23 January 2018

Health and Care Professions Council response to Department of Health consultation: 'Promoting professionalism, reforming regulation. A paper for consultation'

1. About us

The Health and Care Professions Council (HCPC) is a statutory regulator of health, social work and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 professions. 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 public. We regulate 15 professions on a UK-wide basis. Social workers are regulated in England only.

2. Introduction

We welcome the consultation on regulatory reform. The consultation provides a helpful diagnosis of the challenges facing the professional regulators and sets out some clear proposals for how meaningful change might be achieved.

In particular, we welcome the consideration given to how the regulatory system might be simplified to foster greater consistency and reduce costs. The focus in the consultation on how the regulators can support professionalism, and not exclusively on their role in fitness to practise, is also to be welcomed.

We are keen to secure as soon as possible the immediate legislative changes we need to improve the effectiveness and efficiency of our regulatory functions. Our priorities for legislative changes are set out in Annex B and many of the proposed changes are about driving improvements in our handling of fitness to practise cases, in line with the objectives outlined in the consultation.

We note that the scope of the consultation is limited directly to the UK regulation of healthcare professionals. We are the regulator of 16 professions across health and care, including social workers in England, so our response is informed by our experience across the breadth of the different professions we regulate.

The consultation document highlights that, in the creation of a new 'bespoke' regulator of social workers in England, there will be 'alignment with the principles behind the approach to regulation of all health and social care professions'. However, we note that there will inevitably be unhelpful divergence – the suggestion that there should be a substantial reduction in the number of professional regulators of healthcare professionals, to drive consistency of approach and reduce costs, is

inconsistent with the decision to create a separate regulator of social workers in England.

3. Responses to the consultation questions

Q1. Do you agree that the PSA should take on the role of advising the UK Governments on which groups of healthcare professionals should be regulated?

No. We do not agree that the Professional Standards Authority (PSA) should take on this role. We have two concerns in this area: the criteria and the process used to make decisions against those criteria; and the potential for conflict of interest.

We have outlined our views on the criteria suggested by the PSA in our response to question two. At this stage we consider that it needs considerably more refinement before we can be sure that the outcomes are robust and reliable.

The consultation document correctly concludes that it would not be appropriate for the statutory regulators to be involved in advising the four UK Governments on the regulation of further groups. It is important that these decisions are made impartially and independently from those with a stake in the outcome. However, we disagree with the conclusion that the PSA's role in accrediting voluntary registers will not create a conflict of interest. Conflicts of interest are often a matter of perception. The consultation is clear that the purpose of providing advice against published criteria would be to determine the 'appropriate level of regulatory oversight'. This brings PSA administered accredited voluntary registration within scope. Further, the PSA's funding model, based on funding from both statutory regulators and accredited voluntary registers, might also create further potential for conflict.

We recognise the role the PSA carries out in providing advice from time-to-time to the four UK Governments. We also note that the PSA has already used its criteria in providing advice about the regulation of nursing associates in England. If the PSA was to continue providing such advice, additional steps should be taken to improve transparency and mitigate the potential for conflict. A panel independent of the PSA Board (and of other potentially conflicted interests) might be established to provide recommendations on the basis of evidence gathered by PSA employees. Further, the PSA might also be required to consult on its preliminary advice and publish how it has taken into account the responses in finalising its advice to the four UK Governments.

Q2. What are your views on the criteria suggested by the PSA to assess the appropriate level of regulatory oversight required of various professional groups?

The criteria are a helpful starting point in attempting to bring some rigour to this area. However, at this stage we are unconvinced that the criteria, and the process used to make judgements against those criteria, are sufficiently clear or robust.

We agree with the PSA's own conclusion that decisions in this area should be a matter for judgement rather than science or ideology. There are many elements of the criteria that, albeit inevitably subjective to some extent, are sound. For example,

the factors of intervention, context and agency have been widely agreed as central to considering risk in the sector for some time.

However, we have concerns about some elements of the criteria and their practical application, outlined below.

- Risk will vary within as well as between professions and this needs to be taken into account in any assessment. Professions are also dynamic and risks may change over time. This makes a single point assessment, particularly if used to deregulate a profession, highly problematic.

- The published criteria are silent on how the criteria would be weighted and scored and this would be challenging. This would be particularly the case where there are inevitable value judgements – for example, how do you weight psychological harm compared to physical harm?

- The PSA say the first stage of the assessment, intrinsic risk, is scored but do not say the same for stage two, extrinsic factors. In our view further work is required to further develop these extrinsic factors so that the judgements to be made in each are clearer. They should also be weighted and scored.

- We are concerned about the potential for the size of a professional group, a factor included in the stage two assessment, to become an unnecessary barrier to their regulation. Size should not be seen as a primary influence on risk.

- Regulation is seen increasingly as an enabler for workforce transformation. Recent arguments for the regulation of the medical associate professions, for example, have often concerned the potential for this group to increase in size and influence and make an increased contribution to healthcare delivery, if properly regulated. Whilst we agree that the decisions about regulation should be made primarily on the basis of risk mitigation, additional consideration might need to be given to this dimension.

Overall, the application of any criteria would need to guard against unhelpful judgements based on assumptions about a professional group and its practice, rather than properly considered evidence.

For example, arts therapists have previously been suggested as a group for whom statutory regulation may be unnecessary. However, our data shows that whilst the incidence of fitness to practise cases in this profession is low, severity of harm is high. Since 2001, 8 of 15 cases where a sanction was imposed concerned inappropriate personal or sexual relationships with service users, cases which involved the abuse and/or exploitation of vulnerable service users (see Annex A).

