HCPC response to Professional Standards Authority (PSA) consultation on 'The Performance Review Standards – Standards of Good Regulation'

1.   Introduction

1.1   The Health and Care Professions Council (HCPC) welcomes the opportunity to respond to this consultation.

1.2   The HCPC is a statutory UK-wide regulator of 16 health, social work, and psychological professions governed by the Health and Social Work Professions Order 2001. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise.

2.   Consultation questions

Q1a. Should the Standards cover the regulators' performance in respect of Standards and guidance?

2.1   Yes.

2.2   It is important that the regulators are required to publish and promote standards for conduct and competence which clearly describe the requirements for safe and effective practice.

Q1b. What aspects of the work related to setting standards and guidance for registrants should the Standards focus on?

2.3   The HCPC welcomes the requirement for the regulator to publish and promote standards for professionalism, openness and transparency. These are already a core part of our standards, which we believe supports safe and effective practice.

Q2a. Should the Standards cover the regulators' performance in education and training as set out in these proposals?

2.4   Yes, with reservations.

2.5   The HCPC approves programmes against our Standards of education and training, which are common across all the professions we register. These standards cover areas such as admissions, programme design and delivery, programme management and resources, placements and assessments. We support additional standards which would cover the quality assurance processes for education providers.

2.6   There is significant variation across the professions that the nine regulators regulate, and consequently there are substantial differences in the approach each regulator takes to education approvals and monitoring. It is therefore important

that each of the regulators are involved in the development of any standards in this area to ensure that they are appropriate and workable, and enable tailored monitoring of performance.

Q2b. What aspects of the work related to education and training should the Standards focus on?

2.7 Please see responses to questions 2a, 8 and 9.

Q3a. Should the Standards cover the design and delivery of continuing fitness to practise schemes?

2.8 Yes, with reservations.

2.9 Continuing fitness to practise is a key area in regulation, and the HCPC's approach to continuing professional development helps support registrants in ensuring that they maintain their knowledge and skills and practice safely and effectively.

2.10 Our statutory responsibility is to make rules requiring registrants to undertake CPD as set out in standards, and to take action where registrants fail to comply. We fulfil that responsibility.

2.11 We consider that the current standard for continuing fitness to practise is a sufficient and appropriate measure to ensure that the regulators support registrants to demonstrate they remain fit to practise during their professional lives. However, if the PSA were to expand the standards in this area, given the variation in approach across the regulators the standards they would likely need to be set at a high level, and their development would need to involve close engagement with each of the nine regulators to take account of the different contexts within which they operate (for example, factors such as the legislative framework and resources).

Q3b. Which aspects of the design and delivery of continuing fitness to practice schemes should the Standards include?

2.12 Please see our response to question 3a.

Q4a. Should the Standards cover the delivery of the registration function as set out in these proposals?

2.13 Yes.

2.14 Keeping a register which provides a record of any action taken against registration is a core part of our role. The accuracy, accessibility and clarity of that register is important, and we would be happy to engage in further discussions about how the PSA might assess this.

2.15 It is important to ensure that any standards set in this area take into account the different contexts within which the nine regulators operate.

Q4b. What aspects of the registration function should the Standards focus on?

2.16 Please see our response to question 4a.

Q5a. Should the Authority continue to monitor the regulators' activities to prevent illegal or unregistered practice and what level of priority should be given to this work?

2.17 Yes.

2.18 Ensuring that the protected titles we regulate are not misused is extremely important in safeguarding service user safety and confidence in the professions. The approach taken by each of the nine regulators will vary according to the context within which they operate, but we should all work to ensure that appropriate action is taken to prevent illegal or unregistered practice.

Q5b. If yes, do you agree that the Standard(s) should be limited to the areas we have identified above?

2.19 Yes.

Q5c. In general, what aspects of the work related to the prevention of illegal or unregistered practice should the Standards focus on?

2.20 We consider that the Standards should focus on the following:

- The ease with which employers and members of the public can check someone is registered.

- The steps regulators take to raise awareness about protected titles and checking the registration status of health and care professionals.

- Regulators' compliance with the law.

- The timeliness of investigations into protection of title concerns.

Q6a. Should the Standards cover fitness to practise?

2.21 Yes.

2.22 As a core statutory function there should be explicit standards which cover fitness to practise. However, the volume of standards in this area could be reduced. For example:

- Standard 9 is about making decisions public but has similarities with Standard 4 of the Education and Training standards.

- Standard 10 is about information security which applies to all functions not just fitness to practise.

Q6b. Which aspects of the activities related to fitness to practise should the Standards focus on?

2.23 Fitness to practise is a complex area of work for the regulators, and so it follows that there are a higher number of standards. However the standards set for other functions appear to be broader than those for fitness to practise, resulting in a lower volume.

