Response to the Independent Inquiry into Child Sexual Abuse Call for Views

August 2017

1. Introduction

1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk

1.2 As part of our work we:

- Oversee the nine health and care professional regulators and report annually to Parliament on their performance
- Set standards for and accredit registers of practitioners working in health and care occupations not regulated by law
- Conduct research and advise the four UK governments on improvements in regulation
- Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

2.1 We welcome the opportunity to respond to the Independent Inquiry into Child Sexual Abuse. This is a hugely important issue as children are vulnerable by definition and particularly so when receiving health or care services. Whilst there has clearly been work carried out across the health service, including by the regulators, to address issues relating to the safeguarding of children and vulnerable adults, it has become apparent that failures to protect children often occur when there is a lack of clarity between organisations in the sector over who has responsibility for speaking up and acting on or reporting potential abuse, which may lead to safeguarding opportunities being missed. This Inquiry provides a helpful opportunity to highlight measures that have been taken, report on any issues that continue to arise and identify further opportunities to address any barriers to preventing abuse.

2.2 We recognise that the Inquiry is proposing a seminar that will be specifically focussed on the potential to avoid abuse of children in healthcare settings. However, as our remit also includes oversight of the Health and Care Professions Council who currently regulate social workers in England, we have also covered issues relevant to social care in our comments. In addition, there are no questions in this call for information on the role of healthcare professionals in

child protection more broadly. Following on from the findings of the Savile review, this seems an important area which would be worth exploring in more detail and we would be happy to contribute on this topic if the scope of the Inquiry allows it. Finally, although the Inquiry is clearly specifically focussed on the issue of child sexual abuse, research suggests there are common behavioural traits amongst those who abuse both children and adults whether sexual or not. We have therefore also sought to reference some broader work and issues relating to boundary violations more widely where we feel there is relevance to the aim of protecting children from sexual abuse.

2.3 As highlighted, the Professional Standards Authority oversees the nine statutory health and care professional regulators through reviewing their performance against our Standards of Good Regulation[1]. In order to protect the public the statutory professional regulators carry out four main tasks. They:

- Check the quality of education and training courses to make sure they give students the skills and knowledge to practise safely and competently
- Set standards of competence and conduct that health and care professionals must meet in order to be registered and practise
- Maintain a register that everyone can search
- Investigate complaints about people on their register and decide if they should be allowed to continue to practise or should be struck off the register - either because of problems with their conduct or their competence.

2.4 We also run the Accredited Registers programme which sets standards for and accredits registers of practitioners who are not regulated by law. The scheme seeks to ensure that members of the public can choose from a register that we have assessed meets our demanding standards. Accredited Registers perform similar functions to those of the statutory regulators except that it is not mandatory to join a register in order to practise. Practitioners on Accredited Registers work within the NHS - such as health scientists and counsellors and psychotherapists - as well as a diverse range of occupations in the private sector[2].

2.5 Professional regulators can contribute to the prevention of abuse in three ways: by setting standards of conduct for registrants and enforcing them though continuing fitness to practise procedures; by removing the offender from practice so that they cannot offend in the same way again; and by enforcing the duty of candour and the need to speak up if there is any suspicion of abuse or inappropriate behaviour.

2.6 Although the duty of candour is now established in law and in the regulators' codes of conduct, we are not sure how consistently it is applied in practice. As long ago as 2001, the report into children's' heart surgery at the Bristol Royal

[1] Professional Standards Authority, *Standards of Good Regulation.* [Online] Available at: http://www.professionalstandards.org.uk/publications/detail/standards-of-good-regulation [Accessed: 11/08/17]

[2] Professional Standards Authority, *About accredited registers*. [Online] Available at: http://www.professionalstandards.org.uk/what-we-do/accredited-registers/about-accredited-registers [Accessed: 11/08/2017]

Infirmary included a recommendation for a duty of candour for healthcare professionals[3]. The importance of candour and the ability to speak up amongst health professionals when something goes wrong was highlighted most recently in the Mid-Staffordshire NHS Hospital Trust report from Sir Robert Francis, however it also has relevance to child protection and the prevention of child abuse in healthcare settings[4].

