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Professional Liaison Group (PLG) - Review of the standards of conduct, performance and ethics, 7 November 2014

Second working draft of revised standards

Executive summary and recommendations

### **Introduction**

1. This paper includes a second working draft of revised standards.
2. This draft has been put together on the basis of the PLG's discussion at the last meeting. Changes to the draft presented to the PLG last time are shown ~~struck through~~. Additional text or new standards are shown in **bold, underlined text**.
3. The commentary describes and alerts the PLG to the main changes made since the last draft, particular those standards and areas where further discussion and consideration is required. This is not exhaustive of all the changes made in the second draft – other changes have been made which are either in line with the PLG's discussion at the last meeting (such as reordering standards), or are otherwise of a minor nature (for example, to ensure consistency).
4. The draft has been informed by discussion with the HCPC Solicitor to Council. A meeting has been arranged with him to discuss and finalise the third draft prior to its consideration by the PLG at the final meeting in December. Should any significant changes or issues be identified these will be highlighted to the PLG. (Legal scrutiny routinely takes place when required and at defined stages of the standards development, consultation and finalisation process to ensure adherence to relevant legislation and case law where relevant.)
5. In putting together the draft the Executive has considered again the feedback gathered as part of the research and engagement activities. Similar codes of conduct produced by other regulators have also been used as a reference point. The Executive's assessment is that the decisions of the PLG to date as incorporated in the draft well reflect the feedback we have received as appropriate. However, the Executive considers that it would be useful to consider this further between meetings as part of the iterative process of developing the standards. If any gaps or areas for further consideration are identified as a result they will be highlighted to the PLG at its next meeting.

### **Decision**

The PLG is invited to discuss the attached paper.

The PLG may particularly wish to focus on standards 2, 6, 7, 9, 10 and 11 which were not the focus of its discussion at the last meeting.

**Background information**

None. A copy of the existing standards is included on the agenda to note.

**Resource implications**

None

**Financial implications**

None

**Appendices**

None

**Date of paper**

30 October 2014

## Commentary on second draft of standards

| Draft standard                    | Comments  |
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| <b>General</b>                    | <p>The Executive has reviewed the draft and has made some minor amendments for consistency and clarity.</p> <p>A particular challenge in the standards given their applicability across 16 professions is how we refer to the work undertaken by our registrants. For some registrants (within and between professions) the terms ‘care’ and ‘treatment’ will be considered appropriate, for others they will not. The phrase ‘care, treatment or services’ has been used throughout. The PLG is invited to review whether this is appropriate.</p>   |
| <b>‘Service users and carers’</b> | <p>The consistency of references to ‘service users’ or ‘service users and carers’ was discussed at the last meeting. The following highlights those standards where reference is made only to ‘service users’ with the rationale considered at this stage for doing so. The PLG is invited to consider whether this usage is appropriate.</p> <p><b>Standard 2.</b> says ‘You must respect the confidentiality of service users’ and the remainder of the detailed standards refer to ‘service users’. This standard is about protecting the information of those that registrants are providing care, treatment or services to.</p> <p><b>Standard 3.</b> says ‘You must act appropriately to protect service users’ and 3.1. ‘You must act report any concerns about the safety of service users promptly and appropriately’. The focus of this standard is ‘service user safety’ – i.e. the safety of someone who directly receives care, treatment or services. Where appropriate, a number of the detailed standards beneath also refer to carers.</p> <p><b>Standard 7.</b> The detailed standards under seven about referral refer to service users only, as they are referring to someone who directly receives, care, treatment or services.</p> <p><b>Standard 10.</b> is about informed consent of the person who directly receives care, treatment or services from a registrant.</p> |