We consider that further development and piloting is required before the criteria becomes routinely applied.

Q3. Do you agree that the current statutorily regulated professions should be subject to a reassessment to determine the most appropriate level of statutory oversight? Which groups should be reassessed as a priority? Why?

In principle, it may be appropriate in time for the current statutorily regulated professions to be reassessed. However, we do not consider this to be a high priority and we have not identified any groups which in our opinion are a higher priority for reassessment.

We recognise that the extension of statutory regulation in the past has been incremental and driven by a number of factors including political factors. If a more coherent approach to regulation is a desired outcome from regulatory reform, it is logical that this should extend to both professions being considered for regulation and those that are already regulated. In answering this question, we are cognisant that as an existing statutory regulator we have a self-interest in retaining the regulation of the professions we regulate.

Our view is contingent on the issues outlined in our responses to questions one and two being satisfactorily addressed before any criteria or process was applied. We also consider that there are some specific issues related to existing regulated professions that would need to be considered in any assessment and have outlined these below.

This approach, should it lead to de-regulation of an existing regulated group, is not without significant risk. The logic of the PSA's model might be that deregulation could occur once, following an analysis of risk, it had been concluded that a different form of assurance, such as voluntary registration, was sufficient to manage the risk. However, where a group has been regulated by statute for some time the feasibility / non-existence of alternative systems of assurance would need to be considered. A practical example would be that if one of the professions were de-regulated there would not immediately be an organisation willing and competent to maintain a voluntary register for that group unless the Government was willing to fund this. A failure to do so would heighten the public protection risks involved.

In addition, consideration would need to be given to how service delivery is influenced by statutory regulation and might be detrimentally affected by de-regulation. Statutory regulation is one catalyst for workforce transformation, providing an additional 'safety net' which can enable service providers to consider changes to care delivery models and clinical governance arrangements that they might not otherwise. Deregulation might destabilise the workforce by reducing recruitment, especially in smaller professions.

Removing some professions from statutory regulation, even within a consolidated sector, might have a detrimental impact on a regulator's financial viability by removing income that contributes to overheads. This would run counter to the consultation's aim that regulation should in future be 'less costly'.

Any re-assessment should therefore include a thorough impact assessment of any change upon groups including service providers, health and care professionals and regulators.

Q4. What are your views on the use of prohibition orders as an alternative to statutory regulation for some groups of professionals?

In principle, a system of prohibition orders may be a more appropriate approach for occupations where there is no viable voluntary register in existence (and there is unlikely to be) and where issues of cost and proportionality mean that full statutory regulation may be unfeasible or disproportionate. However, we note that this model has yet to be developed or implemented in the UK context, limiting the ability of stakeholders to fully assess the relative advantages and disadvantages at this stage.

We have previously suggested a system of prohibition orders as a suitable approach for regulating adult social care workers in England, taking into account the size and relatively transient, low paid nature of the workforce.[1]

This model should be viewed as distinct from statutory regulation – one difference being that the lack of a register and education quality assurance limits the ability of the regulator to play a more direct role in developing professionalism. As a result, it may be a more appropriate tool for occupations rather than professions.

The main challenge in implementing such an approach is financing – the absence of a 'positive' register means that alternative funding sources (such as taxpayer funding or a levy on employers) would need to be secured.

Q5: Do you agree that there should be fewer regulatory bodies?

Yes. We agree that there should be fewer regulatory bodies. The consultation document sets out a persuasive rationale for reducing the number of regulators and correctly identifies the potential benefits. In particular, reducing the number of regulators would have benefits in simplifying the landscape, providing increased clarity for members of the public about whom to contact; and in achieving economies of scale.

In previous reforms, consistency of approach has been an ongoing challenge and the number of different regulators, each with their own legislation and governance arrangements, is a significant barrier to achieving this. It is increasingly difficult to justify many of the differences between the regulators – minor or more significant – on any logical or sound basis. For example, the PSA has recently identified variation in the thresholds for investigation of fitness to practise cases applied by the regulators, highlighting 'major inconsistencies' in legislation, policy and implementation and possible risks to the public.[2]

[1] HCPC (2014). Proposal for regulating adult social care workers in England. http://www.hcpc-uk.org/assets/documents/100049BFHCPCPolicystatement-RegulatingtheadultsocialcareworkforceinEngland(Nov2014).pdf

[2] Professional Standards Authority (2017). Right touch reform. A new framework for assurance of professions. https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-reform-2017.pdf?sfvrsn=5

A reduction in the number of regulatory bodies would entail an extension of the model of multi-professional regulation, a model we have successfully operated for a number of years. The benefits we have seen in multi-professional regulation are consistent with the benefits outlined in the consultation document and include the following.

- Common standards and processes (wherever possible and appropriate) ensuring consistency of approach across multiple professions.

- A single point of access for members of the public (i.e. ability to check registration for multiple professions).

- Promotes equity between professions.

- Avoids regulatory capture where the profession regulated exerts undue influence on the regulator.

- Economies of scale – we currently have the lowest renewal fee of all the nine regulators overseen by the PSA.

- A clearer division of responsibilities between professional body and regulator, allowing the professional body to focus on promotion of the profession.

In answering this question and the questions that follow, we have taken a whole of sector view, with the needs of the public and public protection in mind. We recognise that a reconfigured sector, and the number, names and structure of the organisations within it, may look radically different than it does today.

Q6: What do you think would be the advantages and disadvantages of having fewer professional regulators?

