HCPC response to Professionals Standards Authority (PSA) consultation on 'The review of the performance of the health and care regulators – A revised process for the performance review'

1. Introduction

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

1.2 The HCPC is a statutory UK regulator of 16 health and social care 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. Our role is to protect the health and wellbeing of those who use or need to use our registrants' services.

1.3 We have responded to the consultation questions below.

2. Consultation questions

Q1. Do you agree with the proposal to move to a rolling programme of performance review?

2.1 We agree in principle with the proposal to move to a rolling programme of performance review.

2.2 We consider that the proposed rolling programme of review which incorporates the outcomes of the PSA's other activities, including the initial stages audit of fitness to practise cases, is a sound one.

2.3 We have two comments to make about this proposal. In the current approach, the regulators know that they will be required to complete the self-assessment template between September and October each year, with further information requested in January of February of the following year. Drafts of the regulators' report and overview section are then considered between April and May. This approach helps the regulators to plan effectively and ensures that sufficient resources are available to participate in the performance review.

2.4 We would want to be sure that the PSA will provide sufficient notice of its intention to ask each regulator to participate in the performance review and that, wherever possible (unless an earlier review is triggered by significant adverse information), the PSA undertakes its stage one review of each regulator in approximately the same period each year.

2.5 In addition, one of the advantages of the current approach is that this provides an easy opportunity for the PSA to moderate its judgements by comparing performance across the regulators. For example, the PSA is able to note changes in the number of data breaches a regulator has reported, but then compare this to the rate of breaches across the regulators as a whole, in order to inform its judgement about whether the regulator has met its standards. This is particularly important given that (appropriately) the PSA does not prescribe performance targets (or their equivalent), and there will be variability between each regulator's performance targets. Both changes in the regulator's performance year-on-year and the regulator's performance relative to other regulators are crucial. The increased frequency of data reporting proposed in the consultation should enable the PSA to continue to do this to some extent. We would be keen that the PSA ensures that the move to a rolling programme did not mean that this opportunity for moderation is lost.

Q2. Do you agree with the proposal that the Standards of Good Regulation should include a new Standard relating to the management of risk?

2.6 Yes.

2.7 We agree that a new standard on the management of risk should be added.

Q3. If so, do you agree with the areas of focus relating to the management of risk?

2.8 Yes.

2.9 The proposed new standard reflects questions already asked by the PSA as part of the existing performance review template and appropriately includes content which looks at how the regulators have used sources of information, such as the outcomes of organisational complaints, to improve what they do.

Q4. Are there other areas that could be defined as management of risk that should be included as part of this standard?

2.10 No.

Q5. Would you prefer the alternative proposal that, instead of including a new standard about the management of risks, we should ask the regulator about forthcoming risks as part of the information we use to decide to scope of their review?

2.11 No.

2.12 We consider that the proposed standard is much clearer and would ensure that comparable information is provided by each regulator.

Q6. Do you have any views on the effectiveness of the question as currently drafted, and whether it will assist us in determining how risk is managed?

2.13 We consider that the proposed question outlined in paragraph 4.8 is too ambiguous and as a result the depth and type of information that the PSA would receive from each regulator would vary considerably.

2.14 The question as currently drafted appears to be much narrower in focus than the proposed standard and would lend itself to answers which focus on the regulators' corporate risk registers and/or duplicating information about performance challenges (if they exist) discussed in response to the other standards. In contrast, the proposed standard is much clearer and broader in scope, covering areas such as organisational learning and governance.

Q7. Should the response to the question be signed off by the Chief Executive, the Chair of Council, the Chair of the Audit and Risk Committee, or a combination of these individuals?

2.15 We consider that it is unnecessary for the PSA to prescribe who signs off the response to this question (if implemented).

2.16 The consultation document does not include any information to explain the PSA's rationale for asking this question. We consider there is no more reason to prescribe who signs off the response to this question than to prescribe who signs off the regulator's response against the other standards. Being prescriptive about sign-off would run counter to the PSA's general approach to its work - that its role is to scrutinise and seek assurance but not to prescribe in detail how the regulators run their own organisations.

