Response to consultation

A Review of the Standards of Good Regulation

Introduction

This response reflects our submission to the pre-consultation in December 2016. We welcomed the

approach, underpinned by the overriding purpose of protecting patient safety, would enable the regulators to focus on the best way to deliver that protection.

To demonstrate these concerns we hope that the following illustrations will be helpful:

1. **Prosecutors and investigators focussing upon securing a sanction by whatever means**: We have seen reflections and admissions proffered by registrants to demonstrate engagement then used to form the basis of fresh charges, or used as evidence to assist prosecution. This is well illustrated in the appeal case of Lusinga (judgement attached as appendix), where the attempts by the registrant to admit to dishonesty (incorrectly, as it turned out, through misunderstanding the test for dishonesty) were then turned against the registrant by the NMC case presenter who

us to be leading to illogical outcomes and a distraction from the proper focus on current and future safety.

5. **A focus on the errors of the front-line practitioner, while missing the opportunity to analyse and learn from the systemic issues**: the well-publicised cases of the Ebola nurse volunteers demonstrate this issue well. Their cases revolved around whether they had intentionally mis-recorded a raised temperature in the volunteer Pauline Cafferkey, when she was being checked at the airport upon her return to the UK.

   Many hours of hearing time at the NMC and GMC were spent upon what exactly was said by whom during the few minutes in question. However, it was alleged in all the coverage that Public Health England had failed to plan for and provide a safe homecoming for the volunteers, which had led to volunteers mingling with the public and having to take each-others temperatures in unsuitable surroundings after a long flight. We are aware of no report of any lessons being learnt from these obviously systemic failings.

Responses to questions

Question 1(a
Standards and guidance?

in respect of standards and guidance.

Question 1(b): What aspects of the work related to setting standards and guidance for registrants should the Standards focus on?

We would like to see a clear differentiation between standards and guidance, and their purpose. We would expect regulators to have clear guidance around regulatory issues, e.g. registration processes; interpretation of regulatory standards and guidance and a mechanism to address these with their registrants.

Question 2a): Should
training as set out in these proposals?

We agree the Standards should cover the regulators

to the regulatory body on the health and character of the student includes information on any proceedings that have occurred with a student.

Question 4a): Should the Standards cover the delivery of the registration function as set out in these proposals?

We agree that the Standards should cover the delivery of the registration function as set out in the proposals:

- only registering professionals who meet their standards;
- placing on the Register any action taken against a registrant that limits their entitlement to practice;
- making the Register publicly available;
- ensuring that the Register is accurate, accessible and clear for anyone wishing to used it.

Holding a Register s well as being fundamental to registrants experi4(a)-5(s-6]1 56.64 58175( )]TE)6(d)-3(a) 0 1 158.7837[1vETB(n)-3(d)6(a)-3(m)ET E

Question 5b): If yes, do you agree that the Standard(s) should be limited to the areas we have identified?

- *Whether the regulator has appropriate methods for identifying those case which pose a risk of harm to the public;*
- *The proportionality of decision-*
- *How effectively the regulator liaises with other relevant authorities.*

We believe the areas given in the consultation, to be sufficient to meet the core objective of ensuring, as far as is reasonably practicable, the safety of the public.

In particular, we agree that the focus should be upon the cases which pose a risk of harm and proportionality.

Question 5c): In general, what aspects of the work related to the prevention of illegal or unregistered practice should the Standards focus on?

We would like to see any work focused on how well the regulators are identifying instances of illegal or unregistered practice, and on how well they then work with other relevant authorities, as these are both key to reducing the overall level of abuse.

We note that there is little hard evidence about the overall level and impact of malicious unregistered work[1], (which is not to say that it is not a potential risk) and so we would want this activity to be commensurate with the level and risk posed by unregistered or illegal practice.

Question 6a): Should the Standards cover fitness to practise?

We agree that the Standards should cover fitness to practise, as this is a core component of the Regulators

We would also like to see this widened to include those involved in supporting and assessing students in practice settings, as they are a vital part of the education and training infrastructure and assurance system.

Question 9) Should we adjust the wording of the Standards to focus on regulato ensuring the robustness of learning assessments?

We support the proposal to adjust the wording, on that basis that we believe it unnecessary for the PSA to replicate quality assurance processes around delivery of education programmes, but vital for it to focus on how the learning assessments ensure that the outcomes required for registration are met. This will require the Standard to apply in both academic and practice settings where educational assessments take place.

Question 10) Should the Standard covering continuing fitness to practise be expanded to

scheme to inform other functions?

We agree with the Standard being expanded
regulators processes. We would like processes that are as transparent as possible in their operation, and ones that produce meaningful data that can be efficiently and effectively used to inform learning and secure quality improvement.

Question 11) 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?

We support the introduction of a Standard to cover this part of the process, on the basis that it if the PSA is to have oversight of FtP that it should be throughout the process. It is only through properly drafted allegations and properly evaluated evidence that a registrant can be assured of having a just hearing.

However, we have been aware of the NMC citing the role of the PSA as placing pressure upon them to become more prosecutorial. An example of this has been the far greater likelihood that a charge of dishonesty will be added to other clinical charges simply on the basis that a clinical record has been altered, even if there is no other evidence that the motivation might have been a dishonest one. Often, such charges do not succeed at the hearing, but they cause immense distress to registrants.

- The Standards need to focus upon even-handed and balanced prosecution. In our experience, the role of the PSA has been experienced in one direction by the NMC, leading to more heavy handed prosecution. It is less easy to challenge - , so it is being incentivised. In most cases, over-prosecution does not end up in an appeal, because the panels do not always agree with the case presented to them and appeals are expensive and difficult.

-prosecution is
referenced) where the case presenter did persuade the panel that a nurse who had

The point to be made here is that the effect of PSA oversight has been an incremental anxiety about under-prosecution leading to an overzealous approach, without a counter-weight to guard against the equally pernicious effects of over-prosecution with the risks of unfairness. This is a real danger for organisations that are both prosecutor and adjudicator, and can lead to a loss of trust among their membership. We would look to the new Standards to redress the balance, and to put fairness to registrants on an equal

Encourage regulators to look at their performance and behaviours across regulatory functions and encourage innovation;
Less process-driven, giving greater focus behaviours of regulators;
Avoid the duplication found in the existing approach
PSA reports able to address

Question 23) 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 /P 55.apopah

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