluntary health and care occupational registers to improve consumer protection and raise standards

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

Our evidence

1. The Professional Standards Authority for Health and Social Care would like to bring to the Committee's attention work that it has done in this area in recent years. This includes:

- The Authority's role in relation to the appointment of professional regulators' chairs and council members
- *Fit and Proper? Governance in the public interest* (March 2013) in which we set out our reflections on governance drawing on our experience of annual reviews of the regulators' performance, our reports on specific areas of concern, our experience of developing policy in the sector, and our international experience
- *Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England* (November 2012 & November 2013) advice to the Secretary of State, and associated standards
- *Board size and effectiveness* (June 2011) in which we advised the Department of Health on the potential benefits of moving to smaller councils as a way of delivering more board like and effective governance
- Details of our own accountability arrangements with the Health Select Committee.

2. The overarching themes include:

- A focus on values as well as technical competence
- A focus on personal responsibility as the meaning of accountability
- The importance of including in governance and accountability arrangements a diversity of views and perspectives

Our role in relation to the appointment of regulators' chairs and council members

3. The health and care professional regulators are led by their councils. These governing bodies provide strategic leadership to their respective organisations and hold the executive to account. The size and composition of each council is specified in the legislation of each regulator; they all have an equal number of lay and professional members. Council members and chairs are appointed by the Privy Council. The Privy Council also has the power to reappoint, suspend, remove or extend the appointment of council members and chairs.

4. Since July 2012 the Authority has been responsible for advising the Privy Council on the quality of the processes the health and care professional regulators (excluding the Pharmaceutical Society of Northern Ireland) use to recommend candidates for appointment as chairs and members of their councils. This responsibility derives from Section 25C of the National Health Service Reform and Health Care Professions Act 2002, as amended by the Health and Social Care Act 2012. This provides that the Privy Council can make arrangements with the regulators, the Professional Standards Authority and others to help it make and manage council member and chair appointments.

5. It is the Privy Council which makes the appointments, but the regulators are responsible for running a suitable process to select candidates to recommend to the Privy Council. Our role is to scrutinise the process the regulator has used, and assess whether

it is fair, whether it is transparent and open, whether it inspires confidence, and whether it ensures all selection decisions are based on evidence of merit. We advise the Privy Council whether each process adheres to these four principles. Our scrutiny is focused exclusively on the process – we take no view on the suitability of particular candidates, and we have no say in who is appointed. We also advise the Privy Council on processes used to recommend incumbent chairs and council members for reappointment, and the Privy Council may ask for our advice in relation to other similar processes, such as the removal of a chair or council member.

6. The process that we adopt is set out in detail in Section 25C scrutiny process: the Authority's approach to scrutinising regulators' council appointments processes, published in January 2014, which is available on our website at <http://www.professionalstandards.org.uk/docs/default-source/s29-general/section-25c-scrutiny-process-january-2014.pdf?sfvrsn=0>

7. In January 2014 we also published *Good practice in making council appointments: guidance for regulators making appointments which are subject to section 25C scrutiny*. In this document, we provide good practice guidance on how regulators may adhere to our four principles of a good appointments process:

- merit,
- fairness,
- transparency and openness, and
- inspiring confidence, which we expand on below.

8. The guidance is underpinned by the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The guidance is available on our website at <http://www.professionalstandards.org.uk/library/document-detail?id=16cb2594-554c-4e9a-8666-70a17672dcee>

Merit

9. All decisions must be based on evidence of candidates' merit. This means appointing and reappointing individuals whose skills and experience have been judged to best meet the needs of the regulator and, where appropriate, recommending the removal or suspension of individuals where this is a strong case for doing so.

Fairness

10. Processes used in appointments must be objective, impartial and applied consistently. Processes promote equality and are free from discrimination, harassment and victimisation.

Transparency and openness

11. Public appointments must be advertised in a way that is designed to attract a strong and diverse field of suitable candidates. Information about posts and appointment

processes must be publicly available. The reasons for any recommendations made to the Privy Council arising from these processes must be clear.

Inspiring confidence

12. The regulator's processes and systems must promote public confidence in regulation and take into account external perspectives where appropriate. All processes must meet the requirements of the regulator's legislative framework.

Fit and proper? Governance in the public interest

13. In March 2013 we published *Fit and Proper? Governance in the public interest*, in which we set out our reflections on governance drawing on our experience of annual reviews of the regulators' performance, our reports on specific areas of concern, our experience of developing policy in the sector and our international experience.

14. The context for the paper was the preceding decade of reform of the governance of the health and care professional regulators. The councils or boards of the professional regulators are now much smaller and have a balanced number of appointed professional and public members, rather than the large, elected, representative bodies of old. Presidents have become chairs and many are public rather than professional members. The focus of regulation on serving the public rather than the professions is manifest in these reforms, and is mirrored in similar developments in professional regulation in other sectors, such as the regulation of legal professionals.

15. Nevertheless, we had seen instances of ineffective governance in some of the regulators we oversee which had resulted in internal conflict and external loss of professional and public confidence. In the reviews that we had undertaken, we found examples of inappropriate personal and corporate behaviour which may have presented risks to the public interest and therefore warranted a wider reflection on what good governance looked like in a modern regulator. We intended that our reflections should apply more widely to public organisations.

16. One of our central observations in the paper concerned the ideas of responsibility and accountability. Organisations, board members, chairs and chief executives are said to be accountable for the performance of their organisation. This concept is commonly used and accountability is one of the seven principles of public life. However, we expressed our concern that its real meaning – personal responsibility – had been lost. Responsible people can be held to account for their performance and the performance of their organisation.