2.24 A more streamlined approach to the standards for fitness to practise might be helpful in focusing the public's attention on the key areas of focus. For example, the standards could outline requirements to:

- Anybody can raise a concern, including the regulator, about the fitness to practise of a registrant.

- Deal with matters as quickly as possible, assessing risk appropriately and reducing harm to patients and service users, prioritising serious cases and referring for an interim order hearing where necessary.

- Where necessary, the regulator will determine if there is a case to answer and if so, whether the registrant's fitness to practise is impaired or, where appropriate, direct the person to another relevant organisation.

2.25 As outlined in our response to question 17, the remaining areas could be covered by overarching principles.

Q7a. Should the Standards cover the governance activities of the regulators?

2.26 Yes, governance should be encompassed by the standards. However, we question whether a separate standard is necessary.

2.27 In the CHRE's report 'Revision of the Performance Review Process and Standards Consultation analysis report June 2010' it explained the removal of the governance standard on the basis that it considered its role to be focused on the regulators' performance in their core regulatory functions, not directly on governance arrangements. It stated that in reviewing the core functions, any failings in governance would be identified and addressed. We think that this reasoning was and remains sounds and we can see no clear rationale for re-introducing a separate standard on governance.

2.28 To some extent the PSA's consultation sets out an approach which favours reviewing the governance mechanisms when operational processes are not working well and are not being addressed properly by regulators' Councils. However, it is not clear how this would work in practice, and what approach the PSA would take to review independence, transparency, quality and effectiveness.

Q7b. Which aspects of the activities related to governance should the Standards focus on?

2.29 Please see our response to question 7a.

2.30 Although we have questioned the rationale and need for a separate standard on governance, good governance is central to effective regulation. If a separate standard were to be considered aspects important to good governance include boards having the following:

- An appropriate mix of skills, knowledge and experience.

- Strong leadership and a common sense of strategic direction.

- Effective relationships, both internal and external.

- Relevant and timely, high quality information in order to make informed decisions.

Q7c. Do you have other comments on our approach to governance?

2.31 Please see our response to questions 7a and 7b.

Q8. Should we introduce a new Standard that requires regulators to have mechanisms that enable them to gather information from students and tutors about compliance with minimum standards of safety?

2.32 Yes, with reservations.

2.33 We agree that regulators have an important role to play in ensuring that students are placed in environments which are safe, both for them and for service users, and that feedback about safety is encouraged and acted on appropriately. However, we are concerned that the wording used here infers a 'one-size-fits-all' approach.

2.34 In light of the Francis report, we have recently introduced a new standard in our standards of education and training which requires education providers to help learners recognise situations where service users may be at risk, support them in raising any concerns and make sure action is taken in response to those concerns. The new standard reads: 'There must be an effective process in place

to support and enable learners to raise concerns about the safety and wellbeing of service users.' (SET 3.17.)

2.35 During our approval process, we meet with students to benefit from their feedback. We do not normally visit placement sites as part of an approval visit, but we may do where a specific concern has been raised by students or staff. We also have established a process to enable us to review concerns that anyone might have about approved programmes and consider whether our standards are still being met.

2.36 We are concerned that the wording used in this proposal appears to lend itself to a 'one-size-fits-all' approach based on the GMC's training survey model, and that this may not be appropriate or workable for our own approach to education approval and monitoring. We would argue that our approach achieves the outcomes that are intended here, but perhaps might not meet any new requirement if narrowly focused only on the regulator gathering such feedback as opposed to ensuring such feedback is gathered and acted on.

2.37 The proposal may also lead to increased burden / duplication given that there are other existing mechanisms for gathering student feedback, such as the National Student Survey.

2.38 We consider that this proposal requires further, more detailed engagement to ensure that any potential changes are proportionate and reflective of the practices across the nine regulators.

Q9. Should we adjust the wording of the Standards to focus on regulators' work in ensuring the robustness of learning assessments?

2.39 Yes, with reservations.

2.40 We would be confident that our existing standards and approach to quality assurance would meet any new standard focused on the regulators' roles in assessing the learning outcomes required for registration. However, we would be concerned that this approach would be unduly narrow in its focus.

2.41 The evidence base for the conclusions reached in this area in 'Regulation rethought' was unclear to us. We agree with the PSA's suggestion that a more substantial review of the regulators' roles in this area might be beneficial (and we would recommend completing the review / creating the evidence base before making changes to these standards). We agree that regulators should be outcomes-focused in their approaches; reducing unnecessary duplication wherever they can; and, where possible, working collaboratively with other organisations involved in quality assurance of higher education. However, we would have a number of concerns if regulators' roles in this area were reduced solely to directly assessing that learning outcomes are assessed and achieved

(albeit that fitness to practise at entry to the Register is and should be the outcome regulators seek to achieve from their quality assurance processes).

