General Dental Council response to the PSA review of the Standards of Good Regulation

Overview

1. The General Dental Council (GDC) welcomes the Authority’s review of the Standards of Good Regulation and is pleased to have the opportunity to provide its views on the issues raised in the June 2017 consultation document.

2. We agree that this is an appropriate time to review the standards on which the performance of the regulators is judged. The environment within which healthcare professionals deliver care has changed significantly in the last decade, for example with the increase in the delivery of care by a team comprising a range of healthcare professionals and the developing skills mix across such teams. The regulatory landscape is also changing, with a shift in the focus of regulation towards expending greater effort on preventing problems from arising rather than dealing with the aftermath of those problems.

3. The GDC’s proposals to change the focus of regulation away from a system that focusses on enforcement were published in our discussion document Shifting the balance; a better, fairer system of dental regulation in January 2017. The document sets out a range of ways in which we will seek to shift the balance of effort ‘upstream’ and forms the basis of our regulatory strategy going forward. It can also be taken as our views on many of the issues raised by this consultation paper. While the standards used by the PSA to date have been useful in helping us re-shape the data which we use to assess our performance outputs, it is timely for those standards to now be reviewed in order to promote regulatory outcomes and patient protection going forward and to reflect the changes taking place across the sector.

4. We are firmly of the view that oversight mechanisms such as those of the PSA should be directed towards assessing regulatory outcomes. The system of regulation should work effectively to deliver a reasonable expectation on the part of patients and the public that the professionals with whom they interact are doing their best to treat them safely and effectively and are providing them with good information (including financial information where relevant) on which to base well-informed decisions about their care.

5. We therefore welcome the Authority’s desire to move to Standards which capture the key outcomes and characteristics of good regulation, giving regulators an objective assessment of performance in terms that go beyond an audit of processes and the outputs of those processes. While there are some areas where it is appropriate for outputs to be assessed (for example, in relation to the accuracy of entries in the Register), in other areas an explanation of how a regulator is seeking to assure particular outcomes could give greater assurance. If the Standards can set clear outcomes, then the regulators will have scope to decide how they will meet those outcomes and to develop innovative solutions which fit with their particular legislation, scale and circumstances.

6. The recent changes to the performance review process have been helpful in rationalising and updating the dataset and in allowing the PSA to have a greater awareness of the processes by, and context within which, decisions are taken by the Boards through scrutiny of papers and attendance at Board meetings. However, we
are still of the view (previously expressed in our response to the consultation on the review process) that reviews should offer Boards and senior management an objective and constructive assessment of their readiness to meet current challenges. To this end, the Standards of Good Regulation should provide a clear description of what an effective regulator looks like.

7. We have previously suggested that this should go beyond the ground covered by the PSA’s current standards to include measurements of financial viability and good governance. This is not to suggest that the PSA should involve itself in budgets, fees charged to registrants or comparisons of efficiency against benchmark organisations. Rather, that the PSA should assess and challenge financial viability as an assurance measure given that organisations whose finances are weak may be tempted to cut corners.

8. In constructing our response to the current consultation, we have taken account of the initial views which the PSA has reached as a result of its early discussions with stakeholders and which are set out in the document, namely that:
   - the Standards should continue to focus on the regulators’ core activities;
   - the PSA does not intend to change the performance review process again in the light of the Standards review unless absolutely necessary; and
   - both the Standards and the process for assessing them should be clear.

9. However, we would not be averse to further changes in the review process if that was what was needed to allow Standards to be introduced which were more outcomes-focussed.

10. Thank you for the opportunity to respond to this consultation. Our more detailed views on the areas in which the consultation seeks specific comment are set out below.

What should the Standards cover?

11. We agree that the Standards should continue to cover the areas of professional standards and guidance, education and training, registration and fitness to practise. However, we also consider that the balance between these four areas in the regulatory process, which is reflected in the current Standards, needs to shift. A modern regulator should seek to secure good outcomes for those it exists to protect and those it regulates by defining and promoting standards – it follows therefore that the oversight framework within which those regulators operate should do the same.

12. While this could be done by setting Standards for each area, as now, it could also be done in a more thematic way which cuts across functions. For example, requirements such as our regulatory activities being focussed on public protection, that we engage with stakeholders and that we are open and transparent (to name but three) could be demonstrated in all four areas, while measurable outcomes such as timeliness and accurate decision making are important across Education, Registration and Fitness to Practise. Adopting this approach would also reduce the repetition which features in the current Standards. However, if the current function-based model is to be retained,
we would make the following points in relation to the four areas:

**Standards and guidance**

13. There is a tension in the standards which the regulators set between efforts to encourage good practice which facilitates patient-centred care and establishing a standard below which professionals must not fall. This dichotomy needs to be considered when standards are reviewed and regulators should be encouraged to establish an agreed position with their various stakeholders and articulate it clearly to their registrant communities.