The advantages of having fewer regulators are those identified in paragraph 2.14 of the consultation document and outlined in our response to question five above.

In moving to a reconfigured sector, it will be important to take into account the potential and perceived disadvantages, so that they can be effectively addressed and mitigated in the change process. The potential disadvantages include the following.

- Disruption caused to the sector and delivery of public protection through organisational change.

- Diseconomies of scale and creating organisations which are ‘too big to fail’.

- Perception of a loss or lack of specialist expertise and knowledge and/or lack of attention to the particular needs of specific professions.

- Regulators could become too ‘generic’ to effectively engage with and have the confidence of their stakeholders.

The extent to which the above are challenges or disadvantages that would be entailed in fewer regulators is, of course, highly debatable. The first two bullets above could be effectively mitigated through careful planning and sequencing of any reforms (see our response to question seven).

The second two bullets above reflect well the concerns that some stakeholders have held over the years about multi-professional regulation. Our successful model, however, has shown how these disadvantages need not occur, as highlighted in some key areas below.

- Our standards are common wherever possible and appropriate, but with the flexibility for profession-specific standards to reflect the specific practice and context of the different professions we regulate.

- Our governance arrangements ensure appropriate expertise in our decision making. We have a pool of 'partners' – registered health and care professionals and lay people – who provide the specialist and profession-specific expertise we need in all our process based decision making. They are involved, for example, in making decisions about fitness to practise cases at hearings and in approving education and training programmes.

- The process of developing regulatory standards and policy ensures that stakeholders are appropriately involved and engaged throughout. This includes the use of research, communication and consultation activities to ensure that standards and policies are evidence informed and can command the confidence of stakeholders. Where appropriate, we establish working groups ('Professional Liaison Groups'), involving stakeholders directly in helping us to review or develop standards and policy.

Q7: Do you have views on how the regulators could be configured if they are reduced in number?

We have not formed a firm view on the number or configuration of the regulators in a reformed sector and consider that this will require further discussion and debate with stakeholders. However, we have identified a number of points that might be considered.

If a more radical consolidation to three or four (or fewer) regulators were to be considered, there are a number of options. These include grouping professions together because of similar practice or similar levels of risk, on the basis that it might be more possible to regulate those professions within a common framework. Another option might be to regulate those professions who typically practice 'on the high street' together, incorporating the functions of those regulators who currently carry out an inspection or registration role of service providers. Consideration would also need to be given to ensuring that diseconomies of scale are not introduced by creating regulators that risk being too big to carry out their functions in a cost-effective manner.

Each of the options discussed above has its own advantages and disadvantages. If radical reform is contemplated, using the existing landscape as the starting point may not be desirable. For example, on the basis of risk and ability to pay for the costs of regulation, there may be some argument that some professions currently regulated together should in future be regulated by different bodies. Further, before consolidation it might be helpful to review whether some functions currently performed are required in future; should continue in their current form; or should be delivered by other bodies.

We would suggest that change should not be attempted in one reform programme. Instead, the number of regulators in the first instance should be reduced over time by abolishing the smaller volume regulators and transferring their registers to other regulators. More radical configuration might then be considered building on the learning from those reforms. This approach might mitigate the potential for change to risk the delivery of public protection.

We have considered carefully the suggestion that a single regulator or regulatory scheme, such as that in place in Australia, might be contemplated. Such a model has a number of attractions, including for the public in a single point of contact, and greater consistency in standards and process. We have concluded that this might be too costly and disruptive to implement at this stage and as such this might negate any potential benefits. We also see that there could be some benefit in having a small number of regulators, as this leads to 'competition' through comparison and challenge and can act as a catalyst to continuous improvement. A single regulatory scheme might be considered in the future once the effectiveness of the reformed arrangements has been reviewed.

Q8. Do you agree that all regulatory bodies should be given a full range of powers for resolving fitness to practise cases?

Yes. We agree that all regulatory bodies should be given a full range of powers for resolving fitness to practise cases. This would help improve consistency of approach amongst the regulators and enable the regulators to deal with fitness to practise cases in a more flexible and proportionate way, allowing effective action to ensure public protection to be taken whilst avoiding the financial and non-financial costs of lengthy investigations.

Annex B describes the key changes that we have advocated to help us be a flexible and responsive regulator. Some of these changes have already been successfully implemented for other regulators. We also consider that the terminology used in legislation might also be harmonised at the same time – for example, there currently exists unhelpful variation in the nomenclature used to describe sanctions.

Q9. What are your views on the role of mediation in the fitness to practise process?

We consider that mediation is best conducted at a local level and has a limited role in the fitness to practise processes of the professional regulators.

Mediation is a challenging function for regulators to exercise. There are some benefits to providing opportunities for registrants and service users to meet. Mediation might help a registrant to develop further insight and learn from when things have gone wrong when shown the impact their behaviour may have had on a service user. The service user may better understand the circumstances leading to their complaint, and be better assured that the registrant has learnt from what went wrong. It might foster mutual understanding and possibly lead to an apology where one was not previously forthcoming. However, there is a danger mediation in the context of regulation might be seen as an obligation for registrants, undermining its basis as a consensual process and mitigating the benefits.

Our legislation provides for mediation. However, mediation can only take place once a panel of the Investigating Committee has concluded that there is a case to answer in relation to an allegation, or where a final hearing panel has concluded that there is impairment of fitness to practise. There is no provision for the case to be referred back to the fitness to practise process should mediation fail. In such circumstances panels quite rightly conclude that mediation is inappropriate.