2.42 Firstly, it is important to ensure that organisations involved in quality assurance are not inadvertently relying on each others' processes. Regulators withdrawing from quality assuring the overall management and delivery of programmes might risk creating a void in which these issues are not adequately assured by anyone. Even where those processes are assured by the education provider, it is important to bear in mind that their role is to support the interests of the student, as opposed to assuring public safety. Secondly, we would argue that aspects such as course management are integral to the quality and effectiveness of programmes and therefore quality of student experience and achievement of learning outcomes. Education standards and quality assurance arrangements should facilitate and promote the importance of professionalism and facilitate and support students meeting the outcomes required for safe and effective practice and public safety.

2.43 We consider that this might be an area which requires significant research and development to ensure a sufficient evidence base is available before changes are contemplated. This would need substantial input from each of the nine regulators to ensure that the approach protects any risks to patient and service user safety, and is agile to shifts in the health and care landscape.

Q10. Should the Standard covering continuing fitness to practise be expanded to cover the efficacy of the scheme and the regulators' processes for using learning from the scheme to inform other functions?

2.44 No.

2.45 As indicated in our response to question 3a, our statutory responsibility is to make rules requiring registrants to undertake CPD as set out in our standards, and to take action where registrants fail to comply. In addition to meeting this statutory responsibility, we review the standards and outcomes in this area periodically in a way which is tailored to our overall approach.

2.46 We share learning points across our functions in a variety of ways, but it is unclear to us why the standards should have a particular focus in this area. There is significant variation in approach to continuing fitness to practise across the nine regulators, and further detailed requirements in this area would be extremely challenging, both in terms of their formulation and in the regulators' ability to meet them.

Q11. Should we introduce a Standard that covers the portion of the fitness to practise process between the IC/case examiner decision and the final panel?

2.47 Agree in part.

2.48 It may be helpful for the standards to cover the portion of the fitness to practise process between the IC/case examiner decision and the final panel hearing for the reasons outlined in the consultation document. However, it would need to adequately reflect the variety of approaches adopted by the nine regulators. It may also further a more process-focused approach, concentrating on the individual steps taken through the fitness to practise process, rather than taking account of the final outcome. This appears to be at odds with the principles of right-touch regulation.

Q12. Should we introduce a Standard covering the operation of consensual mechanisms for disposal and the appropriateness of their outcomes?

2.49 Agree, in part.

2.50 The HCPC's consensual disposal process is in the public domain, as consent applications are considered by panels and the decisions are published. In terms of our process we are therefore unclear why this requires its own standard. However, we are aware that the other regulators adopt different approaches. If a standard were to be developed in this area, it would need to take account of those differences.

2.51 In addition, as outlined in our response to proposal 11, this again furthers a process-focused approach, whereas an outcomes-based model may be more appropriate and in line with right-touch regulation.

Q13. Should we introduce Standards covering equality, diversity and fairness?

2.52 Yes.

2.53 Equality, diversity and fairness is an integral part of regulation and so we support the introduction of standards in this area.

2.54 Whilst all the regulators will have processes in place to ensure there aren't inappropriate barriers / disadvantage to people with protected characteristics, it will be important in developing the standards for the PSA to be mindful of the systems regulators have in place to collect and analyse the diversity of their registrant population and the differing resources that are available to dedicate to further developments in this area.

Q14. Do you agree with our proposals to rationalise the Standards in the areas we have suggested?

2.55 Agree, in part.

2.56 We agree with the rationalisation of the standards. However, we consider that, given the differences across the nine regulators, it would be prudent to undertake

further engagement on the detail of the rationalisation and we look forward to discussing this further.

Q15. Are there any other areas where you think the Standards could be rationalised or simplified?

2.57 Yes.

2.58 In our response to questions 17 we propose a 'blended approach' to the standards, combining the functional and principles-based approaches to help rationalise and simplify the standards. Annex A provides an example of this blended approach and shows how we consider the standards could be rationalised and simplified.

Q16. Do you think our Standards should specifically include consideration of the information governance arrangements of the regulators?

2.59 Yes, with reservations.

2.60 We agree that there should be standard which covers the regulators information governance arrangements. We consider that the existing standard on this is sufficient, with the caveat that it should be reworded to encompass all the regulators' functions, not just fitness to practise. We would not wish to see further / more detailed requirements in this area, as the regulators have to meet Information Commissioner's Office requirements and any further detail in the Standards for good regulation could therefore lead to unnecessary duplication.

Q17. Do you agree with our assessment of the advantages and disadvantages of the current approach? Are there any considerations we should take into account?

