

## **Professional Standards Authority consultation on a revised process for the performance review: NMC response**

### **Introduction**

- 1 The Nursing and Midwifery Council (NMC) is the statutory regulator for nurses and midwives in the UK. We exist to:
  - 1.1 protect the health and wellbeing of the public;
  - 1.2 set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers; and
  - 1.3 ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.
- 2 We hold the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, we investigate that allegation and, where necessary, take action to safeguard the public.

### **General comments**

- 3 We are committed to being open and accountable for how well we protect the public.
- 4 We welcome the review of the current performance process. As part of this, we would be keen to see the Authority and regulators develop together a clear, shared understanding of the fundamental purpose of the performance review process and what it is seeking to achieve. In our view, the primary consideration in determining any revised process should be the added benefit to patient and public safety.
- 5 We consider that any revised process should be consistent with right touch regulation principles, and include the following essential elements:
  - 5.1 transparency: clarity about what constitutes good performance with clear published criteria and metrics setting out the level of performance required to meet each Standard,
  - 5.2 objectivity, fairness and consistency: judgements on performance should be evidenced and subject to robust moderation.
  - 5.3 proportionality: recognition of the significant variation in the size of task faced by each regulator, with due account taken of materiality in reaching performance assessments, where appropriate.

- 5.4 a focus on outcomes and substantive public protection issues, not detail.
- 5.5 a dynamic process that helps us drive real improvements in our work for the benefit of the public. More focus on “what works” and transferable good practice. A process that is proportionate and adds value for the public benefit.

6 We welcome those aspects of the proposals which move in this direction and would urge the Authority to consider the scope for building on these further in developing the final content of a revised performance review process.

#### **A rolling performance review process**

- 7 We see value in a moving to a rolling programme and in combining the various oversight activities, such as the initial stages audits, within a single performance assessment process.
- 8 In practice, we would be interested to understand what assessment the Authority has made of the practical feasibility of this approach, reflecting on the challenges encountered this year in relation to our performance review report and the outstanding initial stages audit from 2014.
- 9 Essential to the introduction of a rolling programme would be a commitment to agree a clear timetable with each regulator, recognising the extensive resource that regulators are required to commit in complying with the performance review process. A collaborative approach to agreeing realistic and reasonable deadlines with each regulator in relation to each stage of the process will also be necessary if a rolling programme is to work effectively.
- 10 We consider that the new process presents an opportunity to introduce more direct communication and ongoing interaction throughout the performance review. This would reduce the significant quantities of written evidence, data and supporting documentation currently required, which is time consuming and resource intensive for both the regulators and the Authority and we would encourage more immediate engagement to discuss issues as they arise, so that the resulting reports have currency and relevance rather than being simply a backwards look which may no longer reflect latest practice.
- 11 We have previously advocated adoption of a thematic based approach across regulators, as likely to yield positive results in helping cross-fertilise good or innovative practices. We would not wish a rolling programme to reduce the scope for this and would encourage the Authority to consider how a thematic approach could be built into any revised process.

#### **A risk based approach**

- 12 We fully support the principle of moving to a more proportionate, targeted and risk based approach to performance review.
- 13 Critical to the success of this will be clarity about, and confidence in, the methodology used to reach any assessment of the extent of further performance review to be undertaken. The lack of detail provided in the consultation about the

criteria that will be used to determine this remains a concern. We have previously encouraged the Authority to consider seeking external input to validate any methodology it proposes to adopt for this purpose and consider that there would still be value in doing so.

- 14 In cases where a full performance review is proposed following initial assessment, it is unclear how this will vary from the current process. We would therefore welcome reassurance that the introduction of this additional initial stage assessment will not simply add a further layer onto an already resource intensive and time-consuming process.
- 15 More generally, we would strongly encourage the Authority to give fuller consideration to how it could apply a more proportionate approach to the way in which it conducts the whole range of oversight activities. This includes for example, moving towards a more targeted, risk based approach to the review of final fitness to practise cases; generation of 'learning points'; and revisiting its approach to initial stages audits. We believe there is scope for greater added value and helping identify performance improvements by adopting such an approach.

#### **FTP and Registration audits**

- 16 As indicated, whilst we welcome the proposals for combining any 'audits' within a single performance assessment process, we would urge that the opportunity be taken to revisit the methodology used for existing FTP initial stages audits and to ensure that a proportionate approach is taken in developing a registration audit.
- 17 Currently the methodology employed by the Authority does not accord with any recognized 'audit' standards. We note that the consultation is silent on the content of the registration audit and would be keen to understand how it is envisaged that such audits would be conducted, the criteria to be used, and how these will help regulators enhance public safety.

#### **Standards of good regulation**

- 18 The existing Standards of Good Regulation have been in place for some five years. Whilst much of the content is laudable, the Standards vary widely in nature and scope and are repetitious in parts. In some cases there is undue focus on inputs at the expense of outcomes; some are of limited relevance to certain regulators but important to others, such as that relating to 'protected titles'; others such as information security, duplicate the work of other regulators, in this case the Information Commissioner.
- 19 We are therefore disappointed that the opportunity has not been taken to review the currency and relevance of the Standards. Both for the above reasons and to ensure that these are future proofed to take account of the changing nature of the healthcare landscape, for example, the greater emphasis on collaborative working from a wider public protection perspective.
- 20 In common with other regulators, we are seeking to rebalance our approach to regulation towards promoting professionalism and maintaining standards, rather than addressing the consequences of failure through fitness to practise activity.

The emphasis within both the current Standards of Good Regulation, with ten of these relating to FTP, combined with the focus on FTP measures within the proposed expanded dataset, seems out of tune with this approach.