## Commentary on second draft of standards

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|   | <p><b>Standard 11.</b> is about keeping records about the care, treatment or services provided directly to an individual.</p>  |
| <p><b>Standard 1: You must promote and protect the interests of service users and carers</b></p> <p>Standard one in the existing standards. Incorporates some principles based on content previously included in existing standard 11</p> | <p><b>Standard 1.2</b></p> <p>The PLG discussed including a reference to maintaining appropriate professional boundaries in standard 1.2.</p> <p>‘You must not abuse the relationship you have with service users and carers’ has been replaced with ‘You must maintain appropriate professional boundaries in your relationships with service users and carers.’</p> <p>The Executive considers that the more negative statement ‘not to abuse’ is subsumed by this more positive statement.</p> <p><b>Standard 1.4</b></p> <p>The PLG discussed rewording this standard to cover referrals – service users and carers should be involved in decisions which are not just about the services provided by the individual registrant. It was suggested that the standard should refer to ‘...involving them in decisions about the care, treatment or other services to be provided’.</p> <p>The Executive suggests that this wording may lack clarity. An alternative wording is suggested, alongside the wording raised in discussion by the PLG. The PLG is invited to consider which wording, if either, it would prefer.</p> <p><b>Standard 1.6</b></p> <p>This standard has been amended to capture the PLG’s discussion about ensuring that the focus on risk in the existing standard 11 (‘You must deal fairly and safely with the risks of infection’) was not lost. In its discussion, the PLG talked about ‘unacceptable risk’ as avoiding all risk was often impossible.</p> |

## Commentary on second draft of standards

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|  | <p><b>Standard 1.7</b></p> <p>This is a suggested new standard. The PLG discussed the importance of the principle that risks should be ‘minimised’ wherever possible. There was also discussion about whether, nonetheless, a specific standard or reference to managing the risk of infection was still required. The suggested wording attempts to incorporate both the general principle and the specific concern about infection control. The PLG is invited to consider whether this standard is required – for example, whether it is sufficiently covered by 1.6 above; and whether it is necessary to specifically reference infection control.</p>  |
| <p><b>Standard 2: You must respect the confidentiality of service users</b></p> <p>Standard two in the existing standards</p>  | <p>Some minor amendments for clarity have been proposed to the draft of this standard included in the papers at the last meeting.</p> <p><b>Standard 2.4</b> was a newly proposed standard and is not included in the existing standards. In the feedback gathering exercises, the most frequent comment from registrants on this standard was that confidentiality is not absolute, as there is a professional requirement for information to be disclosed, even where consent is not given or possible, where there is a public interest reason for doing so, such as where there are over-riding concerns for the safety of the service user or other members of the public. This is reflected in HCPC’s ‘Guidance on confidentiality’.</p> <p>The PLG is invited to discuss this standard to inform a re-draft for the following meeting.</p>  |
| <p><b>Standard 3: You must act appropriately to protect service users</b></p> <p>Incorporates new content and amended content included in standard one of the existing</p> | <p>A number of amendments have been made here in line with discussion at the last meeting.</p> <p><b>Standard 3.2</b> (about escalating concerns wherever necessary) has been changed from ‘should’ to ‘must’. The caveat ‘wherever necessary’ reflects that not every concern will require further escalation, but that there is a professional duty to ensure that where necessary concerns are escalated further to ensure that they are appropriately considered and acted on.</p> <p><b>Standard 3.6</b> is a new proposed standard. The PLG discussed that the principle of enabling service users to make complaints might be incorporated into this standard. This was an area commented on by some registrants and employers during the feedback gathering phase. The HCPC has also committed to considering this area as part of its review of the Clywd review into NHS Complaints (the other</p> |