2.17 In the event that a question is introduced and prescribing sign off is considered desirable, we would suggest this should fall to the Chief Executive. We would suggest that prescribing the involvement of the Chairs of the regulators' Audit Committees may inadvertently lend itself to a more narrow definition of risk (see our answer to question six).

Q8. Do you agree with the proposal that each regulator should provide information on how it meets the Standards at the outset of the revised performance review process, and in subsequent years only provide information relating to any changes to how the Standards are met?

2.18 We agree in part.

2.19 The PSA has sensibly applied this approach previously. We have been expected to provide updates about our performance against the standards for good regulation each year, without the need to repeat information each year about how we have continued to meet the standards if this has not changed. Not having to repeat the same information each year is a sound approach.

2.20 However, in this case the PSA is only reforming the process it uses and is not changing the standards of good regulation in any significant respect. Given this,

we see no reason why the PSA would need the regulators to restate how they meet the standards at the outset of the new process unless this has changed from the previous year.

Q9. Do you agree with the revised elements of the dataset?

2.21 Overall, we do not agree.

2.22 We consider that the amount of data that the PSA is proposing to request from each and every regulator every quarter is disproportionate. The proposals if implemented would add 32 more data items to the requirements. In some cases, it is unclear how the data would help the PSA in its assessment of the regulators. In others we can see a good reason why the PSA may wish to request this data from regulators when undertaking one of the types of review (change, targeted and detailed) or as part of a targeted request for further information as part of the stage one assessment, but not why the PSA would request this data on a regular basis from every regulator.

2.23 Should the PSA decide to request this additional data, we would have no difficultly in providing it, however. In many cases this information is available in regular reporting to the Council, the Executive Management Team and/or in our annual reports.

Q10. Are there elements that you believe should not be included? If so, please explain your specific objections?

2.24 Please see our answer above. We would request that the PSA looks again at the enhanced data sets and ensures that it only requests additional data on a regular basis where this is proportionate and helps it to make an assessment about the performance of the regulators in terms of outcomes, timeliness and quality. We do, recognise, however, that there may be areas where the PSA will need to ask for information about inputs or outputs in the absence of other suitable outcome measures of performance.

2.25 We have highlighted some of the data items that we consider should not be included below, but this is not intended to be exhaustive.

Registration

2.26 Data items 7 and 8 (number of registrants by route to registration and number of applications by route to registration). These data items may be relevant if the PSA wishes to include descriptive statistics in an individual regulators' report, or in its overview report. However, they are not data items which give the PSA any information (direct or implied) about outcomes (as opposed to outputs), timeliness or quality.

Education

2.27 The additional data listed for education appears to be based on a model whereby regulators undertake a cyclical programme of approval visits. As the PSA is aware, we visit and grant open ended approval to programmes. They are then monitored via the annual monitoring and major change processes which can trigger a fresh visit. As a result, for example, our visit schedule (data item 19) will normally consist of visits to new programmes and triggered visits as required, rather than a set schedule, the failure to adhere to which might be an indicator of poor performance.

2.28 Data item 15 (number of visits where concerns are raised resulting in the regulatory taking regulatory action) may need clarification to ensure that its scope is clear. We assume that the PSA intends that this data item will include visits where a programme is not approved; ongoing approval is withdrawn; or where conditions are attached to approval or ongoing approval. The majority of programmes we visit are approved or re-approved subject to conditions, therefore our answer to data item 15 is very likely to be almost 100% on each occasion.

2.29 Data item 16 (number of cases of student whistleblowing). We would suggest that it might be clearer to refer to 'number of concerns about programmes raised by students to the regulator'.

Fitness to practise

2.30 Data item 38 (number of cases opened by category). We routinely collect his data and report information in our annual fitness to practise annual report. However, we do not think there is a clear rationale as to why the PSA would need to routinely request this information every quarter.

2.31 The rationale given is that this data provides an 'indication of the effectiveness of the regulator's awareness raising, as well as information relation to how a regulator manages whistleblowing and anonymous complaints'. We fail to see how this data would help the PSA to do that. An increase in the number of complaints from members of the public, for example, might be an indication of effective awareness raising; or ineffective awareness raising in that the regulator is receiving an increased number of complaints which do not fall within its remit; or could simply reflect the profile and nature of the practice of the professions regulated by that regulator and wider societal issues which drive increased reporting.

