

## Response to Legal Services Board call for evidence on ongoing competence

July 2020

### 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](http://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
  - 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 contribute to the Legal Services Board's call for information on ongoing competence. We have provided an overview of how ongoing competence is maintained amongst health professionals as well as by Accredited Registers along with our position as laid out in our policy paper on the subject.
- 2.2 There are a range of approaches currently in use by the health and care professional regulators and the Accredited Registers that we oversee and these vary accordingly in terms of the level of assurance they provide. In health and care, the statutory professional regulators seek to ensure that registrants remain fit to practise which means maintaining standards of both competence and conduct.
- 2.3 In our policy paper on this area we put forward the view that for health and care professionals, the approach to continuing fitness to practise should be tailored to the risks of each profession. We suggest that regulatory approaches fall on a risk-based continuum ranging from higher levels of

assurance provided by a revalidation approach through to self-reported input based continuing professional development (CPD).<sup>1</sup>

### 3. Detailed comments

#### Professional Standards Authority view

- 3.1 As outlined in our policy paper *An approach to assuring continuing fitness to practise based on right-touch regulation principles*, we have proposed a risk-based approach to continuing fitness to practise. For health and care professionals we suggested the term ‘continuing fitness to practise’ as it is the regulators’ role to ensure that registrants continue to be compliant with the standards of competence and conduct.
- 3.2 We summarised the key proposals from the paper in our more recent report *Right-touch reform*:
- In developing continuing fitness to practise schemes, the regulator’s role should be focused on ensuring that registrants continue to meet the standards of conduct and competence rather than a narrower focus on measurement of inputs such as hours of continuing professional development (CPD) activity
  - The task of seeking to ensure continuing fitness to practise (CFtP) is supported by the regulatory functions of education, standard setting, registration and fitness to practise
  - Regulators should take a proportionate approach when developing appropriate continuing fitness to practise mechanisms, based on a clear assessment of the level of risk of harm in the practice of the regulated group, where and why the risk occurs and the context in which the regulated group operates
  - Continuing fitness to practise measures should be clearly targeted at areas of risk in performance but regulators should also utilise any existing mechanisms which can help to ensure ongoing compliance with the standards
  - Regulators should assess the reliability of different levels of assurance provided by different CFtP measures pursued by assessing how accurately it helps them identify those who continue to meet the standards. The level of risk should determine how reliable a response needs to be
  - There should be transparency to the public on the level of assurance provided by different mechanisms and on how decisions are made on what level of assurance is needed.<sup>2</sup>

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<sup>1</sup> Professional Standards Authority 2012, *An approach to assuring continuing fitness to practise based on right-touch regulation principles*. Available at:

<https://www.professionalstandards.org.uk/publications/detail/an-approach-to-assuring-continuing-fitness-to-practise-based-on-right-touch-regulation-principles>

<sup>2</sup> Professional Standards Authority 2017, *Right-touch reform*. Available at:

<https://www.professionalstandards.org.uk/publications/detail/right-touch-reform-a-new-framework-for-assurance-of-professions>

- 3.3 The Authority assesses the regulators' performance against the Standards of Good Regulation. Standard 13 is: 'The regulator has proportionate requirements to satisfy itself that registrants continue to be fit to practise.'<sup>3</sup>
- 3.4 Although we have only published one performance review report under the new Standards of Good Regulation there was a similar requirement in the previous Standards. In the last 4 years, we haven't failed a regulator against this Standard in part because the main requirement is to have a continuing fitness to practise scheme and to justify the approach taken.

### Summary of statutory regulator approaches to continuing fitness to practise

- 3.5 As outlined in *Right-touch reform* there are a range of approaches currently employed by the health and care professional regulators to ensure continuing fitness to practise amongst registrants. Some broad observations about the developments in approach across the health and care regulators include:
- A shift from purely input-based systems such as hours-based CPD requirements to much broader frameworks of activity based on assessment of registrants' ongoing fitness to practise
  - Consideration of more innovative measures seeking to ensure that registrants understand and continue to comply with the standards throughout their professional life
  - Peer review and feedback as key areas, with almost all of the regulators including this as a continuing fitness to practise requirement
  - Individual reflection on practice a feature of most systems, with requirements for registrants to participate in reflective discussions or complete reflective writing examining how the standards of conduct and competence have been relevant to specific area of their practice
  - The use of patient and peer feedback is also a common feature.
- 3.6 Most regulators base requirements closely around the standards of practice, although some of the regulators including the Health and Care Professions Council (HCPC) have specific standards which registrants must meet to demonstrate continuing fitness to practise.
- 3.7 Social Work England (SWE) also has a specific standard for CPD (Standard 4 of its professional standards).<sup>4</sup> As a new regulator SWE is currently in the process of developing its CPD/continuing fitness to practise requirements therefore it may be helpful for the LSB to discuss this experience directly.
- 3.8 Key differences in approach across the statutory professional regulators include:
- How centralised or decentralised the systems in place are