In order to explore the possible value of mediation and informed by commissioned research, we carried out two pilots of mediation between 2013-15 and 2016-17. Mediation was offered in appropriate cases where either a case to answer or no case to answer was reached. The pilots had limited success. Over the two pilots, only 11 cases were identified as potentially suitable for mediation. Of these, only one case was successfully mediated. In the other cases, mediation did not take place because of lack of contact from the parties, or because one party, often the complainant, declined the offer of mediation.

There are a number of reasons why the pilots were not successful. By the time a case has reached the regulator it has often been ongoing for a number of months. In contrast mediation is recognised as being best offered at the earliest opportunity.

Mediation may be a more useful tool in the very early stages of a complaint and in cases which do not raise fitness to practise concerns and therefore its use falls outside of our existing remit. We would be concerned that a role for the regulators in mediation would therefore entail an enlargement of our scope and come at significant cost. This would be inconsistent with and difficult to justify given the overall focus on proportionality and cost-effectiveness in the consultation document. In our view, legislative reforms to allow us to agree undertakings with registrants (see Annex B), for example, are likely to have greater impact.

We would, however, welcome and support initiatives which sought to encourage and improve mediation approaches at a local level as this might be effective in resolving matters at an earlier stage, avoiding unnecessary escalation. In our experience many of the complaints we receive from members of the public which are not

progressed beyond the initial stages of the fitness to practise process involve a breakdown in relationships and communication. In some cases, a complainant has already been through a number of other complaints processes before coming to the regulator in a final attempt at redress. Improved complaint handling at a local level, including the use of mediation, might help in resolving matters at an earlier stage, reducing the financial and non-financial impacts of case handling for all those involved.

Q10. Do you agree that the PSA's standards should place less emphasis on the fitness to practise performance?

Yes. Public protection is achieved through all of the regulators' statutory functions. By overly focusing on one of those functions, there is a risk that the PSA cannot sufficiently assure itself that the regulator is protecting the public.

Furthermore, often registrants and the wider public view the regulator solely as a 'disciplinary' body. This has negative impacts on the relationship between regulators and their registrants, and can damage the confidence the public has in the regulator. By giving equal weight to each of the functions of the regulators in the performance reviews, the PSA can in part help assist with that misconception.

In addition, as the future model of regulation is to move towards a more preventative approach, scrutiny of the regulators should take account of the developing initiatives they have in place to regulate 'upstream'.

Q11. Do you agree that the PSA should retain its powers to appeal regulators' fitness decisions to the relevant court, where it is considered the original decision is not adequate to protect the public?

Yes, but only in limited circumstances.

The consultation document notes the creation of the Medical Practitioners Tribunal Service (MPTS) to adjudicate fitness to practise cases involving doctors. The MPTS has been put on a statutory footing and the GMC now has the ability to appeal MPTS decisions where it considers that they are inadequate to protect the public. In 2017, we established the Health and Care Professions Tribunal Service (HCPTS) to provide greater independence between our roles in investigating and adjudicating fitness to practise cases. This draws to some extent on the experience of the MPTS and in time might also be put on a statutory footing.

We agree that it is important that there are safeguards to ensure that where a tribunal decision may not adequately protect the public it can be referred to the relevant court. In our view, where a regulator does not have a clear, statutory separation between its adjudication function and the rest of its fitness to practise functions, the PSA should retain its powers.

However, where there is clear, statutory separation between the adjudication function and the regulator's other fitness to practise functions, it is right that the regulator should have the sole ability to appeal adjudication decisions. The PSA and the regulator both retaining powers to appeal, as is currently the case with the GMC,

is unnecessary duplication. The PSA would continue to retain oversight of the regulators' performance in this area through its performance review.

Q12: Do you think the regulators have a role in supporting professionalism and if so how can regulators better support registrants to meet and retain professional standards?

Yes. We welcome the recognition in the consultation document that there is 'more to regulation than fitness to practise'. There has been an increasing recognition in the sector over recent years that the increasing burden of fitness to practise cases is unsustainable and that an approach is needed which seeks to engage earlier, in an attempt to create a 'virtuous cycle' in which fewer cases might require action.

The numerous variables that influence fitness to practise case volumes may make a reduction in cases too much to expect. However, regardless, there is a reasonable expectation that regulators should use the data and intelligence they collect through their regulatory functions and use this to help prevent the same issues from continuing to arise. The consultation document is perhaps not as explicit about this as it might be. Regulators have a role in building an evidence base through commissioning of research and analysing their data to look at trends or identify patterns which may inform strategies for the prevention of fitness to practise concerns. They have a duty to engage stakeholder groups using this evidence. The PSA has helpfully recognised this important role – arguing that the regulators can play a role in 'indirect frustration of harm' by 'providing those close to emerging and potentially harmful situations with knowledge to contribute to prevention' (PSA 2017).

To this end, we commissioned the University of Surrey to improve our understanding of the number and nature of fitness to practise concerns in two of our professions – paramedics and social workers in England. The insights from this research is influencing a developing work programme, which includes engaging with registrants on our requirements for self-reporting of fitness to practise issues and using fitness to practise case studies developed as part of the research to inform the education and training of future professionals. The outcomes of the research are also being used as part of our ongoing programme of stakeholder engagement. For example, the findings of the research have been discussed in sessions focusing on the prevention agenda at our regular 'Meet the HCPC' events with our registrants and at events with employers.