17. We also argued that in order fully to assume responsibility for the performance of an organisation, board members must demonstrate both behaviours and values that are appropriate to the holding of public office. They must approach the tasks of board membership or chairmanship with seriousness of purpose, probity and integrity as appropriate to their responsibilities, applying care, diligence and skill to all that they do. They must have resilience and courage, to challenge the opinions of others and to ask questions when they are in doubt. We expressed our concern that too often the qualities

which are set out as the prerequisites for public office are too heavily focussed on technical competences and business skills, at the expense of attitudes and values required for governance in the public interest.

18. The paper also contains our reflections on dealing with disagreement, roles and relationships, achieving credibility as a board, conflicts of interest, transparent decision making, understanding performance, and oversight of complaints. It can be found in full at <http://www.professionalstandards.org.uk/library/document-detail?id=d53298ac-3d5d-45cf-85fe-5004132741e0>

Standards for board members

19. In November 2012 we published advice to the Secretary of State, Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England, and associated Standards. A year later, we published a reviewed version of the standards in the light of recommendations made in the reports by Robert Francis QC, Sir Bruce Keogh, Don Berwick, Dame Fiona Caldicott, and Camilla Cavendish.

20. This work arose from a commitment made by the Government in February 2011 in *Enabling Excellence* to commission work to 'agree consistent standards of competence and behaviour for senior NHS leaders'. In July 2011 Sir David Nicholson, then chief executive of the NHS in England announced that CHRE (as we were then known) had been asked to develop a set of high level ethical standards for executive and non-executive NHS board members in England. The standards were then developed through a review of existing standards and other relevant guidelines, extensive discussion with key stakeholders across the healthcare sector, and a three-month public consultation.

21. The standards cover three distinct areas: personal behaviours described by a set of values; technical competence; and business practices. They are consistent with the Seven Principles of Public Life and with existing regulatory frameworks applying to professionals and senior managers working in the NHS. They are intended to apply to members of board and governing bodies in NHS organisations. This would include chief executives, executive directors, chairs and non-executive directors, and members of governing bodies of CCGs. The application and implementation of the standards was not within the scope of the project, however, in our drafting we considered that the Standards could apply to the boards or governing bodies of all existing, remaining and/or outgoing NHS trusts; clinical commissioning groups, NHS foundation trusts; and the NHS Commissioning Board Authority.

22. The full text of the advice to the Secretary of State for Health can be found at: <http://www.professionalstandards.org.uk/docs/psa-library/2012---advice-on-standards-for-board-members.pdf?sfvrsn=0>

23. The revised standards can be found at <http://www.professionalstandards.org.uk/footer-pages/news-and-media/latest-news/news-article?id=907e579e-2ce2-6f4b-9ceb-ff0000b2236b>

Board size and effectiveness

24. In June 2011 the Department of Health asked us for advice on the efficiency and effectiveness of health professional regulators, one element of which was the particular issue of whether there was a case for moving to small councils as a way of delivering more board like and effective governance. The advice we offered was based on our experience of overseeing the nine health professional regulators and was backed up by evidence and literature from a range of sources pertinent to the question of board size.

25. We concluded that smaller boards are associated with greater effectiveness. It appeared to us that smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones. They are less likely to suffer from fragmentation and clique-formation and more likely to develop a culture of inclusiveness. A smaller board helps members focus on core governance issues, rather than becoming involved in executive matters.

26. We also concluded that an important shift in thinking was required from the idea of a board being representative to it having the appropriate mix of knowledge, understanding and awareness to take into account different interest groups and points of view. We also concluded that a board must have enough members to ensure that it has the necessary mix of skills and experience to carry out the various governance functions effectively, maintain credibility and have the necessary diversity of perspectives, bearing in mind that it can always call on external specialist advice.

27. The full text of the advice can be found at <http://www.professionalstandards.org.uk/library/document-detail?id=9994ade6-fa75-472a-a6bd-235a1332f24f>

Our accountability relationship with the Health Committee

28. The Professional Standards Authority's accountability relationship with the Health Committee stemmed from the Francis Report in 2013. The Committee wrote in its report *After Francis* that it proposed to 'enhance its scrutiny of regulation of healthcare professionals by taking public evidence each year from the Professional Standards Authority for Health and Social Care...on the regulatory environment and the performance of each professional regulator, based on the PSA's own annual report. The Committee held an initial evidence session on 9 July with representatives of the PSA to examine its annual report and performance review for 2012-13.'

29. The Committee also wrote that it planned to 'draw on the views expressed by the PSA in its reports and in these sessions in preparing for its regular accountability hearings with the General Medical Council and the Nursing and Midwifery Council. It will also examine the case for inviting other professional regulators under the PSA's remit to appear before it from time to time, in the light of the views expressed about their performance by the PSA...it intends to develop its relationship with the PSA to make this oversight as effective as possible'.

30. Our input and support to the Committee takes a number of forms. This includes the performance review report and audit reports as they are published; our meeting, if requested, with the Committee following the publication of our performance review report; written evidence ahead of each session with the regulators, including Section 29 data where appropriate; and additional briefings on topics identified by the Committee – for example, we were asked to provide information on the transfer of the social work registers to the Health and Care Professions Council ahead of its accountability meeting in January 2014.

31. The Authority through its own Board attempts to operate by the high standards we expect of others in regards to governance. Our view is that the ethics and values we express in our work are as important as our technical competence and our financial and business practices. We publish our values and are happy to be held to account by demonstrating them; we are committed to being independent, impartial, fair, accessible and consistent.

32. I hope that this evidence is of use and interest to the Committee. We would be happy to discuss further any aspect of it.

Yours sincerely

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