2.7 The Authority carried out research in 2015 into candour, disclosure and openness, highlighting a number of barriers to health professionals doing the right thing[5]. The case of Jimmy Savile demonstrates that these barriers can apply to reporting even extremely harmful and criminal behaviour. The report into the abuse and neglect of patients by staff at the Winterbourne View care home in Gloucestershire in 2011[6] shows that when people do speak up this has not always been acted upon by those with regulatory oversight and also demonstrates that those in positions of authority should not be able to claim ignorance as an excuse for failing to prevent abuse.

2.8 The Authority also produced advice for the Department of Health on implementing the professional duty of candour[7]. This led to a joint statement from the professional regulators highlighting how they intended to incorporate this duty into their standards for registrants[8]. We have recently highlighted our disappointment that we have not subsequently seen the duty reflected in the allegations drafted against the registrant or references to the Duty of Candour in panel determinations[9].

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[3] *The Report of the Public Inquiry into children's heart surgery at the Bristol Royal Infirmary 1984–1995 - Learning from Bristol*, July 2001. Available at: http://webarchive.nationalarchives.gov.uk/20090811143752/http://www.bristol-inquiry.org.uk/final_report/rpt_print.htm [Accessed: 15/08/2017]

[4] Sir Robert Francis QC, *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, 2013*. [Online] Available at: http://webarchive.nationalarchives.gov.uk/20150407084231/http://www.midstaffspublicinquiry.com/report [Accessed: 15/08/2017]

[5] Professional Standards Authority 2015, *Candour, disclosure and openness - Learning from academic research to support advice to the Secretary of State*. [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/candour-disclosure-and-openness-2013.pdf?sfvrsn=6 [Accessed: 15/08/2017]

[6] Department of Health Review: Final Report, *Transforming care: A national response to Winterbourne View Hospital.* [Online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf [Accessed: 18/08/2017]

[7] Professional Standards Authority 2013, *Can professional regulation do more to encourage professionals to be candid when health care or social work goes wrong? Advice to the Secretary of State for Health.* [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/publications/advice-to-ministers/Encouraging-candour-2013.pdf?sfvrsn=12 [Accessed: 15/08/2017]

[8] Joint statement from the Chief Executives of statutory regulators of healthcare professionals, *Openness and honesty - the professional duty of candour*. [Online] Available at: http://www.gmc-uk.org/Joint_statement_on_the_professional_duty_of_candour_FINAL.pdf_58140142.pdf [Accessed: 11/08/2017]

[9] Professional Standards Authority, Review of Professional Regulation and Registration with Annual Report and Accounts 2016/2017. [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/publications/professional-standards-authority-review-of-professional-regulation-amp-registration(annual-report-amp-accounts-english)0bed19f761926971a151ff000072e7a6.pdf?sfvrsn=0 [Accessed: 16/08/2017]

2.9 We have also raised concerns that the proposed new powers for the Health Service Safety Investigation Body, to prohibit disclosure of information held in connection with an investigation, may frustrate the regulators' ability to fulfil their statutory duties in relation to fitness to practise and public protection, and conflict with the duty of candour for health care professionals[10].

2.10 In 2008 we published a suite of guidance, with information for professionals, patients and panels on clear sexual boundaries between healthcare professionals and patients[11]. Amongst other advice the guidance highlights that if there is: 'a serious and imminent threat to the patient's, or other patients' safety, or that of a child or vulnerable adult, the healthcare professional must act without delay so that their concerns are investigated and patients are protected'. Our guidance has subsequently been used as a template for guidance produced by the regulators covering the maintenance of appropriate professional and sexual boundaries. It has also been used by colleagues internationally when developing guidance. We are about to begin further work in this area looking at issues which have arisen since our guidance was first published.