## Commentary on second draft of standards

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| standards   | <p>content relevant to our role has been addressed in the remainder of this standard).</p> <p>The proposed wording has been drafted in a way which might set an appropriate expectation which is applicable to all registrants and professions, regardless of their level of seniority or working context.</p> <p>Since the PLG's meeting, the statement of eight of the professional regulators on candour has been published, the key part of which is that professionals must:</p> <ul style="list-style-type: none"> <li>• tell the patient (or, where appropriate, the patient's advocate, carer or family) when something has gone wrong;</li> <li>• apologise to the patient (or, where appropriate, the patient's advocate, carer or family);</li> <li>• offer an appropriate remedy or support to put matters right (if possible); and</li> <li>• explain fully to the patient (or, where appropriate, the patient's advocate, carer or family) the short and long term effects of what has happened.</li> </ul> <p>The PLG may wish to consider how successful the current draft is in reflecting the points above in a manner appropriate to the HCPC and the professions it regulates.</p> |
| <p><b>Standard 4: You must justify the trust other people place in you by acting with professionalism, honesty and integrity at all times</b></p> <p>Incorporates content previously included in standards three, 13 and 14 of the existing standards</p> | <p>The wording of the standards here are likely to require further discussion.</p> <p><b>Standard 4.1</b></p> <p>At the last meeting, the PLG discussed the feedback from registrants, employers and others that the phrase 'high standards of personal and professional conduct' was too ambiguous or subjective. Wording was suggested by the PLG which is reflected in standard 4.1 and replaces the requirement for 'high standards'. I have reviewed the content of other regulators' codes on this point and they are reproduced below.</p> <ul style="list-style-type: none"> <li>• Ensure that your conduct, both at work and in your personal life, justifies patients' trust in you and the public's trust in the dental profession. (General Dental Council)</li> <li>• You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession. (General Medical Council)</li> </ul>   |

## Commentary on second draft of standards

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|  | <ul style="list-style-type: none"> <li>• Acknowledge your position of trust and uphold the reputation of your profession at all times through high standards of personal conduct. (Consultation draft of Nursing and Midwifery Council (NMC) code)</li> </ul> <p>Of note is that these standards cover conduct both ‘personal’ and ‘professional’; and the link made between conduct and justifying the trust placed in both the individual professional and their profession.</p> <p>If the wording of standard 4.1 was considered sufficient, the PLG may wish to consider whether the more ‘negatively framed’ statement in 4.2 could then be removed.</p>  |
| <p><b>Standard 5: You must disclose any important information about your conduct and competence</b></p> <p>Standard four in the existing standards</p> | <p>The PLG discussed this standard, including that it should be less punitive in tone and aim to encourage registrants to volunteer information in order to protect the public, whilst ensuring that the information was clear and factual. Some amendments have been made to the text to reflect this discussion.</p> <p><b>Standard 5.3</b></p> <p>Whilst useful, the PLG is invited to note that the content in standard 5.3 is unusual to be included in a code of conduct. It does not readily fit the ‘You must’, ‘You should’ format of the remainder of the standards. It is about giving information about what we do, and how we would make a decision, rather than setting out a requirement of registrants. In short, the content, as included in the existing standards and in this draft, is not really a standard at all.</p> <p>To this end, the Executive suggests that the PLG should consider removing this standard. This content it is proposed is more appropriately covered in the HCPC’s Guidance on health and character (and is already addressed in that guidance document). (This guidance did not exist at the time that the existing standards (and their previous iteration) were developed.)</p> |
| <p><b>Standard 6: You must keep your professional knowledge and skills up to date</b></p>  | <p>No changes have been made to the draft.</p>   |

## Commentary on second draft of standards

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| <p>Standard five in the existing standards</p>   |  |
| <p><b>Standard 7: You must act within the limits of your knowledge, skills and experience and, if necessary, refer the matter to another practitioner</b></p> <p>Standard six in the existing standards.</p> | <p>A number of minor amendments have been proposed to this draft standard. It is proposed that 7.5 in the previous draft is removed as the other standards sufficiently cover this.</p>  |
| <p><b>Standard 8: You must communicate appropriately and effectively</b></p> <p>Standard seven in the existing standards</p>   | <p>The PLG requested the addition of carers to standard 8.1. As a result, the Executive has proposed removing the previous standard 8.2, as it is now covered by standard 8.1 and also more generally in standard 1.4 (working in partnership with service users and carers).</p> <p><b>Standard 8.3</b></p> <p>The PLG discussed that the standards needed to have content which was about the importance of seeking, listening and reflecting on feedback. A new standard, 8.3 is proposed, with wording which attempts to reflect this discussion. ‘Should’ is used here as whilst it is a professional expectation that feedback is sought and used, it would be difficult / inappropriate perhaps to mandate this through ‘must’.</p> <p>The PLG also discussed whether this standard should include a specific requirement about social media. It was agreed for the Executive to propose a standard without an express reference, and one</p> |