14. If the current model of PSA Standards is retained, we would like to see them reflect better the inclusion of patients in the development of standards and guidance, possibly with a requirement for regulators to demonstrate a) how they had assured themselves that they were clear about patient expectations when setting standards and b) whether/how they had assured themselves that the standards developed would support professionals to meet those expectations.

15. Once standards have been developed and published, they need to be articulated clearly and embedded. Regulators need to take action to explain to registrants what they mean for them in practice and (in partnership with professional representatives and advisers) support them in meeting them. We need to make sure that standards are defined, explained and promoted sufficiently well to ensure that they secure – on behalf of patients – a reasonable expectation that they will receive safe and effective treatment, be treated with dignity and respect and provided with sufficient information (including on costs, where relevant) to help them make good choices about their care.

16. Accessibility of information remains an important principle, but its meaning has changed since the current Standards were published and it now refers to a much wider range of channels. We know that registrants increasingly access information related to their profession via digital channels, as do patients in relation to conditions and treatment options. We will be looking for innovative ways to bring our standards to life using a range of channels and it would be helpful for the requirement to be updated in this regard.

**Education and Training**

17. We support the point made by several regulators at the themed meeting on Education and Training that the Standards should focus on the outcomes of the education and quality assurance functions of the Regulators and not on the quality of the education or training itself. The role of the regulator is to set the learning outcomes (in some cases) and then to give assurance that the learning is appropriately assessed. We have identified several areas in relation to education and training which new Standards could focus on:

i. **Patient protection:**
   For example: *The regulator must have systems in place to be assured that those treated by/coming into contact with trainees on programmes leading to registration are not put at unnecessary risk of harm.*
ii. Appropriate learning outcomes.
For example - Regulators set learning outcomes and requirements that reflect the knowledge, skills, abilities, attitudes and behaviours that are necessary for practice. The learning outcomes should be developed and updated based on evidence, taking into account the views of a range of stakeholders. The learning outcomes for each profession should be reviewed regularly to ensure that they best reflect the anticipated requirements of future practice.

iii. Appropriate assessment:
For example: Regulators ensure that those applying to join professional registers have demonstrably met the requirements (i.e. the learning outcomes) set by the regulator.

18. We also agree that the systems which regulators use to quality assure education programmes should be proportionate. Where possible, this proportionality should include considering evidence gathered for other organisations and other purposes, to reduce duplication. We are currently developing quality assurance systems which will include consideration of the risks and issues particular to each programme leading to registration. Our intention is to operate a more proportionate approach, enabling us to apply our regulatory resources where the greatest risks and issues lie. We will be consulting on our proposals (which featured in Shifting the balance), in early 2018.

Continuing Fitness to Practise
19. In relation to further developing elements of the Standards and adding new areas, we agree that consideration of continuing fitness to practise (CFtP) should be expanded, reflecting the greater emphasis that both regulators and regulated professionals now place on the development and maintenance of professional skills and the ability to demonstrate them.

20. The Standards and the way in which they are assessed should allow the Authority to assure itself that the regulators are developing and operating CFtP schemes which are beneficial to patients and professionals and proportionate to the risks associated with practice in the relevant area. However, we acknowledge the potential difficulties with this, in that it is difficult for a regulator to assure itself of the efficacy of continuing professional development activities undertaken by its registrants. One option may be to consider how far the regulators are delivering schemes which verify practice or facilitate changes in practice.

21. New standards would need to take into account that the regulators have differing powers in relation to CFtP and that the various professions have differing levels of professional support networks, therefore the CFtP schemes are likely to have different ways of achieving similar ends. We have given further views on CFtP in paragraphs 42-44 below.

Registration
22. The current Standards cover all of the register functions and we have not identified anything which could be added. The document suggests that revised Standards might include the accuracy, accessibility and clarity of the registers: we are of the view that these aspects are already covered in the current third and fourth Standards. As these are very similar, it should be possible to have one clear Standard which
covers all the requirements.