2.61 Yes.

2.62 In particular, we agree that this approach does not address the concerns that the standards are not outcome-focused and do not take account of the different ways in which regulators work.

2.63 We do however consider that there is the potential for further refinement to this model. The standards could continue to cover existing core activities, and the common themes across those standards could be extracted into a group of overarching standards (principles-based) to be adhered to. Please see Annex A for an example of how this blended approach may work.

2.64 Depending on the content of these standards, this blended approach may provide a number of advantages:

- Encourage regulators to look at their performance and behaviours across their regulatory functions and might encourage innovation.

- Avoid duplication.

- Reports could address behaviours which are important and not readily covered by the existing standards, because the overarching standards could detail behaviours rather than specific activities or processes.

- The transition from the current model would be easier for the regulators and the PSA to approach than a shift to an entirely principles-based model.

Q18. Do you agree with our assessment of the advantages and disadvantages of the principles-based approach? Are there any considerations we should take into account?

2.65 Yes.

2.66 However, as outlined in our response to question 17, we believe some of the advantages may be able to be replicated by updating the existing framework.

2.67 We agree with the paper's assessment of the disadvantages of the principles-based approach. If this approach were to be adopted, there would need to be an appropriate level of engagement. In addition, substantial consideration would need to be given to the transition arrangements for each of the nine regulators, taking into account their legislation, model of regulation, and resources.

Q19. Do you think that the Authority should use the principles in Right-touch regulation as the underlying concepts for its assessment of regulators' performance?

2.68 Yes, we agree that these principles are appropriate and should underpin whichever model of standards the PSA takes forward.

Q20. Should the Authority add the principles of Fairness and Efficiency?

2.69 Yes.

Q21. Are there other principles that should be added or different ways of expressing the concepts which might suit our performance review better?

2.70 No.

Q22. Have you any initial comments on the draft wording used in the example (Annex B)?

2.71 Yes.

2.72 A number of references are made to 'patients' throughout, which does not take into account some of the professionals regulated by the HCPC. This should be updated to 'patients or service users' to reflect the position across the nine regulators.

2.73 In reviewing this approach, the addition of fairness and efficiency as principles would improve the clarity of the document.

2.74 The PSA has indicated that if a principles-based approach was adopted more guidance may be required. This additional guidance would be vital if the PSA are to follow a transparent and consistent approach, and would require detailed engagement with each of the nine regulators to ensure they are able to meet the principles.

Q23. Do you have any observations about difficulties that may arise for regulators or the Authority in gathering information and evidence to operate the performance review under a principles-based approach?

2.75 Yes.

2.76 Under the existing framework there are opportunities for increased consistency, clarity and transparency regarding the approach taken by the PSA during its annual review. It is sometimes unclear to us what criteria are used in assessing our performance against each of the standards, and what the acceptable threshold levels are. This can lead to a perceived lack of transparency and equity in how decisions are reached. We think this could be addressed by the PSA publishing decision makers' guidance (similar in intent perhaps to regulators' sanctions policies), setting out the relevant factors it will take into account in determining whether each of the standards are met.

2.77 There is an even greater risk of lack of clarity within a principles-based approach and if this approach is to be adopted we consider it would be necessary for the PSA to provide explicit guidance on how they intend to measure each principle, and give greater clarity on the measures and approach taken to assess adherence to the standards. We recognise that this may reduce the flexibility as outlined in the consultation paper, as the regulators would be subject to detailed guidance rather than broad principles.

Q24. Do you think the Authority should adopt the first or second option?

2.78 Our view is that the model adopted needs to support a more outcomes-focused approach. As outlined in our response to question 17, we think this can be achieved by amendments and rationalisation to the current approach rather than by implementing a new principles-based model.

2.79 Whichever option is adopted, it is important that greater clarity and transparency is provided around the criteria used for determining judgements and the threshold levels used to determine acceptable performance.

Q25. Do you think that the Authority should continue with its 'met/not met' approach? If not, what other approach would you prefer?

2.80 The alternative approach outlined in the consultation paper appears to provide a more informative grading system for the regulators and the public. This may require further refinement / testing prior to implementation.

2.81 The second bullet point in 5.7 also appears confused and may require revision.

Q26. Are there other ways of reporting on performance that the Authority should consider?

2.82 Yes.

2.83 As detailed in some of our responses to earlier questions, we favour the PSA adopting a more outcomes-focused approach to its review of the regulators' performance, providing greater clarity and transparency around the criteria used for determining judgements and the threshold levels used to assess acceptable performance.

Q27. Are there any aspects of these proposals that you feel could result in differential treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010:
- **Age**
- **Gender reassignment**
- **Ethnicity**
- **Disability**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Sex**
- **Sexual orientation**
- **Other (please specify)**

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

2.84 No.