2.32 Other data items proposed in the area of fitness to practise do not appear sufficiently linked to outcomes, timeliness or quality – for example, data item 53 (breakdown of cases by outcome).

Q11. Is there additional data that you believe should be included in the dataset in order for us to gain a clearer understanding of the performance of the regulator?

2.33 No.

Q12. Do you agree with the indicators that we have set out in annex three?

2.34 Overall, yes, but with two exceptions.

2.35 The first indicator reads 'The number of registration appeals upheld where no new information is presented'. This appears to be a fair indicator in that the PSA should legitimately be interested in cases where a decision made by a regulator has been found at appeal to be flawed or inappropriate in some way.

2.36 However, the difficulty with this indicator lies in how the regulators can consistently determine what constitutes 'new information'. In order to appeal, an applicant or registrant has to submit their grounds of appeal. In many cases, new information not previously available is submitted. In others, however, arguably, the registrant does not provide any information which is materially different than that they previously submitted. We would suggest that the PSA would need to be clear about what constitutes such 'new information', particularly if it wishes to make, or allow others to make, legitimate comparisons between the regulators.

2.37 The seventh indicator includes number of cases disposed by 'CPD agreement reviewed by a Fitness to Practise Committee'. We assume this relates to consensual disposal agreements. We would suggest that the PSA should avoid using this acronym, to avoid confusion with its common use to refer to 'continuing professional development'.

2.38 See our answer to question ten for our comments on the third indicator.

Q13. Are there indicators from the dataset that we should include?

2.39 No.

Q14. Do you agree with the proposals that the dataset should be collected from the regulator on a quarterly basis?[1]

2.40 No. Although we understand the reasons for moving to this approach, we do not consider it necessary to ask for the whole of the proposed data set every quarter (see our previous comments about the length of the data set proposed).

2.41 We would suggest the PSA gives consideration to requesting the key indicator data set and/or the existing data set every quarter but only requests some of

[1] The consultation document has two questions numbered 14. We have followed the numbering in the consultation document in our response.

the other additional data items when an assessment indicates they are necessary, or at least on a less frequent basis.

Q14. Do you agree with the proposed methods of assessment and review of each regulator? If you disagree with one or more aspects, please explain why.

2.42 Yes, overall we agree with the proposed methods of assessment and review of each regulator, but with some reservations.

2.43 The overall process is clear and logical. The inclusion of factors to be considered (section seven of annex four) and how the PSA will evaluate the impact and consequences of risk and determine appropriate actions (sections seven to nine of annex four) is helpful. Whilst it is inevitable that there may on occasion be disagreements between the regulators and the PSA as to the judgements it has made, this does provide more clarity about how those judgements are reached.

2.44 The process outlines that a regulator which demonstrated satisfactory performance and no significant changes to practice would not need to undergo a more detailed review. In many circumstances, this is a sound risk-based approach. However we would want to ensure that the approach adopted by the PSA was capable of identifying a regulator that had not undergone significant change over a period of time and therefore had not undergone a more detailed review, but who's performance may have declined relative to other regulators (rather than in absolute terms). We would suggest that the PSA may wish to consider whether to undertake a detailed review of each regulator at least every five years, in keeping with its proposal about the initial stages fitness to practise audit.

2.45 The consultation document says that a targeted or detailed review 'may also involve an audit by us of aspects of either the fitness to practise or the registration process, depending on the nature of the performance concerns that have been identified' (paragraph 3.9). The PSA has previously undertaken audits of the initial stages of the regulators' fitness to practise processes, so its approach in this area is familiar. However, no information is provided about the proposed registration audits and what they might be likely to entail. Further, it would be useful to have information about the legal basis on which the PSA would conduct these audits.

2.46 We would further observe that it is important that the PSA is clear about what they consider to be a significant change in the new process to ensure that inadvertent under or over reporting by the regulators is avoided.

Q15. Are there any other possible impacts relating to these proposals that we have not considered?

2.47 No.

Q16. Are there any further comments you would like to make which are relevant to the proposals, and which you have not already covered?

2.48 No.