*Fitness to Practise*

23. The responses we received to our *Shifting the balance* discussion document gave us an indication of where our key stakeholders want to see our resources focussed, namely ‘upstream’ on prevention and promoting positive behaviours rather than on FtP after harm has occurred. While FtP will always be a vital regulatory function, the degree of focus in the current standards on the metrics of FTP processes has, we submit, contributed to behaviours on the part of regulators that have led to an over-concentration of resource in this area to the detriment of other modes of regulation (for example education, promoting and embedding standards) that may in fact be more conducive to patient protection. Going forward, we would therefore suggest that the Standards should include assessment of the efforts regulators are making in both prevention (‘upstream’) and directing complaints appropriately.

24. If function-specific Standards are retained, those in relation to FtP should focus on clear principles and relate to those areas where there is a clear public interest in high performance, for example timeliness, outcomes and quality of service. At the same time, there could be a rationalisation of the quarterly dataset, removing some of the data that is open to interpretation.

25. Where common datasets are used, there needs to be much greater and more openly acknowledged recognition of the widely differing contexts (legislative, range of practice settings, range of professions regulated, prevalence of commercial environments and others) within which regulators operate. Some data series, such as complaints volumes, can have complex and ambiguous underlying causes and be open to more than one interpretation. For example, the PSA has tended to view a rise in complaints as a positive because it could indicate that the regulator is raising awareness of its processes among patients. However, a fall in numbers could equally be a success indicator if the regulator is providing potential complainants with clear information about the range of options open to them and the differing outcomes which could result from the various processes. It is important that the Standards recognise that the regulators are not complaints handling bodies but are, in fact, dealing with possible impairment of fitness to practise which requires mechanisms for the assessment and handling of risk.

26. We would suggest that the aspects of FtP which should be addressed by the Standards (whether by function or by theme) are:
   - Timeliness
   - Transparency
   - Proportionality
   - Responsiveness (customer service)
   - Risk management
   - Effective decision making

27. We discuss Standards in FtP further in paragraphs 45-48 below.

*Illegal or unregistered practice*
28. The consultations asks whether the Authority should continue to monitor regulators’ activities to prevent illegal or unregistered practice and what level of priority this should be given; whether the Standards should be limited to the areas identified in the document and what aspects of work they should focus on.

29. Our over-arching objective in exercising our functions is the protection of the public. It is our view that alongside our powers to tackle fitness to practise concerns, regulators’ statutory powers to prevent illegal or unregistered practice are essential to ensuring the public remains fully protected. There is a strong public interest in ensuring that only those who are qualified undertake restricted activities and that the public is not misled about an individual’s status and qualifications. The fact that the NHS has its own mechanisms in place to deal with some issues around misuse of protected titles and that work done in this area can appear to be for the protection of registrants’ business interests rather than protection of the public are, in our view, limited in scope and outweighed by the public interest.

30. The GDC pursues complaints of illegal or unregistered practice in accordance with its primary function to protect the public, not to protect the business interests of registrants. Systems of regulation which are based on a registered or licensed ‘right’ to do something (in this case, practise dentistry) inevitably run a risk of becoming a mechanism for enforcing a closed shop. However, if the regulator or licensing body is appropriately focussed on public protection, including being sensible to the benefits of competition and innovation in service deliver, then the public interest is served by the taking of proportionate action against those not suitable to provide care or deliver the service. Successful prosecutions may have the effect of protecting the business interests of those appropriately trained and registered to provide treatment but this is an incidental outcome.

31. The GDC has invested proportionately in deterring illegal practice. While we have a considerable track record in successful prosecutions, in fact that is only a relatively small slice of our activity. We use a range of cost-effective enforcement techniques to deal with individual instances of lower-level illegal practice. More importantly, through our communication and engagement work with the public and a range of stakeholders, we have highlighted and brought to the public’s attention the tangible risks of harm associated with some forms of illegal or unregistered practice, for example tooth-whitening.

32. We would not wish to see a regulator’s performance in this area assessed by prosecution outcomes. These can be outside of a regulator’s control but, more importantly, a focus on prosecution volumes could easily lead to over-prosecution. A narrative assessment of a regulator’s strategy for dealing with Illegal Practice would be preferable, focussing on all levels of enforcement and on engagement.

33. Taking these factors into account, the aspects of work that the GDC therefore considers the Standards could focus on include:
   - how a regulator reviews complaints/allegations on receipt and the criteria for deciding which it should be pursue;
   - that the regulator pursues serious issues, in a timely and effective manner;
   - that the process is operated fairly and objectively; and
• the rationale of decision-making throughout the process, ensuring decisions are well-reasoned, consistent, proportionate and most importantly, made with a view to protecting the public and maintaining public confidence in the profession and the services it provides.