2.11 The regulators all refer to boundaries/relationships in their standards and supplementary guidance. For example, the GMC's Good Medical Practice states: 'You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them'[12]. The NMC states that registrants should: 'stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers'[13]. They also all reference the importance of being open and honest for health professionals, for example the General Pharmaceutical Council state in their standards that 'pharmacy professionals must speak up when they have concerns or when things go wrong'[14].

2.12 Following the NHS investigations into Jimmy Savile[15], as part of our Performance Review process we asked the nine professional regulators for feedback on any specific action taken in the response to the reports produced. At the time only two regulators highlighted specific work to develop further guidance or support for

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[10] Professional Standards Authority, *Response to the consultation: Providing a 'safe space' in healthcare safety investigations.* [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/publications/consultation-response/others-consultations/2017/authority-response-to-dh-safe-spaces-final.pdf [Accessed: 11/08/2017]

[11] Council for Healthcare and Regulatory Excellence 2008, Clear sexual boundaries. [Online] Available at: http://www.professionalstandards.org.uk/publications/detail/clear-sexual-boundaries [Accessed: 17/08/2017]

[12] General Medical Council 2013, Good medical practice. [Online] Available at: http://www.gmc-uk.org/static/documents/content/GMP_.pdf [Accessed: 15/09/2017]

[13] Nursing and Midwifery Council, The Code for nurses and Midwives. [Online] Available at: https://www.nmc.org.uk/standards/code/ [Accessed: 15/08/2017]

[14] General Pharmaceutical Council May 2017, *Standards for pharmacy professionals*. [Online] Available at: https://www.pharmacyregulation.org/sites/default/files/standards_for_pharmacy_professionals_may_2017_0.pdf [Accessed: 15/08/2017]

[15] Kate Lampard and Ed Marsden, *Themes and lessons learnt from NHS investigations into matters relating to Jimmy Savile - Independent report for the Secretary of State for Health, February 2015.* [Online] Accessed: 15/08/2017]

registrants on safeguarding of vulnerable adults and children, one other highlighted work to develop guidance for registrants on sexual boundaries and another noted the intention to carry out training for their investigating committee on dealing with cases relating to boundaries.

2.13 Professional standards provide the framework by which the conduct and competence of professionals is measured. If a complaint is made about a health or care professional then the misconduct will be assessed against whether they have departed from their professional standards and if their fitness to practise is found to be impaired then the appropriate sanction will be imposed.

2.14 Research commissioned in 2011 by the Authority from Dr Oliver Quick identified professional regulation as just one among many influences on registrants' behaviour and may not be a common factor in individual decision making[16]. Professor Gerry McGivern in his work for the General Osteopathic Council highlighted that professionals are most likely to comply with professional standards when they see them as relevant and in line with what they already consider good professional practice and where the potential benefit to their patients is clear[17]. It is therefore important to note that there is limited evidence on the direct effectiveness of standards and regulation on guiding registrant behaviour in key areas.

Reviewing the regulators' fitness to practise cases

2.15 As highlighted, the regulators are able to address misconduct amongst health and care professionals through their fitness to practise processes and this could include when professionals are perpetrators of, or party to, child abuse.

2.16 As part of the Authority's role overseeing the professional regulators we also review all of the regulators' fitness to practise cases that go to final panel hearing. The Authority only appeals cases where the sanction is 'insufficient to protect the public'. The number of cases appealed which relate to child protection issues is therefore limited, because a health or care professional who has committed a criminal act such as child abuse is almost certain to be struck off. We do however review striking-off cases to check whether interim suspension orders have been used appropriately so that the public are protected while an investigation is underway.