## Commentary on second draft of standards

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|  | <p>with an express reference to social media.</p> <p>In practice this has proven challenging. With reference to a standard without an express reference, it has been difficult to come up with wording which reflects the PLG's concerns that 'electronic communication' will be construed to mean email rather than social media, without mentioning social media itself.</p> <p>With reference to a specific standard on social media, this is also problematic. The issues which come up / could come up with reference to registrants and social media are arguably covered elsewhere (e.g. breaches of confidentiality, breaches of professional boundaries, offensive, derogatory comments). The NMC used the following wording in their draft code for consultation:</p> <p>'You must ensure that you use social networking sites and other forms of electronic communication responsibly and in line with our guidance, in particular by not referring to employers, colleagues or past or current people you have cared for.'</p> <p>The Executive considers this wording problematic, given the blanket 'ban' inferred here for all references to employers, colleagues and patients, whatever their nature.</p> <p>Three possible standards are given for the PLG to discuss. The Executive has noted the PLG's recommendation that the Council consider producing separate guidance on social media use.</p> |
| <p><b>Standard 9: You must supervise effectively tasks you have asked other people to carry out</b></p> <p>Standard eight in the existing standards.</p> | <p>No changes have been proposed in the draft to this standard. The PLG is invited to discuss whether any changes are necessary.</p>   |
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## Commentary on second draft of standards

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| <p><b>Standard 10: You must get informed consent to give treatment (except in an emergency)</b></p> <p>Standard nine in the existing standards.</p>                         | <p>No changes have been proposed in the draft to this standard. This is a challenging standard. The references to ‘treatment’ reflect that consent is an issue which engages legislation, including the law on mental capacity. Therefore its applicability was always deliberately focused on those professions and professionals where consent is relevant to the nature of the work carried out. As drafted, this standard will not be relevant to all registrants.</p> <p>The PLG is invited to discuss whether any changes are necessary. This will inform a further draft at the next meeting.</p>  |
| <p><b>Standard 11: You must keep accurate records</b></p> <p>Standard 10 in the existing standards</p>  | <p>Some minor amendments have been made to the previous draft in an attempt to ensure applicability across the professions – for example, for some professions (e.g. forensic psychologists, social workers) service users do not always ask for their services.</p> <p>The first draft of this standard aimed to ensure that it was applicable to record keeping which was both paper-based and electronic (the most frequent comment about this standard in the feedback gathering exercise).</p> <p>The PLG may wish to consider whether the standard as drafted is successful in doing that and whether there is content currently included which might be removed.</p> |
| <p><b>Standard 12: You must limit your work or stop practising if your performance or judgement is affected by health</b></p> <p>Standard 12 in the existing standards.</p> | <p>A minor amendment has been made here to reflect the PLG’s discussion about risk.</p>   |

## Second working draft

### Standards of conduct, performance and ethics

#### 1. You must promote and protect the interests of service users and carers

- 1.1 You must treat service users and carers as individuals and with respect and dignity.
- 1.2 You must ~~not~~ **maintain appropriate professional boundaries in your relationships** ~~abuse the relationship you have with service users and carers.~~
- 1.3 You must not unfairly discriminate against service users and carers by allowing your personal views to affect the services that you provide. This includes, for example, your views about a service user or carer's age, disability, gender, race, religion or sexual orientation.
- 1.4 You must work in partnership with service users and carers, wherever possible and appropriate, involving them in decisions about the care, treatment or ~~other services you provide.~~

#### OR

You must work in partnership with service users and carers, wherever possible and appropriate, involving them in decisions about the care, treatment or other services you provide **to be provided.**

- 1.5 You should try wherever possible **and appropriate** to empower service users to maintain their health and wellbeing and support them to make informed decisions ~~wherever appropriate.~~
- 1.6 You must not do anything, or allow someone else to do anything, which ~~would cause concerns about~~ **could put** the health or safety of a service user **or carer at unacceptable risk.**
- 1.7 **You must take all reasonable steps to minimise the risk of harm to service users, carers and colleagues. This includes, where appropriate, managing the risk of infection.**
- 1.8 You are responsible for your actions and any failure to act.
- 1.9 You must be able to justify your decisions ~~if asked to.~~

## 2 You must respect the confidentiality of service users

- 2.1 You must treat information about service users as confidential and use it only for the purposes they have provided it for.
- 2.2 You must not knowingly release confidential information to anyone who is not entitled to it, and you should check that people who ask for information are entitled to it.
- 2.3 You must only use **confidential** information about a service user:
  - to continue to care, **treat** or provide services to that person; or
  - for purposes where that person has given you specific permission.
- 2.4 You may **must** disclose confidential information where it is in the public interest to do so, such as when this is necessary to prevent harm to other people.