Governance

34. The GDC has been supportive of the inclusion of Standards in relation to good governance, in terms of financial viability and risk management. While it is true that governance processes are not outcomes as such, they are processes designed to facilitate good outcomes, ensuring that Councils have effective oversight of the work of the relevant regulator. We would suggest that, should Standards in this area be included, they should be limited to an assurance that the regulator has good oversight of its financial position and a robust risk management framework.

Adopting new Standards

Education and Training

35. The consultation suggests a new standard that requires regulators to have mechanisms that enable them to gather information from students and tutors about compliance with minimum standards of safety (question 8). We support the aim but would not wish to see a new Standard introduced which simply requires a mechanism to be in place – we would prefer it to refer to outcomes, for example how such information is used.

36. We have limited mechanisms for gathering and analysing information from students and tutors about compliance with minimum standards of safety – we rely on providers to manage the collection and analysis of intelligence. A new Standard requiring us to gather this information directly from tutors and trainees would require significant resource to put into operation. A more proportionate approach could be to require regulators to undertake this activity indirectly, with education and training providers collecting the information and reporting it to the regulator through the annual monitoring process (or other QA activities). This would work well with the GDC’s proposed ‘risk-based’ approach to quality assurance. It would be important for us to emphasise to institutions and for the PSA to also be clear that reporting a risk to patient safety does not equate to failure, particularly where an institution has responded quickly and robustly.

37. Further work on establishing and defining ‘minimum standards of safety’ across the regulated professions would be required, as this is a phrase open to interpretation. Thought should also be given to requiring providers to collect and consider information that goes beyond minimum standards and focuses on improvement.

38. In relation to learning assessments (question 9), we agree that regulators’ focus should be on ensuring that new registrants have met the required learning outcomes, including that they have been subject to valid, reliable and robust assessment against them. However, the PSA would need to bear in mind the range of training pathways across UK registered health professions and be careful not to restrict regulators in ways that could increase the risk of patient harm.
39. We currently have three overarching areas within our Standards for Education which are the focus of our regulatory activities, namely patient protection, quality evaluation and review and student assessment. We agree that a primary focus of regulators must be on the ‘end-product’ of education and training, i.e. that new registrants have met the required learning outcomes, and we address this under the ‘Student assessment’ area. However, we also set requirements in the areas of ‘patient protection’ and ‘quality evaluation and review’ and we believe that there are good reasons for doing this.

40. Students and trainees on many programmes leading to registration with the GDC deliver direct patient care and undertake non-reversible procedures on patients. Restricting the Standards to only the outcomes of the education provided on those programmes would not fully reflect our regulatory remit and could itself be a risk to patient safety.

41. In relation to quality evaluation and review, there are around 70 different awards that lead to registration with the GDC, some of which are UK-wide and national awards offered by over 100 local providers. There is also a wide range of types of organisations delivering dental education and training, including universities, FE colleges, NHS Trusts, independent colleges and Royal Colleges. While we encourage providers to use evidence for our QA activity which they have gathered for other purposes, they are not all subject to educational QA from other organisations.

Continuing Fitness to Practise

42. In principle, we support an increased focus on the regulators’ activities in CFtP. However, we would have concerns about a Standard which sought to assess the efficacy of the various schemes. Each regulator has its own scheme, governed by its own Rules and its own desired outcomes. It is therefore difficult to establish criteria by which efficacy could be measured across the piece – while some regulators could point to the numbers of registrants securing revalidation of their fitness to practice, others would only be able to confirm how many registrants had met the CPD hours requirements of their schemes. Even for registrants who could demonstrate that CPD had been carried out (in addition to meeting other administrative requirements such as confirming that they had indemnity cover), it would be difficult for a regulator to demonstrate the efficacy of various activities in improving registrant practice.

43. We would not wish to see the Authority develop Standards in this area which had the unintended consequence of stifling innovation in CPD and CFtP schemes. For example, we will shortly begin discussions with the profession on the benefits and risks of moving to a model of CPD which emphasises greater ownership by the professional, could include peer-to-peer activities such as mentoring and which would focus more on quality and less on quantity – possibly removing the hours requirement. We would therefore want to see Standards which would allow for ongoing developments - this might be an area that would lend itself more to principles to be met rather than measurable outcomes.