2.17 An example of a case which the Authority successfully appealed involving child protection issues is the case of Fleischmann in 2005[18]. In this case, a dentist who had been convicted of downloading and viewing child pornography received only a 12-month suspension of his registration from the Professional Conduct

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[16] Dr Oliver Quick, May 2011, *A scoping study on the effects of health professional regulation on those regulated. Final report submitted to the Council for Healthcare Regulatory Excellence*. [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/study-on-the-effects-of-health-professional-regulation-on-those-regulated-2011.pdf [Accessed: 15/08/2017]

[17] Gerry McGivern etc. al, *Exploring and explaining the dynamics of osteopathic regulation, professionalism and compliance with standards in practice, Report to the General Osteopathic Council February 2015*. [Online] Available at: http://www.osteopathy.org.uk/news-and-resources/document-library/research-and-surveys/dynamics-of-effective-regulation-final-report/ [Accessed: 17/08/2017]

[18] *The Council for the Regulation of Healthcare professionals - and – General Dental Council - Mr Alexander Fleischmann 2005*. [Online] Available at: http://www.bailii.org/ew/cases/EWHC/Admin/2005/87.html [Accessed: 14/08/2017]

Committee of the General Dental Council. The Authority successfully argued that this decision was insufficient to protect the public and the judge substituted the decision for one of permanent erasure from the dental register. We also appealed a case of physical abuse of a child which resulted in a pharmacist being struck off[19].

2.18 Whilst we have not carried out any in-depth analysis, our legal team have noted that the duty of candour is rarely specifically pleaded in the allegations brought against health care professionals by their regulatory bodies, or mentioned in the decisions of Fitness to Practise Committees. We highlighted this observation in our 2016/17 annual report. Other views from those active in the field of patient representation suggest that the duty of candour may not yet have been widely implemented[20].

2.19 The majority of cases we review which include reference to safeguarding and child protection issues relate to social workers who are currently regulated by the HCPC. In the cases we review it's very rare that social work professionals are directly responsible for abuse, but are in a crucial role to help detect and prevent vulnerable children being abused. Observations from such cases are that they can be miscategorised as being about "record keeping", rather than about failures to assess risk or undertake visits to vulnerable people, including children. In certain cases this may result in registrants missing key indicators of abuse and not adequately protecting children through their role.

2.20 When considering how to identify those who may be perpetrators of abuse, it is worth highlighting that research which we have commissioned and are soon to publish demonstrates that sexual misconduct rarely occurs in isolation and tends to be associated with a cluster of other inappropriate behaviours. This may have future relevance for those seeking to target preventative activity before sexual misconduct and abuse occurs.

2.21 Finally, it is worth noting that there is a general view that the current system of professional regulation, in particular fitness to practise proceedings, can be a difficult experience for individuals going through the process, particularly vulnerable people including children who find complaints procedures stressful and confrontational. The regulators have carried out work to try and improve the experience of the process for vulnerable individuals, by providing support and making adjustments where required. This includes providing access to independent support services ahead of a hearing, the potential to have an independent supporter accompany a witness on the day or the use of video evidence from vulnerable witnesses. The NMC have a dedicated witness liaison team to support witnesses throughout the process and provide a specially trained single point of contact.

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[19] The Professional Standards Authority for Health and Social Care - and – The General Pharmaceutical Council - Lynne Sidoh Onwughalu. [Online] Available at: http://www.bailii.org/ew/cases/EWHC/Admin/2014/2521.html [Accessed: 17/08/2017]

[20] Anthony Gold Solicitors, *The NHS Apology To Injured Patients*. [Online] Available at: https://www.lexology.com/library/detail.aspx?g=e8a7e83e-c001-4398-8b30-0d1912d738f1&utm_source=lexology+daily+newsfeed&utm_medium=html+email+-+body+-+general+section&utm_campaign=lexology+subscriber+daily+feed&utm_content=lexology+daily+newsfeed+2017-07-18&utm_term [Accessed: 17/08/2017]

2.22 It is now recognised good practice to take all allegations of sexual abuse seriously, however there are still challenges for vulnerable complainants in navigating regulators' complaints systems. In our own experience of handling concerns, the majority of those we deal with are vulnerable and particularly in cases which relate to abuse this may make it especially difficult for them to effectively progress their concerns. It is clear to us that the complaints processes themselves are often damaging to those who complain.