We have two notes of caution. Regulators have a role in supporting professionalism in collaboration with other stakeholders including professional bodies, employers and educators. However, care has to be taken to ensure that activities in this area do not lead to 'role creep' – a clear differentiation between the role of the professional body and the role of the regulator is important to avoid confusion and to maintain public confidence in the independence and impartially of the regulators.

Second, a greater role for the regulators in supporting professionalism creates challenges for accountability. This area is largely about how the regulators can harness their 'soft influence', engaging more and working in collaboration with stakeholders in contrast to a sole focus on traditional 'reaction and sanction' or process-led approaches. However, these are activities which might be much harder

to measure and to deliver ‘at scale’. Systems of accountability, such as the PSA’s performance review, will need to adapt to provide effective scrutiny and accountability for the regulators’ performance in this area.

A key opportunity to influence the professionalism of future generations of professionals is engagement with pre and post registration education providers, to ensure that the quality of education remains high and delivers and supports learners to become and remain safe and effective practitioners. The consultation document rightly highlights the role the regulators play in the quality assurance of education and training programmes which lead to registration. We agree that this should be focused on assuring that education providers produce ‘high quality professionals who are suitable for registration at the end of the course’.

We welcome the four UK Governments’ support for a review of the role of the regulators in assuring the education of healthcare professionals. We agree that a clear focus is required and that duplication of effort should be avoided wherever possible. However, we have a number of reservations about the conclusion of the PSA referenced in the consultation document, that regulators should not deal with issues such as ‘course management’. It is important that organisations involved in quality assurance are not inadvertently relying on each other’s processes and there is a risk of creating a void whereby these issues are not adequately assured by anyone. Further, we would argue that aspects such as course management are integral to the quality and effectiveness of programmes and therefore the quality of learner experience and achievement of learning outcomes.

Education standards and quality assurance arrangements should facilitate and promote the importance of professionalism and facilitate and support learners meeting the outcomes required for safe and effective practice. We look forward to participating in the future debate about the appropriate role of the regulators in this area.

Q13: Do you agree that the regulators should work more closely together? Why?

Yes. We agree that regulators should work more closely together. The healthcare professional regulators routinely work together including through attendance at various fora designed to share good practice and intelligence between the professional regulators and with system regulators; memoranda of understanding between the regulators and other regulators to achieve more consistent sharing of information; and, on occasion, common policy statements between the regulators. A recent statement on conflicts of interest is one example of this.

However, joint working is perhaps more piecemeal than systematic and focuses on ongoing sharing of knowledge and experience and completion of specific small scale projects rather than fundamental change. The extent of effective joint working amongst the professional regulators is necessarily constrained because of organisational and legislative boundaries. The varying size of the regulators means they have varying resources to devote to joint initiatives. Developing joint guidance would engage nine different organisations’ governance arrangements, for example. A reduction in the number of regulators as we have advocated in our response to

question five might have the additional benefit of reducing barriers to effective joint working.

Closer, more effective collaboration between the regulators might lead to benefits including the following.

- A stronger voice to lobby for change where required.
- Greater visibility among some stakeholder groups, potentially resulting in stronger engagement e.g. public and employers.
- Greater consistency where this is advantageous, which would result in greater clarity where differences are necessary.
- Economic benefits.
- Increased perception of fairness among registrant groups where processes are aligned and consistent.
- Ability to build a more robust evidence base for effective regulation through sharing data and collaborative research.

Q14: Do you think the areas suggested above are the right ones to encourage joint working? How would those contribute to improve patient protection? Are there any other areas where joint working would be beneficial?

We have outlined our views on the potential areas for joint working identified in paragraph 4.10 of the consultation document below.

Shared online register, search engine or online portal of all registered healthcare professionals

The suggestion of a shared online portal of all statutory regulated healthcare professionals has some potential merit. If widely promoted it might make it easier for service users, the public and employers to access details about whether a health and care professional is registered.

A single shared register would not appear feasible unless there was substantial harmonisation of standards and processes between the regulators, otherwise such a register is very likely to be unclear for the public. There is wide variation between the regulators as to matters such as types of registration and the extent and type of information available on the registers.

A single set of generic standards for all healthcare professionals

The consultation document acknowledges that we have successfully had in place a similar model for the professions we regulate for a number of years. Our standards of conduct, performance and ethics, standards of proficiency, standards of education

and training and standards for continuing professional development, are common to all the professions we regulate. The standards of proficiency have a consistent core structure, with many standards covering aspects such as communication skills common across the professions. There are then profession-specific standards for each profession.

A single set of shared standards for conduct and ethical behaviour would be a realistic aspiration, reflecting that many health and care professionals registered by different regulators will work side by side in multi-professional teams. This could improve the understanding of service users, the public and health and care professionals of the standards expected and help facilitate more consistent decision making in fitness to practise.

A single adjudicator responsible for all fitness to practise decisions

A single adjudicator is an attractive proposition. It would enable greater separation between the regulators' roles in investigating complaints and presenting cases and the adjudication of the outcomes. It would also help promote consistency in fitness to practise outcomes – for example, by having a single sanctions policy. There may also be efficiencies arising from scale.

However, this approach would not be without its challenges and it is worth noting that a previous attempt at moving in this direction – the Office of the Health Professions Adjudicator – failed because of concerns about the initial and ongoing costs. Alignment of underpinning regulatory standards, processes and legislation would be required to make this approach successful across a number of regulators.

An alternative model could be to have a single organisation to provide and manage tribunal facilities across the UK, including online and remote facilities, whilst regulators retain the adjudication function. However, the benefits from this model are unlikely to be as great as a single adjudicator.

