PSA response to the Home Office's consultation on the mandatory reporting of child sexual abuse – November 2023

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 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 ten health and care professional regulators and report annually to Parliament on their performance

• Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme

2. Answers to questions

Question 9. In addition to the definition of 'regulated activity in relation to children' provided by the Independent Inquiry, the government is proposing to set out a list of specific roles which should be subject to the mandatory reporting duty. Which roles do you consider to be essential to this list

2.1 Through our work, we think that, in addition to those working in regulated activity with children, it is possible that some people working in regulated activity with adults may receive disclosures from a perpetrator of child sexual abuse in the course of their work, for example GPs and counsellors. This group would include all of the health and social care professionals required by law to be registered with a statutory regulator. It would also include some, but not all roles that are eligible to be a member of an Accredited Register.

Question 14. We would like to test the view that professional and barring measures apply to those who fail to make an appropriate report under the duty. Do you agree with this approach? Would different situations merit different levels or types of penalty?

2.2 The Professional Standards Authority for Health and Social Care oversees the ten health and care professional regulators and accredits registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme. With exceptions, the regulators are generally UK-wide. So, we note that they will need to manage the differences in terms of mandatory reporting between the four countries of the UK.

2.3 We support the view that registrants failing in their duty to care for or protect patients and users of health and care services should naturally come under the

scrutiny of their professional regulators. A decision of the Disclosure and Barring Service to bar a registrant raises a question about the fitness to practise of the registrant.

2.4 For our comments below, we have interpreted the proposal as currently worded in the consultation document to mean that, on the basis of a barring decision, a sanction must, rather than may, be applied, although we acknowledge that, under the proposal, the regulator would have the flexibility to decide what type of sanction is appropriate.

Statutory health and care professional regulators

2.5 The purpose of the fitness to practise process is to protect the public, patients and users of health and care services from harm, rather than punish professionals for how they have practised in the past.

2.6 We are of the view that the approach as described, would not allow the regulators the autonomy to take into account certain factors which may under the current system lead them to determine that a sanction is not appropriate. So, for example, this approach – one which requires there to be a sanction for failure to report - would not allow regulators to consider whether the professional has shown insight into the consequences of their failure to report or have remediated for it, thereby giving confidence to those reviewing the case at the regulator that they would not act in the same way in the future. Under the current process, evidence of insight and remediation could lead to the regulator determining that a sanction is not appropriate since they judge the professional would not repeat the behaviour and therefore would not fail in their duty to care for or protect patients and users of health and care services in the future.

2.7 In addition, the proposed approach would not appear to allow those reviewing the case at the regulator to assess whether, by not reporting disclosed child sexual abuse, the professional had acted appropriately in terms of the safety of the child. It could be the case, for example, that the professional was in the early stages of understanding the nature or extent of the disclosed abuse and judged it important to allow time to build trust and understand the situation better before reporting it. In this instance, there could be the risk that the professional may not record their initial concerns over the abuse in case they are later sanctioned for not disclosing this at that particular time.

2.8 The proposed approach would also appear to prevent the regulators from forming a judgment on whether or not they are satisfied with the tests and processes undertaken by the Disclosure and Barring Service in reaching their decision that there has been a breach. As things currently stand, barring decisions are a key part of the evidence taken into account by the regulators. However, regulators may also secure additional evidence in making their judgments.

2.9 We would like to seek clarification on whether our interpretation of the approach described in the consultation document correlates with the intention of the Home Office. An alternative reading of the proposal would be that breaches of the mandatory reporting requirement must be subject to fitness to practise proceedings, which is different from requiring there to be a sanction. In this instance, the outcome of the individual case would not be predetermined as a sanction. Such an approach would appear to sit between what we have

understood to be the Home Office's proposal and the procedures for the mandatory reporting of Female Genital Mutilation (FGM) as described at Paragraph 4.1 here: FGM Mandatory Reporting The FGM procedures state that failure to comply with the duty may (rather than must) be considered through fitness to practise proceedings by the regulator with whom the professional is registered.

Accredited Registers

2.10 Not all those working in health and care roles are required by law to be registered with a statutory regulator to practise. People in roles who aren't required by law to be registered, can choose to become a member of a voluntary register. This can help demonstrate they meet defined standards. Under the Health and Social Care Act 2012, the PSA has the powers to accredit voluntary registers that meet our Standards for Accredited Registers. Those which do are known as 'Accredited Registers'. These organisations, and their registered practitioners, may display our accreditation Quality Mark. The aim of this is to give members of the public, employers and others using their services, confidence in their competence and professional behaviours. A list of the Accredited Registers is here: https://professionalstandards.org.uk/what-we-do/accredited-registers/find-a-register

2.11 If a mandatory requirement to report child sexual abuse were introduced, we would be likely to expect Accredited Registers to take account of this in their own standards for registered practitioners. If an individual failed to report child sexual abuse, then this could potentially trigger a disciplinary process, to see if any of the standards had been breached. We would expect the outcomes in terms of any sanctions would vary according to the individual case and take into account a range of information. We would also want to make sure that our expectations for Accredited Registers in this area were consistent with those for the statutory regulators. It is important to note that not everyone on an Accredited Register will be working in regulated activity, under the current definitions. However, they may still be in a position to become aware of child sexual abuse.

Question 16. In the light of the proposals outlined in this paper, what are the key implementation challenges and solutions reporters and organisations will face?

2.12 We are conscious that the disclosed or witnessed child sexual abuse may have been carried out by a health or care professional or colleague in another role within the workplace. Equally, a health or care professional may become aware of a colleague failing to report disclosed or witnessed child sexual abuse. There is currently in place a professional Duty of Candour for health and care professionals. This requires health and care professionals to be open and honest with patients when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress. In addition, and pertinent to this consultation, health and care professionals must support and encourage each other to be open and honest and not stop someone from raising concerns. Therefore, some of the barriers the PSA has identified to being candid may be applicable here, too.

2.13 We have previously undertaken work to understand the difficulties for health and care professionals in adhering to the Duty of Candour[1][2]. From these studies, we know that being candid can be a challenge for professionals in working environments that do not, for reasons that are often beyond their control, support this sort of openness. Lack of candour is often a result of concerns about the consequences and, particularly through the culture of an organisation[3]. We would suggest that there will need to be emphasis on encouraging organisations and senior managers to create a culture in which individuals feel able to report child sexual abuse. This would especially be the case where the professional may be reporting a colleague.

2.14 Finally, we also know from our own work at the PSA that the term 'regulated activity' may not be widely understood and can be misinterpreted as meaning statutorily regulated professionals. So, it will be important to make sure the definition is as unambiguous as possible and communicated to a wide range of stakeholders.

3. Further information

3.1 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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[1] Professional Standards Authority 2013, Candour, disclosure and openness - Learning from academic research to support advice to the Secretary of State. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/candour-research-paper-2013.pdf?sfvrsn=5b957120_8

[2] Professional Standards Authority, 2019 Telling patients the truth when something goes wrong. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/telling-patients-the-truth-when-something-goes-wrong---how-have-professional-regulators-encouraged-professionals-to-be-candid-to-patients.pdf?sfvrsn=100f7520_6

[3] For an example, see West Suffolk Hospital where the management appeared more concerned about establishing the identity of the whistle-blowers than about the concerns they were raising. https://www.kingsleynapley.co.uk/insights/blogs/medical-negligence-and-personal-injury-blog/duty-ofcandour-threatened-by-hunt-for-whistleblowers