

**Professional Standards Authority consultation:
The review of the performance of the health and care regulators – a revised
process for the performance review**

GPhC response

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

We can see that a rolling review cycle makes sense for the Authority in spreading its workload through the year. We also support the proposal that other information arising from, for example, initial stages audits, section 29 referrals and Council papers, is considered alongside the regulators' evidence submission reporting against the standards of good regulation.

The current process requires the regulators to complete the evidence submission at a fixed point in the year. The process is resource intensive but as it takes place at the same time every year we are able to plan for it. If a rolling programme is to be implemented sufficient notice should be given to each regulator as to when they will be required to report.

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

We agree that consideration of governance and risk management arrangements would be useful to the Authority alongside its review of the regulators' performance against the current standards of good regulation.

If this standard is to be introduced the Authority should be clear about what criteria it will use to assess performance against the standard i.e. what does good look like?

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

Yes. The standard as drafted contains some information already collected as part of the performance review process and some additional areas. As stated above, if the Authority is to make judgements on the regulators' performance in the areas of governance and risk management, it should be transparent about the basis on which those judgements are made.

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

No.

5. 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 the scope of their review?

The standard on risk would be our preferred option.

6. 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?

The question as drafted focuses on the prospect of regulators failing to protect the public. It is unlikely that this will yield useful information about how the regulators are identifying risks. We would suggest that the Authority should focus on assuring itself that regulators have appropriate risk management processes in place rather than consideration of individual risks.

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

This is a matter for the regulators.

8. 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?

We do not consider it necessary to repeat the evidence submission reporting against the standards for this year. The Authority should have enough information from the 2014/15 review process, information we produce on an ongoing basis, for example performance monitoring reports to Council, to make a judgement about what type of review is required for each regulator for 2015/16.

If a new standard relating to governance and risk arrangements is introduced, we would suggest that regulators could report against this standard only for 2015/16.

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

No. We would support the development of a core dataset but this should be limited to the collection of the minimum amount necessary for the intended purpose. We would welcome the opportunity to work with the Authority and other regulators to achieve this. Please see comments in response to questions 10, 12 and 14 (1).

In addition, part of the rationale for the new dataset is to provide greater consistency and reliability (para. 6.4). It is difficult to see how this would be achieved through the proposed increase in the number of data items or quarterly reporting.

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

We do not agree that the case for the significantly increased dataset has been made. We feel the Authority should engage with the regulators to clarify the intended purpose of the proposed data items and agree a core dataset with agreed definitions and consistency of reporting by the regulators.

11. 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?

No.

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

If the Authority plans to report on key indicators to compare performance across the sector it is essential that there are clear definitions and consistency of reporting by the regulators.

It is unclear why this particular set of indicators has been proposed or what they are intended to demonstrate. In addition, please see our comments above about how the Authority intends to use the data and the need for clear criteria/decision frameworks.

We have concerns about two of the proposed indicators in particular:

Key indicator No. 3: ‘% of QA visits where concerns raised result in regulatory action’ – it is unclear what judgement will be made on the basis of this. Also, if a regulator has only carried out one visit in a quarter the result might be 100% - would that be good or bad?

Key indicator No. 10: Data breaches reported to ICO – there is no indication as to what an ‘acceptable’ level would be. If the Authority wants to scrutinise/monitor data breaches, it should focus on any action taken by the ICO rather than how many incidents have been reported. It is ‘regulatory overlap’ for Authority to be monitoring (indeed holding up as a key indicator) issues we have reported to the ICO.

13. Are there other indicators from the dataset we should include?

No.

14(1). Do you agree with the proposals that the dataset should be collected from the regulator on a quarterly basis?

Providing such a large dataset on a quarterly basis would substantially increase the burden on regulators. In addition, the data collected from the regulators is not always comparable due to differences in definitions used.

We would also question whether the Authority has the capacity to analyse and interpret such a large volume of data from all the regulators on a quarterly basis.

The proposed dataset has 62 items, rather than the 15 collected previously, which will add to the burden considerably, particularly as not all the data requested is automated. In addition, the data may require context/narrative or prompt questions from the Authority which will also add to that burden.

14(2). 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.

In principle we agree with the approach as described. We do, however, have a number of concerns about how the process will be carried out.

The assessment stage, as described, does not indicate that there will be any discussion with the regulators before a decision is made as to the type of review that will be carried out. We would suggest that this would be a helpful step to add into the process.

As with the current performance review process, it is not clear from the proposals how judgements will be made. Conclusions are reached without an explanation of the criteria/metrics used. There should be greater transparency around these.

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

As the regulators fund this activity we would be seeking clarity on costs and assurances that the overall cost of the process will not increase.

We would also suggest that an impact assessment be carried out to assess the full impact of the proposed process on the regulators and on the Authority.

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

We welcome the proposal to revise the current performance review process and would support the introduction of a two stage process involving different types of review based on an assessment of a range of information.

We support the aim of developing a comparative dataset, but this should be kept to a minimum and the Authority should be clear about the justification for the data it is proposing to collect. We do not consider that the case has been made for the revised dataset as outlined in the consultation document.

We produce performance monitoring reports for every Council meeting. The Authority has indicated that the revised process will include greater scrutiny of information produced by the regulators, including Council reports, as part of its assessments. We would suggest that using this information, rather than collecting large amounts of separate data on a quarterly basis, would be a more proportionate approach.

We would be happy to work with the Authority and other regulators to agree a core dataset comprising a small number of high level indicators.

The proposed review process involves judgements being made about performance and compliance with standards. Judgements would also be made at the assessment stage to make a decision on what type of review each regulator would be subject to. There is, however, no indication as to what methodology, criteria or frameworks would be used as the basis of these judgements. In addition, there is no indication that the assessment stage involves any engagement with the regulators, or any mention of an appeals process at any stage.

It is unclear from the consultation document how the Authority will judge the success of the revised process. It does not set out what it expects the process to achieve. The proposed emphasis remains on scrutinising fitness to practise processes. Whilst this is important, we would also like to see the process as a mechanism for identifying and spreading good practice that supports the regulators as they work to drive improvement and promote professionalism within their sectors.

It is disappointing that a regulatory impact assessment has not been carried out to assess the full impact of the proposals on the regulators and the Authority. We would suggest that this is carried out before a final decision on a revised process is made.

Overall we would want to see a more transparent, proportionate review process, consistent with the Authority's 'right-touch' principles.

General Pharmaceutical Council
27 July 2015