2.23 There are limitations to how much the process can be improved within the current legislative framework. The Authority has been critical of the current professional regulatory framework and its adversarial nature and has set out detailed proposals for reform to better protect the public[21].

Accredited Registers

2.24 The Authority has established and runs the Accredited Registers programme through which we accredit registers of practitioners who are not regulated by law, based on their compliance with our standards[22]. As part of a register's application for accreditation or renewal they are required to complete a risk matrix demonstrating they have identified relevant risks within practice and have mechanisms in place to mitigate these risks. This will cover strategies around safeguarding of vulnerable individuals including children where appropriate.

2.25 There are currently 23 registers accredited by the programme covering 80,000 practitioners across a wide range of therapies including sports therapists, acupuncturists, counsellors, complementary therapists and foot health practitioners amongst many others. Registers which either regulate practitioners who have regular contact with children or whose practitioners are particularly active within the NHS include:

- Play Therapy UK
- The Association of Child Psychotherapists
- Genetic Counsellor Registration Board (GCRB)
- The Register of Clinical Technologists

2.26 All Accredited Registers have complaints handling procedures to allow them to remove practitioners from their register in cases of misconduct. Most have a mechanism for managing registration status while investigations are ongoing to protect the public, for example interim suspension orders and a panel assessing an application for accreditation of a register would recommend implementing such a system if a register does not already have this in place.

2.27 Registers whose practitioners deal primarily with children and young people provide support to the practitioners on their register on safeguarding of children

[21] Professional Standards Authority, *Rethinking regulation*. [Online] Available at: http://www.professionalstandards.org.uk/publications/detail/rethinking-regulation [Accessed: 11/08/2017], Regulation rethought. [Online] Available at: http://www.professionalstandards.org.uk/publications/detail/regulation-rethought [Accessed: 11/08/2017]

[22] Professional Standards Authority, Our standards. [Online] Available at: http://www.professionalstandards.org.uk/what-we-do/accredited-registers/about-accredited-registers/our-standards [Accessed: 15/08/2017]

and young people. Play Therapy UK includes clauses on preventing abuse as part of their ethical framework[23], and the Association of Child Psychotherapists[24] and British Association of Play Therapists[25] include clauses on safeguarding as part of their code of ethics. The British Association of Counsellors and Psychotherapists which has a wider client group has guidance for members on working with children and young people which includes information on safeguarding[26].

2.28 The standards require all Registers to recognise decisions about professional conduct made by regulatory bodies and other Registers accredited by the Professional Standards Authority when deciding whether a person should be admitted, kept on or removed from their register[27]. They are also expected to report concerns about practitioners to other regulatory agencies when needed to protect the public.

2.29 We have previously reported, most recently in our 2016/17 Annual Report[28], that Registers within the programme face certain barriers ensuring public protection. Unlike statutory regulators, Registers accredited under the programme are not covered by the Safeguarding Vulnerable Groups Act 2006[29] which allows certain organisations to check whether an individual is listed on the Disclosure and Barring Scheme barred list. The statutory regulators are covered by this legislation.

2.30 Accredited Registers are also prevented from accessing criminal records information under the Rehabilitation of Offenders (exceptions order)[30] which allows employers for certain professions to request an enhanced criminal records check, including information about spent convictions for potential employees.

2.31 We ask the Inquiry to support our call to Government to bring the Accredited Registers programme within this legislation to strengthen the ability of the Registers to protect the public. Whilst some practitioners on Accredited Registers

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[23] Play Therapy UK, *Ethical Framework*. [Online] Available at: http://www.playtherapy.org.uk/Standards/EthicalFramework/EthicsKeepTrust#Confidentiality [Accessed:18/08/2017]

[24] Association of Child Psychotherapists, *Code of Professional Conduct and Ethics*. [Online] Available at: http://www.childpsychotherapy.org.uk/sites/default/files/documents/Code-of-Ethics-adopted-September-2014.pdf [Accessed: 18/08/2017]