2ND WORKING DRAFT - PLC 07/14

**3. You must act appropriately to protect service users**

- 3.1 You must report any concerns about the safety of service users promptly and appropriately.
- 3.2 You ~~should~~ **must** follow up concerns you have reported and escalate them wherever necessary.
- 3.3 You must be open and honest with service users and carers about mistakes you make and take action wherever possible to put matters right.
- 3.4 You must explain fully and promptly to ~~the person~~ **those** affected what has happened and any likely effects.
- 3.5 You should apologise to service users and carers for mistakes wherever possible.
- 3.6 **You should support service users and carers to raise concerns about the care, treatment or services they have received wherever possible.**
- 3.7 You must give a constructive and honest response to anyone who complains about the care, treatment or services they have received.

- 4 **You must justify the trust other people place in you by acting with professionalism, honesty and integrity at all times**
- 4.1 **Your personal and professional conduct must uphold and support public trust and confidence in you and your profession**  
~~You must keep high standards of personal and professional conduct~~
- 4.2 You must not get involved in any behaviour or activity which is likely to damage the public's confidence in you or your profession.
- 4.3 **You must be honest about your experience, qualifications and skills. This includes in any advertising you may do.**  
~~You must make sure that any advertising you do is fair and accurate.~~
- 4.4 You must make sure that any potential financial **or other** reward does not influence any professional advice or recommendations you make.

2ND WORKING DRAFT - PLC 07/14

## 5 You must disclose any important information about your conduct and competence

5.1 You must inform us and any other relevant regulators if you are:

- convicted of a criminal offence, receive a conditional discharge for a criminal offence, or if you accept a police caution;
- disciplined by any organisation responsible for regulating or licensing a health or social care profession; or
- suspended or placed under a practice restriction by an employer or similar organisation because of concerns about your conduct or competence.

5.2 You should co-operate with any investigation into your conduct or competence, the conduct or competence of others or the care, treatment or services provided to service users.

5.3 **You should be aware that we have** arrangements in place to be told about convictions and cautions involving registrants. ~~We can take action against you if you are convicted of a criminal offence or have accepted a police caution. We will always consider each case~~ **every conviction and caution referred to us** individually to decide whether we need to take any action to protect the public.

We will consider rejecting an application for registration, or removing you from the Register if you are already registered, if you are convicted of a criminal offence or accept a police caution that involves one of the following types of behaviour.

- Violence
- Abuse
- Sexual misconduct
- Supplying drugs illegally
- Child pornography
- Offences involving dishonesty
- Offences for which you received a prison sentence

~~This is not a full an exhaustive list. We will always look at any convictions or cautions we find out about, and we have arrangements in place to be told about convictions and cautions involving registrants.~~

**OR**

**The Executive proposes removing this standard**

- 6 You must keep your professional knowledge and skills up to date.**
- 6.1 You must make sure that your knowledge, skills and performance are of a good quality, up to date, and relevant to your scope of practice.
- 6.2 You need to make sure that whatever your area of practice, you are capable of practising safely and effectively.