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<sup>3</sup> Professional Standards Authority 2018, *Standards of Good Regulation*. Available at: [https://www.professionalstandards.org.uk/docs/default-source/publications/standards/standards-of-good-regulation-2018-revised.pdf?sfvrsn=ce597520\\_11](https://www.professionalstandards.org.uk/docs/default-source/publications/standards/standards-of-good-regulation-2018-revised.pdf?sfvrsn=ce597520_11)

<sup>4</sup> Social Work England, *Continuing Professional Development*. Available at: <https://www.socialworkengland.org.uk/cpd/continuing-professional-development-cpd/>

- The evidence needed to demonstrate compliance to the regulator and the frequency/intensity of reporting.
- 3.9 In general, mechanisms utilised to ensure ongoing competence will also depend on the environment professionals are working in. It's easier to have a complex revalidation system involving peer reviews for example in environments where there are reporting structures and strong clinical governance. This would not be as workable in an environment of sole practitioners or businesses where your peers are your competitors.
  - 3.10 It may be helpful to contrast two different regulators to demonstrate the range of different approaches in this area. The GMC system of revalidation requires doctors to participate in local systems of appraisal and receive sign-off from a local Responsible Officer who confirms their ongoing participation. The GMC is ultimately responsible for making decisions on a doctor's revalidation activity based on a recommendation from a Responsible Officer along with any other information available to them. Revalidation takes place every five years; however, doctors are required take part in annual appraisals.<sup>5</sup>
  - 3.11 At the other end of the spectrum, the HCPC outline a set of CPD criteria with which registrants should comply and asks that individuals reflect on their own practice. The HCPC requires registrants to declare compliance with the criteria and audits a sample of CPD submissions.<sup>6</sup>
  - 3.12 The Nursing and Midwifery Council (NMC) process of revalidation is similar to the GMC's with the regulator responsible for making decisions about registrant renewal.<sup>7</sup> Some of the other regulators require submission of a CPD portfolio centrally, however most will only audit a sample of submissions to check compliance.
  - 3.13 This is an area that regulators regularly review and consult on changes in response to emerging risks and developments within the profession. Appendix II of *Right-touch reform* outlines in detail the systems in place in 2017 although there have been a number of changes since then.<sup>8</sup>

### Assessments of effectiveness

- 3.14 The effectiveness of different approaches to continuing fitness to practise/continuing professional development can be difficult to evaluate as there are a number of different factors affecting registrant behaviour and actions. However, several of the health and care regulators have sought to assess the impact of their approach in this area. This includes the GMC's commissioned evaluation of revalidation<sup>9</sup>, an independent evaluation carried out by Ipsos Mori for the NMC looking at the impact of the introduction of

<sup>5</sup> General Medical Council, Revalidation: <https://www.gmc-uk.org/registration-and-licensing/managing-your-registration/revalidation>

<sup>6</sup> Health and Care Professions Council, Continuing Professional Development (CPD): <https://www.hcpc-uk.org/cpd/>

<sup>7</sup> Nursing and Midwifery Council, Revalidation: <http://revalidation.nmc.org.uk/>

<sup>8</sup> Ibid.

<sup>9</sup> Evaluating the regulatory impact of medical revalidation. Available at: <https://www.gmc-uk.org/about/what-we-do-and-why/data-and-research/research-and-insight-archive/evaluating-the-regulatory-impact-of-medical-revalidation>

revalidation for nurses<sup>10</sup> and the NMC's own annual revalidation data report for year 3.<sup>11</sup>

### Accredited Registers

- 3.15 The Accredited Registers programme accredits registers of practitioners that are not regulated by law. Standard 10d) for Accredited Registers (under 'Registration') requires that the organisation/register: 'Requires registrants to keep their practice up to date and checks at appropriate intervals that registrants continue to meet its standards. In deciding its arrangements, the organisation takes account of:
- The pace and extent to which professional practice is subject to change (for example, technological advancements or research based findings)
  - The nature and extent of risk registrants' practice poses to service users and the public.'
- 3.16 The Authority checks the processes that registers have in place to ensure that registrants remain up to date with their practice and any audit outcomes. The majority of the registers audit a sample of registrants' CPD every year.
- 3.17 We are considering doing a thematic review in this area and potentially look to set minimum standards or standards for good practice. We are in the process of carrying out a strategic review of the Accredited Registers programme including reviewing the standards against which registers are assessed.

## 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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<sup>10</sup> Ipsos Mori, *Evaluation of revalidation for nurses and midwives – Year three report*. Available at: [https://www.nmc.org.uk/globalassets/sitedocuments/annual\\_reports\\_and\\_accounts/revalidationreports/ipsos-mori-revalidation-evaluation-report-year-3.pdf](https://www.nmc.org.uk/globalassets/sitedocuments/annual_reports_and_accounts/revalidationreports/ipsos-mori-revalidation-evaluation-report-year-3.pdf)

<sup>11</sup> Nursing and Midwifery Council, *Revalidation Annual data report - Year 3: April 2018 to March 2019*. Available at: [https://www.nmc.org.uk/globalassets/sitedocuments/annual\\_reports\\_and\\_accounts/revalidationreports/revalidation-annual-report-year-3.pdf](https://www.nmc.org.uk/globalassets/sitedocuments/annual_reports_and_accounts/revalidationreports/revalidation-annual-report-year-3.pdf)