[25] British Association of Play Therapists, *Ethical Basis for Good Practice in Play Therapy*. [Online] Available at: http://www.bapt.info/play-therapy/ethical-basis-good-practice-play-therapy/ [Accessed: 18/08/2017]

[26] British Association for Counselling and Psychotherapy, *Working with children and young people.* [Online] Available at: http://www.bacp.co.uk/ethical_framework/documents/GPiA046.pdf [Accessed: 11/08/2017]

[27] Professional Standards Authority, Standard 10e: Clarification and guidance. [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/accredited-registers/ars-policies-and-procedures/standard-10e-guidance.pdf [Accessed: 15/08/2017]

[28] http://www.professionalstandards.org.uk/docs/default-source/publications/professional-standards-authority-review-of-professional-regulation-amp-registration(annual-report-amp-accounts-english)0bed19f761926971a151ff000072e7a6.pdf?sfvrsn=0

[29] *Safeguarding Vulnerable Groups Act 2006*. [Online] Available at: http://www.legislation.gov.uk/ukpga/2006/47/contents [Accessed: 15/08/2017]

[30] The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. [Online] Available at: http://www.legislation.gov.uk/uksi/2013/1198/pdfs/uksi_20131198_en.pdf [Accessed: 15/08/2017]

will be subject to such checks if they are directly employed in certain roles within the NHS or social care, such as child psychotherapy, many are self-employed and work independently, leading to a potential gap in public protection. We understand that the Department of Health has raised this issue with the Home Office and the Ministry of Justice and we hope that this issue can be addressed as soon as possible.

Issues relating to recognition of qualifications within the EU

2.32 Through its membership of the EU, the UK is currently subject to the Mutual Recognition of Professional Qualifications (MRPQ) Directive meaning that health professionals recognised under the legislation are able to automatically work in any country within the EU.

2.33 Along with other European countries the UK participates in the European alert mechanism for healthcare professionals. Under the system Competent Authorities (in the UK, the professional regulators) of EU countries are required to issue alerts relating to professionals in the health and education of minors sectors who:

- have been prohibited or restricted from practising the profession in one country
- have used falsified diplomas for their application for the recognition of their qualification.

2.34 Concerns have been raised that not all EU countries are making use of the Alert system in issuing and checking alerts, either through resource constraints or difficulties with the system[31]. Whilst we do not have evidence of the kinds of sanctions that are not being reported, there may be a child protection risk if UK regulators are not informed about professionals from the EEA who have been sanctioned or convicted of child abuse who subsequently apply to work in the UK.

2.35 It is worth noting that it remains unclear whether the UK will remain part of the MRPQ when it leaves the EU and this may also have implications for ongoing participation in the alerts system.

3. Detailed answers

3.1 We have only commented on some of the specific consultation questions below.

Question 1. Please outline some of the steps that your organisation has taken since 2015 to prevent children being abused in healthcare settings?

3.2 As highlighted, we do not have a direct responsibility for preventing abuse of children in healthcare settings as we are not engaged in healthcare provision. However, through our standards for the statutory professional regulators and the

[31] Healthcare Professionals Crossing Borders, *Competent authority recommendations on the alert mechanism.* [Online] Available at: http://www.hpcb.eu/March_2017___HPCB_recommendations_on_alert_mechanism.docx.pdf_69850792.pdf [Accessed: 15/08/2017]

Accredited Registers we seek to ensure that the regulators' processes are fit for purpose in protecting the public, and that the needs of vulnerable people are considered throughout the fitness to practise process.

3.3 We have also drawn Government's attention to the gap in public protection with the Accredited Registers falling outside of the provisions of the Safeguarding Vulnerable Groups Act 2006 and the Rehabilitation of Offenders (exceptions order) which mean they are unable to seek information about whether a registrant is on the DBS barred list, or request an enhanced criminal records check.

3.4 Through our Section 29 work reviewing the regulators' fitness to practise cases we provide an important check on the way that cases are handled and if we do not believe a decision is sufficient for public protection then we can and do appeal to the High Court.