A single organisation conducting back office functions such as HR, finance and IT

We do not consider this to be a viable option.

The consultation suggests that if one organisation were to be responsible for 'back office functions' then 'they are likely to be delivered more effectively'. However, evidence from other sectors shows that there are considerable challenges with organisations sharing 'back office' functions; that the cost savings are often not as great as anticipated; and that they can have a negative impact on effectiveness.[3] In our view the concept of 'back office' services is unhelpful as functions such as IT and

[3] See, for example:
National Audit Office (2016). Efficiency and reform in government corporate functions through shared service centres.
https://www.nao.org.uk/report/efficiency-and-reform-in-government-corporate-functions-through-shared-service-centres/

HR are an integral part of our regulatory model and it would be less effective or efficient to deliver them separately.

Overall conclusion

These suggestions for joint working, where they have potential merit, need to be considered in the context of a reformed sector with fewer regulators – they should not be seen as an alternative. Many of the benefits seen in these measures, such as greater consistency, could be achieved to some extent through reducing the number of regulators. These suggestions would also be easier to achieve with fewer regulators - for example, the task of producing common standards for all health and care professionals would be greatly simplified. However, in the absence of significant legislative changes, we remain committed to exploring opportunities for further collaboration.

In terms of other areas for joint working, there may be greater scope for joint working on research to build the evidence base and to drive forward the prevention agenda.

Q15: Do you agree that data sharing between healthcare regulators including systems regulators could help identify potential harm earlier?

Yes. We note the conclusion in the consultation document that collaboration between professional regulators and other parts of the regulatory system in healthcare 'does not happen often enough'. We have seen an increase in data sharing between the different regulators in recent years. However, this is an ongoing challenge and an area that needs to be regularly reviewed and continuously improved to guard against complacency.

We have a number of memoranda of understanding with the systems regulators in health and care in the UK which are kept under regular review and these help to facilitate the exchange of data and intelligence. We also participate in a number of regular meetings which provide a forum for information sharing on identified issues.

Q16: Do you agree that the regulatory bodies should be given greater flexibility to set their own operating procedures?

Yes, within appropriate limits which ensure that the public interest is safeguarded.

In the past decade, regulators have witnessed an unprecedented level of change, in the structure and delivery of health and care; the advancement of technology; the expectations of the public; and the numbers of fitness to practise concerns made about health and care professionals. It is challenging to address the risks of those changes whilst adhering to strict legislation that hampers responsive regulation.

The process of changing legislation is costly and time consuming and we have observed that over the years legislation has often been changed in an uncoordinated or piecemeal way. This has had the effect at times of increasing divergence and inconsistency of approach amongst the regulators – for example, by creating unhelpful differences in the fitness to practise powers available to the regulators.

We would support an approach whereby legislation set out the regulators' roles and responsibilities clearly, but allowed greater flexibility in determining the detail of how those responsibilities were delivered. For example, the legislation might set out broad responsibilities around maintaining a register, but leave the detail of that Register to be determined by the regulator.

At present, much of the detail of how we perform our statutory functions is set out in statutory rules. Although easier to change than secondary legislation, this can be unhelpfully prescriptive and impede change. For example, our rules have to be changed whenever we change our registration fees and prescribe the registration renewal cycles for each of the professions. In the future, some of the content of these rules might be left for the regulator to determine as part of policy and practice. In other cases, detail should be set out in rules owned by the regulator which might be changed more easily. We consider that the Law Commissions' work in this area was a good first step which might be built upon in any future proposals.

However, it is important to strike the right balance between autonomy and accountability. The purpose of regulation is to protect the public and the public interest. Regulators exercise important functions which must be discharged fairly and responsibly. It is appropriate to retain sufficient safeguards in the system to guard against abuse of these powers. We anticipate, for example, that statutory rules will still be required for aspects of the fitness to practise process and that existing requirements for public consultation may need to be extended and strengthened.

Q17: Do you agree that the regulatory bodies should be more accountable to the Scottish Parliament, the National Assembly for Wales and the Northern Irish Assembly, in addition to the UK Parliament?

Yes. We welcome any measures which would strengthen our accountability to the UK parliament and the parliaments in the other countries.

Q18: Do you agree that the councils of the regulatory bodies should be changed so that they comprise of both non-executive and executive members?

We have not reached firm conclusions about the desirability of regulatory body councils becoming unitary boards.

There is a lack of a clear justification for the proposed change in the consultation document – some of the arguments made are very similar to those made in justifying previous reforms. The governance arrangements of the regulators have been the subject of reform over a number of years. These reforms, leading to parity between registrant and lay members and a smaller, fully appointed, more board-like Council have achieved their aims in allowing the Council to be more strategic, avoiding the conflicts of interest that arise from elections and registrant majorities.

In attempting to justify further change, the consultation document correctly highlights that registrant members of councils do not sit in a representative capacity. This has been a well-established principle for some time and it is unclear the extent to which 'representation' continues to be an issue for some regulators. As a multi-professional regulator regulating 16 professions, we have a Council of 12 members, only 6

members of which are from the professions we regulate. This perhaps helps reinforce that registrant members bring their skills and expertise and are not there to represent their professions.

We can see that there may be some benefits from moving to unitary boards. Our experience of successful unitary boards includes quicker, more informed decision-making, and joint-ownership and co-production between executive and non-executive members. The current model where executives are only supporting or informing decision making can be challenging. However, relationships between executives and non-executives are perhaps more important than board size or composition and unitary boards are certainly no guarantee of good governance.