### **Management of risk**

- 21 We would question whether there is yet sufficient clarity about what the introduction of this additional element to the performance review is intended to achieve and how it will add value. As currently proposed, this appears to encompass both internal governance and risk management and capability to manage regulatory risk.
- 22 In respect of governance and internal risk, all regulators have risk management policies/processes in place, together with internal and external audit arrangements. Careful thought will be needed to ensure that there is no unnecessary duplication or no usurpation of the functions of regulators' Councils.
- 23 In relation to regulatory risk, as the Authority is aware the King's Fund review of midwifery regulation was unable to find significant quantitative evidence about the impact of regulation on public protection or any quantifiable evidence about the nature of the underlying risk to be mitigated. In these circumstances it is difficult to be clear on what basis judgements would be reached about regulators' ability to manage regulatory risk; what would constitute 'good performance'; or what remedial action would ensue should a regulator be found not to be managing regulatory risk well.
- 24 We are not persuaded that either the proposed standard or the alternative question provides a sufficiently sound basis for moving forward at this stage. It is also unclear how a single assessment of performance could encompass both elements: it is not always inevitable that internal risk management weaknesses will impact on public protection. On balance, we would tend to favour a question rather than the proposed standard but would welcome the opportunity to work with the Authority, in collaboration with other regulators, on how this might be better framed in a way which lends itself to objective assessment.

### **Common dataset**

- 25 We support the aim of developing a common dataset but consider that this comprise a limited set of outcome focused data items which give scope for meaningful comparisons of performance to be made across some or all regulators, where appropriate. Such an approach would be in line with current trends elsewhere in the health sector, for example, Lord Rose's recent review on NHS Leadership.
- 26 The Authority's proposals for a considerably expanded dataset submitted quarterly are at odds with that direction of travel and potentially represent a significant new burden on regulators. Accordingly, we would expect to see justification of the need for each data item; an explanation of how it will be used as evidence in relation to any specific standard and add to the Authority's ability to make an informed assessment of performance. A more modern approach might be for the Authority to focus on how we monitor and report on our own performance and the starting

point should be the data we are already monitoring and reporting in the public interest.

- 27 The impact and costs for regulators of complying with the Authority's proposals would need to be taken into account. In our case, we envisage that this would require process and system changes. These are unlikely to be feasible in the current year and would have a cost attached, as would the need to collect, analyse and submit a much larger set of data on an ongoing quarterly basis.
- 28 More generally, the proposed approach seems ambitious, given the current challenges in developing consistent definitions and reporting of data across the regulators and it is unclear how progress is to be made on this front.
- 29 Finally, as the Authority will appreciate determination of performance indicators and targets is a matter for Councils and we would encourage a more circumspect approach which avoids any suggestion that the Authority is seeking to impose 'key performance indicators' on regulators.

### **Impact assessment**

- 30 The PSA is right to expect regulators to carry out impact assessments when they are consulting on change, and we suggest these proposals would benefit from a full regulatory impact assessment.
- 31 In particular, we would expect to see a full cost-benefits analysis undertaken in relation to the proposals for collection of a considerably expanded data set on a more frequent basis than is currently the case, taking into account the costs to both the Authority of collecting and utilising this data and the costs to each regulator.
- 32 The new funding model places the PSA and the regulators under a shared obligation to ensure that regulation is proportionate, and the costs and burdens on the regulated, manageable. Given the expectation that the Authority's oversight should be proportionate to the risk, we would expect the costs of the performance review process both to the Authority, and to regulators in complying with the process, to reduce not increase. We would refer the Authority to our response to the separate consultation on the 2015-2016 funding requirement in this respect.

### **Conclusion**

- 33 Responses to the specific questions are set out at annexe 1.
- 34 We are keen to ensure that any revised performance review process has credibility and secures the confidence of regulators, stakeholders and the public.
- 35 We remain willing to work with the Authority to shape the revised process to ensure this supports the objectives we all share of enhancing public safety and strengthening confidence in the professions we regulate and in professional regulation.

**Nursing and Midwifery Council**  
**July 2015**

## Responses to specific consultation questions

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

See our response at paragraphs 7 to 11.

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

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

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

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

**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?**

Please see our response at paragraphs 21 to 24.

**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?**

Any input to the performance review process should be signed off by the Chief Executive and Registrar. The outcomes of the performance review process should be a valuable tool for the Council but should not in any way seek to replace or undermine the Council's role as the governing body accountable to Parliament.

**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?**

No. We consider this to be disproportionate and unnecessary. The Authority already holds a wealth of information provided by each regulator evidencing its performance against the Standards. As now regulators, should only be asked to report any significant changes. Any other approach would not accord with the principles of 'right touch regulation.'

**Q9: Do you agree with the revised elements of the dataset?**

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

**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?**

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

**Q13: Are there other indicators from the dataset that we should include?**

See our comments at paragraphs 25 to 29.

In general, we would prefer to see the Authority develop any common data set from first principles, rather than adding to the current data set. This would enable each proposed data item to be rigorously tested against clear criteria to determine how the data contributes to an assessment of performance against a given standard.

**Q14: Do you agree with the proposals that the dataset should be collected from the regulator on a quarterly basis?**

We are not persuaded that the Authority has made a case for this, we remain unclear what would be achieved by collecting data this frequently and how the data would be used.

**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.**

Please see our response at paragraphs 12-20.

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

See our response at paragraphs 30 to 32. We consider that any revisions of the process must be considered alongside the new funding arrangements for the Authority and that the overall costs of any revised process for both the Authority and for each regulator in complying with the process should be contained within current parameters and not increase.

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

This is addressed throughout the body of our response.