3.5 Our work on the duty of candour led to a joint statement by the regulators committing to embed the duty in their standards for registrants. Although further work may be required to ensure that this principle is fully embedded, the principle of candour and, additionally, adequate support for whistleblowers is important in ensuring that health professionals are empowered to speak up about any instances of abuse that they are aware of.

3.6 We continue to make available our guidance on *Clear Sexual Boundaries for healthcare professionals*[32]. We are planning to carry out further work in this area in the year ahead to explore issues which have arisen since the guidance was published.

Question 2. How well does the current legislative framework prevent the sexual abuse of children within healthcare settings?

3.7 We have consistently made the case for reform of the legislation underpinning professional regulation. Whilst we do not have specific evidence that this is impeding action to prevent abuse of children within healthcare settings, we have highlighted that 'the public often find the regulatory system baffling and hard to navigate, particularly when they have a concern or complaint and want to report it in the right way'[33].

3.8 The fitness to practise process is difficult and stressful, particularly for vulnerable adults and children. Although all of the regulators have mechanisms in place to support vulnerable witnesses, there are limitations on how this can be improved within the current regulatory framework. The General Medical Council have previously called for a presumption of erasure from the medical register for

[32] Council for Healthcare and Regulatory Excellence 2008, *Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals.* [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/sexual-boundaries-responsibilities-of-healthcare-professionals-2008.pdf [Accessed: 11/08/2017]

[33] http://www.professionalstandards.org.uk/docs/default-source/publications/regulation-rethoughtd6c718f761926971a151ff000072e7a6.pdf?sfvrsn=0

doctors who are convicted of serious crimes[34]. We consider that such powers of automatic erasure for certain offences should apply to all regulated professions.

3.9 In addition, there are currently some specific regulatory gaps which may have an impact on the ability to detect and prevent abuse in certain healthcare settings. Currently, some regulators do not have powers within their legislation to impose interim conditions on a registrant's practice. This removes a potentially useful safeguarding tool, for example the ability to require the use of a chaperone when seeing patients.

3.10 For professions operating primarily within the NHS or other services regulated by the Care Quality Commission or in Wales, Healthcare Improvement Wales or Care and Social Services Inspectorate Wales, there is an additional layer of checks in place for the context in which the care is delivered, although we have highlighted the need for better integration between regulation of places and regulation of the people that work there.

3.11 In relation to regulators having the information they need to take action against someone on their register, it is worth noting that the Government has discontinued the scheme established by the Notifiable Occupations Circular (Home Office Circulars 006/2006 and 45/1986) [35]. This scheme required the police to notify regulators automatically of convictions relating to professionals working with vulnerable persons, including children. The scheme has been replaced by general common law disclosure and police forces no longer routinely transmit information to regulators[36]. As such, there is a danger that regulators may be unaware of conviction cases and professionals could still practise.

3.12 The regulators currently refer fitness to practise cases to the Disclosure and Barring Scheme (DBS) where they consider that they meet the criteria for referral. This can result in a decision to place someone on a barred list, meaning they are prohibited from working in certain regulated activities with children and adults. However, the Health and Care Professions Council have previously highlighted in their 2014 Accountability hearing with the Health Committee that only 36% of referrals have resulted in a barring decision being made. Cases which have not resulted in a barring decision include sexual assault of patients and inappropriate sexual relationships with vulnerable service users[37]. This may suggest the need for a review of DBS thresholds to ensure that these are at an appropriate level to prevent those who are unsuitable, from working in regulated activities with children or adults.