If implemented, councils should have a substantial majority of non-executives, including the Chair. The Chief Executive should always be on the council. Adding non-executive members may make current arrangements for four country representation difficult to maintain, but we continue to support the principle that the governance arrangements of the regulators must ensure the confidence of their stakeholders in the four countries of the UK. A unitary approach may further necessitate changes in the names of the regulators, away from the language of 'council' to 'board' or 'authority'.

In whatever arrangements are finally agreed, it will be important to ensure that councils have the diverse skills and experience required to lead their organisations. To this end consideration might be given to reforming the current rigid requirements for parity between lay and registrant members. Reformed arrangements might ensure that in future registrant members as now could not form a majority of non-executives, but allow greater flexibility in appointing members on the basis of skills and experience rather than constituency.

Q19: Do you think that the views of employers should be better reflected on the councils of the regulatory bodies, and how might this be achieved?

It is important that the work of regulators takes account of and is informed by the views of employers. However, we do not consider that this needs to be achieved through governance changes to the councils of the regulatory bodies.

Effective regulation is predicated on anticipating and meeting the needs of a range of stakeholders, including employers. This can be achieved effectively in a number of ways, including ensuring that employer interests and perspectives are adequately involved in the development of standards and policy, for example, through the use of communication and engagement activities; working groups; and public consultation. The process of appointing council members, overseen by the PSA, already ensures that the Council has a diverse range of skills, experiences and perspectives.

We have an ongoing programme of engagement with employers including through regular dedicated employer events at which we can provide information about our role and developments and seek the input of employers to shape our work. In addition, regular engagement takes place with employers and commissioners of services and education including involvement in national working groups and initiatives.

Q20: Should each regulatory body be asked to set out proposals about how they will ensure they produce and sustain fit to practise and fit for purpose professionals?

No. We do not consider that this is necessary. The consultation document lacks sufficient detail about this proposal and exactly what it aims to achieve.

We agree with the statement in the consultation document that the regulators play an important role, alongside other stakeholders, in ensuring that we have 'the right workforce, with the right skills and behaviours, educated to the right professional standards, with the right professional values in place'. The consultation document implies that perhaps regulators have not always worked sufficiently closely with employers. It is unclear to us how this proposal would help bridge any gap. We would be concerned that if regulators were asked to publish a statement about their role in producing fit to practise and fit for purpose professionals this could end up being little more than a periodic restatement of their statutory remits and established policies.

Regulators need to remain focused on their statutory remit to protect the public and therefore the data that we routinely collect is about achieving this purpose. However, we are in the unique position to collect further data about the regulated workforce which might be useful for employers and workforce planners. In Australia, the health practitioner national law in place in each state and territory is explicit about the role of the national registration and accreditation scheme in enabling 'the continuous development of a flexible, responsive and sustainable Australian health workforce'.[4] It might be productive to give further thought to the legitimate role the UK professional regulators might play in the future in making a positive contribution to workforce development and planning.

Q21: Should potential savings generated through the reforms be passed back as fee reductions, be invested upstream to support professionalism, or both? Are there other areas where potential savings should be reinvested?

We agree that potential savings generated through the reforms should be used to both reduce, or reduce pressure on the level of, registration fees; and be used to invest 'upstream' on professionalism and/or in other measures to ensure we are fit for the future. The main area in which there is the potential for savings which might be reinvested is in the reform of fitness to practise.

We welcome the clear statement of the four UK Governments that fee rises should be kept to a minimum. All the regulators are required to ensure that they are financially sustainable on an ongoing basis, and from time-to-time, taking into account inflation and changes in operational volumes, will need to increase registration fees. If implemented, the reforms discussed in the consultation document may have the potential to increase flexibility, efficiency and responsiveness and

[4] https://www.ahpra.gov.au/about-ahpra/what-we-do/legislation.aspx

therefore lessen upward pressure on registration fees, if all other factors such as volumes of fitness to practise cases and inflation remain relatively constant.

Q22. How will the proposed changes affect the costs or benefits for your organisation or those you represent?

- **an increase**
- **a decrease**
- **stay the same**

Please explain your answer and provide an estimate of impact if possible.

We foresee an increase in benefits and a decrease in costs. We have assumed that the one off transition costs involved in reconfiguration of the sector would be borne by the taxpayer. The broad nature of many of the issues discussed in the consultation makes it difficult to provide an accurate or detailed assessment of the costs and benefits at this time.

The high level assessment of impacts for regulators in table 7 of the consultation document is largely accurate in our view, with one exception. We see that a reduction in the number of regulators, if carefully managed, would lead to increased economies of scale from larger organisations and therefore lower operating costs per registrant overall than now. We also note that employers and educators, key stakeholder groups with an interest in effective professional regulation, do not appear in table 7.

Q23. How will the proposed changes contribute to improved public protection and patient safety (health benefits) and how could this be measured?

We believe the proposed changes will contribute to improved public protection and patient safety in a number of ways including the following.

- Greater consistency of approach across professions, leading to greater awareness of thresholds by registrants, employers and the public.

- Increased potential for considering a number of different professions within one complaint, allowing for clear understanding of the different roles individuals may have played in the concerns raised, and specific, consistent action to address these concerns across professions in a timely way.

- Increased awareness of the public to the regulation of healthcare professionals, and the expectations of regulators. This may perhaps lead to service users feeling more empowered to question poor conduct or behaviour during consultations, and reporting these issues quickly where they occur.

Regulators play an important role in the quality and safety of health care delivery. However, measurement is challenging – it is often only feasible to measure the outputs of activity rather than the outcomes.