2ND WORKING DRAFT - PLG 071114

- 7 You must act within the limits of your knowledge, skills and experience and, if necessary, refer the matter to another practitioner.**
- 7.1 You must keep within your scope of practice and only practise in the areas in which you have appropriate education, training and experience.
- 7.2 ~~Your duty of care when accepting a service user includes the duty to refer them for further treatment~~ **must refer a service user for further care, treatment or services** if it becomes clear that the task is beyond your own scope of practice.
- 7.3 If you refer a service user to another practitioner, you must make sure that the referral is appropriate and that the service user understands why you are making the referral.
- 7.4 In most circumstances, a person is entitled to be referred to another practitioner for a second opinion. In these cases, you must accept the request and make the referral as soon as you can.
- ~~7.5 If you accept a referral from another practitioner, you must make sure that you fully understand the request.~~
- 7.5 You should only provide the referred **care, treatment or services** if you believe that this is appropriate. If this is not the case, you must discuss the referral with the practitioner who made the referral, and also the service user, before you begin ~~any treatment or provide any advice to~~ **provide any care, treatment or services.**

## **8 You must communicate appropriately and effectively**

- 8.1 You must take all reasonable steps to make sure that you communicate properly **appropriately** and effectively with service users **and carers**. This includes listening to their needs and checking their understanding of care, or **treatment or services**.
- ~~8.2 You should also make sure you communicate appropriately and effectively with carers to inform the decisions you make.~~
- 8.2 You must communicate appropriately, co-operate and share your knowledge and expertise with other colleagues, for the benefit of service users and carers.
- 8.3 **You should seek, listen to and reflect on feedback received from others.**
- 8.4 You must make sure that you communicate appropriately, **responsibly** and effectively in all contexts, including in both face-to-face and electronic communication.

**OR**

**You must make sure that you communicate appropriately, responsibly and effectively in all contexts, including when using social networking sites.**

**OR**

**You must make sure that you use social networking sites and other forms of electronic communication appropriately and responsibly.**

**9 You must effectively supervise tasks you have asked other people to carry out.**

- 9.1 You must be sure that people you ask to carry out tasks on your behalf have the knowledge, skills and experience to carry them out safely and effectively.
- 9.2 You must not ask other people to do work which is outside their scope of practice.
- 9.3 You are responsible for the appropriateness of any decisions to delegate.
- 9.4 You must not force anyone to carry out a task if they tell you they do not think they are capable of doing so safely and effectively. If their refusal raises a disciplinary or training issue, you must deal with that separately, but you should not put the safety of the service user in danger.
- 9.5 You must always give appropriate supervision to whoever you ask to carry out a task.

2ND WORKING DRAFT - PLC 01/14

- 10 You must get informed consent to give treatment (except in an emergency).**
- 10.1 You must explain to the service user the treatment you are planning on carrying out, the risks involved and any other possible treatments.
  - 10.2 You must make sure that you get their informed consent to any treatment you do carry out.
  - 10.3 You must make a record of the person's decisions for treatment and pass this on to other members of the health-care or social-care team involved in their care. In emergencies, you may not be able to explain treatment, get consent or pass on information to other members of the health-care or social-care team. However, you should still try to do all of these things as far as you can.
  - 10.4 You must respect that a person who is capable of giving their consent has the right to refuse treatment.
  - 10.5 You must also make sure that the person is fully aware of the risks of refusing treatment, particularly if you think that there is a significant or immediate risk to their life.
  - 10.6 You must keep to your employers' procedures on consent and be aware of any guidance issued by the appropriate authority in the country you practise in.

**11 You must keep accurate records.**

- 11.1 You must keep records for everyone you **care for**, treat or who asks for your advice or services **you provide services to**.
- 11.2 You must complete all records promptly **and as soon as possible after providing care, treatment or services**.
- 11.3 You **should** ~~have a duty to~~ make sure, as far as possible, that records completed by students under your supervision are accurate and appropriate.
- 11.4 You should update records when you review them and if appropriate include a record of any arrangements you have made for the continuing care, **treatment or services**. ~~of the service user.~~
- 11.5 You must not delete information that was previously there when updating records, or make that information difficult to read. Instead, you must mark it appropriately.
- 11.6 You must protect information in records from being lost, damaged, accessed by someone without appropriate authority, or tampered with.

2ND WORKING DRAFT PLC0114

- 12 You must limit your work or stop practising if your performance or judgement is affected by your health.**
- 12.1 You must take appropriate action if your physical or mental health could harm your fitness to practise **or put service users, carers, colleagues or others at risk.**
- 12.2 You should seek appropriate medical advice and act on it.

2ND WORKING DRAFT - PLG 071114