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[34] General Medical Council, Reform of the fitness to practise procedures at the GMC - Changes to the way we deal with cases at the end of an investigation: A paper for consultation. [Online] Available at: http://www.gmc-uk.org/FTP_reforms_consultation_paper.pdf_38085201.pdf [Accessed: 18/09/2017]

[35] Home Office, *Home Office circular 6/2006: notifiable occupations scheme - revised guidance for police forces.* [Online] Available at: https://www.gov.uk/government/publications/the-notifiable-occupations-scheme-revised-guidance-for-police-forces/for-information-only-0062006-notifiable-occupations-scheme-revised-guidance-for-police-forces [Accessed: 15/08/2017]

[36] Home Office 2015, Common Law Police Disclosure. [Online] Available https://www.gov.uk/government/publications/common-law-police-disclosure

[37] House of Commons Health Committee, *2014 Accountability hearing with the Health and Care Professionals Council, First Report of Session 2014–15*. [Online] Available at: https://publications.parliament.uk/pa/cm201415/cmselect/cmhealth/339/339.pdf [Accessed: 17/08/2017]

3.13 Whilst not yet in law, the proposal outlined in the Queen's Speech[38] for additional powers for the Health Service Safety Investigation Body to prohibit disclosure of information from healthcare investigations could conflict with regulators' ability to carry out fitness to practise proceedings and also with the duty of candour for healthcare professionals.

Question 3. To what extent do the sanctions available to the regulatory bodies ensure that children receiving care and treatment are protected from sexual abuse? This includes the regulators of both:

a) organisations providing healthcare services; and
b) professionals delivering care and treatment

3.14 We suggest that this question misunderstands the main point of sanctions. Sanctions are imposed after an incident so do not in themselves prevent the harmful behaviour except by preventing repeat behaviour by the individual in question if they are removed from the register. Other elements of regulation such as standards and continuing fitness to practise requirements are by their nature preventative, although we have highlighted the limited influence of regulation alone in affecting day to day behaviour of professionals. Professional regulation is not determinative. The regulators also seek to share data from fitness to practise proceedings with others within the system who may be able to target additional measures to prevent abuse occurring.

3.15 In relation to the statutory professional regulators, we are not aware of specific limitations on the sanctions available to deal with those who carry out sexual abuse of children, beyond the loophole we have identified whereby some regulators are unable to impose interim suspension orders for public protection reasons whilst investigations are ongoing. However, as highlighted both the Authority and the regulators have consistently argued that the current legislative framework is not fit for purpose and therefore it follows that reforming it would allow the regulators to more effectively and efficiently protect the public.

3.16 The Authority supports proposals to enable automatic erasure of health and care professionals for serious offences. As noted, the GMC have called for a presumption of erasure from the register for doctors convicted of serious offences, and this was also put forward by the Law Commissions in their 2015 proposals for reform of the regulation of health and care professionals[39].

Question 4. Are health professionals and health sector leaders provided with adequate training, support and guidance on the issue?

3.17 Anecdotal evidence from our work reviewing fitness to practise cases involving social workers suggests that some social work professionals may be missing out

[38] Queens Speech 2017 – background briefing notes. [Online] Available at: https://www.gov.uk/government/publications/queens-speech-2017-background-briefing-notes [Accessed: 17/08/2017]

[39] Law Commissions 2014, Regulation of Health Care Professionals, Regulation of Social Care Professionals in England. [Online] Available at: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf [Accessed: 17/08/17]

on training in effective risk assessment due to workload pressures, however this is based on a small sample of cases.

Question 5. How effectively are organisations and people held to account for the effective prevention of child sexual abuse in healthcare settings?

3.18 See anecdotal evidence from our work reviewing fitness to practise cases in our general comments.

Question 9. Please describe the whistleblowing measures you have in place and how you assess their effectiveness.

3.19 As an organisation, we do not provide services to patients and service users directly. We do however have a whistleblowing policy in place for staff[40] and we have been active supporters of the National Guardian who provides support to the Freedom to Speak Up Guardians based in NHS trusts on best practice to enable staff to speak up safely. We have also carried out investigations into whistleblowing allegations relating to regulators.

4. Further information

4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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[40] Professional Standards Authority, *Whistleblowing policy – raising serious concerns*. [Online] Available at: http://www.professionalstandards.org.uk/docs/default-source/psa-policies-and-procedures/staff-policies/whistleblowing-policy.pdf [Accessed: 17/08/2017]