Q24. Do you think that any of the proposals would help achieve any of the following aims:

- **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 and Section 75(1) and (2) of the Northern Ireland Act 1998?**

- **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**

- **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it? If yes, could the proposals be changed so that they are more effective? If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?**

3.110 No. We do not believe the proposals will have any significant impact, positive or adverse, on achieving the aims of equality legislation. We have not identified any changes that might help achieve these aims.

Annex A: Arts therapists cases considered at final hearing where a sanction was imposed - 2001 to date

Year	Number of registrants	Brief summary of allegation(s) and sanction
2001*	1	• Inappropriate sexual relationship with service user (struck off)
2002*	1	• Inappropriate sexual relationship with service user (struck off)
2007	1	• Inappropriate personal relationship with service user (caution)
2009	3	• Inappropriate relationships and behaviour, including during therapy sessions, with multiple service users over long period (struck off) • Inappropriate sexual relationships with multiple service users (struck off) • Inadequate record keeping, failure to attend clinical supervision and other conduct issues (struck off)
2010	1	• Inappropriate sexual relationship with a service user (struck off)
2011	4	• Health (suspension, subsequently struck off in 2013 at a review hearing) • Conduct issues in education and training role (conditions of practice) • Inadequate record keeping (conditions of practice) • Made statements in legal document without evidence of fact (conditions of practice)
2013	1	• Submission of fraudulent time sheets (struck off)
2015	1	• Inappropriate personal relationship with service user and inappropriately stored records (conditions of practice)
2016	1	• Determination by another regulator - theft from employer (suspended, subsequently struck off in 2017 at a review hearing)

2017	1	• Inappropriate sexual relationship with service user (struck off)

Notes:

- *Disciplinary Committee of the Council for Professions Supplementary to Medicine (CPSM).
- Excludes not well founded and no further action cases. Outcome of substantive hearing.
- Figures are for calendar years

Annex B: Our priorities for legislative change

Proposed change	Commentary
A single fitness to practise committee for adjudication (combining the conduct and competence and health committees)	Where the Investigating Committee concludes that there is a case to answer, it must refer the matter for hearing by the Conduct and Competence Committee or the Health Committee. Allegations of incorrect or fraudulently procured entry are heard by the Investigating Committee itself. Combining the Conduct and Competence and Health Committees would allow allegations to be dealt with 'in the round'. Investigating Committee panels have to make an early decision about which Committee should deal with a case. This can mean that cases are subsequently cross-referred between the committees, for example, where it becomes apparent that there is no evidence of an impairment by reason of health, delaying the progress of cases unnecessarily. Other regulators, including the NMC and GMC, already have a single fitness to practise committee.
Removing the requirement for a council member to chair a registration appeal hearing	A Council member, who must not be a member of the Education and Training Committee, is required to chair registration appeal hearings. This is contrary to the principle applied elsewhere (in the education, fitness to practise and registration processes) of separation between Council members' roles in setting policy and assuring overall performance and 'transactional' decision making in each process. It is proposed that the requirement should be removed and, in line with fitness to practise, Council members made ineligible for appointment to appeals panels. Partners would chair panels.

Clarifying the law on striking-off in cases where a registrant has been continuously suspended or subject to conditions of practice for more than two years	In lack of competence and health cases striking off is not available to panels. A registrant has to be continually suspended or their registration subject to conditions of practice for two years or more before striking off becomes available. This provision has been successfully used by HCPC panels. However, a previous section 60 Order amended the NMC's legislation on this point, owing to concerns that the provision was not sufficiently clear. This change would therefore bring the Order into line with the NMC's legislation, mitigating any potential risk of challenge.
Allowing Northern Ireland qualified solicitors to be appointed as legal assessors	Legal assessors provide advice to fitness to practise panels on matters of law and procedure. The Order currently only permits a Barrister in Northern Ireland to be appointed as a legal assessor but does not permit a Northern Ireland registered solicitor. This is an obvious omission from the legislation which it is suggested should be corrected.
Allowing fitness to practise panels the discretion to decide whether a suspension or conditions of practice order should be reviewed prior to its expiration.	All cases which result in suspension or conditions of practice orders are required to be reviewed before their expiration. In a small number of cases, a review may not serve any practical purpose. We therefore propose that, in line with some other regulators, panels should have the discretion as to whether to direct a review is necessary in each case. We anticipate that in the majority of cases a review will continue to be appropriate because a panel will need to review whether the protection of the public requires a further order to be made.

Allowing the Investigating Committee to issue warnings and advice	This would allow an Investigating Committee Panel to issue warnings and advice in cases where it has determined that there is no case to answer. Panels already issue learning points in cases where there is a realistic prospect of proving the matter but not of establishing impairment of fitness to practise. This change would formalise these arrangements. It would also be consistent with some other regulators including the NMC.
Allowing the Investigating Committee to agree Undertakings	Where a case to answer decision was reached, this would allow the Investigating Committee, in appropriate cases, to agree undertakings with the registrant. Undertakings are an agreement between the regulator and registrant about their future practice and might include, for example, restrictions on what they can and cannot do and commitments to practise under supervision or to carry out training. In cases where an undertaking is not appropriate, a referral would be made to the fitness to practise committee. In cases where an undertaking was breached, appropriate action could be taken including referral to the fitness to practise committee. The ability to agree undertakings would increase the consensual disposal options available in the fitness to practise process, potentially providing an appropriate and timely means of disposing of appropriate cases without the need for a costly, contested hearing. It would be consistent with some other regulators including the NMC and the GMC.