44. In terms of learning from CFtP data, it might be more valuable to ask regulators to demonstrate that the learning flows both ways – for example, regulators could feed
data from FtP cases back to registrants to highlight potential problem areas and help registrants’ make choices about where they could strengthen their skills or knowledge.

**Fitness to Practise**

45. The consultation suggests the introduction of a Standard to cover the portion of the FtP process between the IC/Case Examiner decision and the final panel. While not wishing to necessarily see more Standards, we can see a case for this. Learning points and S. 29 meeting reports which we receive from the PSA often refer to under-prosecution of a case as a result of omissions in charging or a failure to call witnesses. However, there would need to be clear criteria for the selection of charges to minimise subjectivity when the Standard is analysed by the scrutiny team (the Crown Prosecution Service Code provides clear criteria around the selection of charges which could be a useful guide).

46. It would be helpful for prosecution concerns to be addressed via the scrutiny team and the learning points process in the first instance – the PSA would not otherwise have the benefit of seeing the extent of unused material or being made aware of concerns regarding the credibility or veracity of a witness. It would also be important for the PSA to have regard to whether cases had been prosecuted internally or by an external legal firm.

47. The document also asks whether the PSA should introduce a Standard covering the operation of “consensual” mechanisms for disposal and the appropriateness of their outcomes. We take the view that this is a key function for regulators to develop in order to secure proportionality, fairness and value for money and one where public confidence that “consensual” mechanisms are being used appropriately could be supported by a PSA Standard. We would also prefer to see more constructive language used around these disposals – “consensual” carries unfortunate overtones and we would prefer to emphasise that these mechanisms are based on the early recognition and acknowledgement of shortcomings by the registrant.

48. However, we are of the view that a Standard could also cover non-consensual methods of disposal such as NHS referrals, discontinuance and Rule 9 cases. The assessment of a particular disposal should be based on whether it secured public protection and confidence in the profession, while assessment overall could consider how responsive regulators are to identifying cases suitable for disposal. Any Standard and assessment that was introduced would need to take account of the variations in legislative schemes between the regulators and the restrictions and/or opportunities afforded by them.

**Equality, diversity and fairness**

49. The regulators are already subject to the public sector equality duty under the Equality Act 2010 and must therefore consider how policies and processes affect people with protected characteristics. We collect E&D data on registrants at the point of application and also in our role as an employer, but the provision of such data is
voluntary and we cannot compel applicants to provide it or current registrants to keep it updated. Given both of these factors, we do not think that the PSA could add value by setting a Standard in this area. However, if the new Standards are to include the principle of fairness, as discussed in paragraphs 4.15 and 4.16 of the document, this would give the regulators an opportunity to demonstrate – and the PSA an opportunity to consider - (for example) what the regulators do to identify issues, what they do to solve them and what proactive measures they take in relation to equality, diversity and fairness.

Rationalising the Standards

50. We agree that the Standards could be rationalised, but not necessarily in the way suggested. The four Standards quoted in paragraph 3.43 relate to the ways in which a) standards and guidance and b) standards of education and training are developed; the considerations taken into account during that development and how the two types of standards relate to each other. However, paragraph 3.45 suggests that the rationalisation could be achieved by requiring the regulators to articulate the standards publicly, which would not achieve the same end.

51. We do agree that the various Standards relating to the provision of accessible information (paragraph 3.44) could be rationalised.

Information Governance

52. Again, while this is an important area the regulators are already subject to legal requirements in relation to data protection and freedom of information. A PSA Standard would not add to the importance of an area that the regulators already take very seriously and would be likely to look at processes which we have in place to ensure that we meet our obligations. We do not think, therefore, that a Standard in relation to information governance would achieve improved outcomes.

How the Standards are presented and measured

53. We agree that there are advantages and disadvantages to both updating the current Standards and moving to a principles-based approach. Overall we would favour moving to a principles-based approach in which the Standards focus on public protection and set out clearly for the regulators and the public what good regulation looks like. This would take the emphasis away from regulatory processes and allow the regulators to assess whether they were providing ‘good’ regulation. Where they were not, they would have a clear goal to aspire to but flexibility to achieve that goal in a way that was proportionate and effective for them.

54. We do, however, acknowledge that performance data is important, particularly in the areas of Registration and Fitness to Practise where timeliness, accuracy and good decision-making are vital. We would suggest that the Authority continues to monitor performance data as it does now – possibly with a more streamlined dataset, alongside consideration of wider, principles-based assessment.

55. The principles of good regulation could provide a framework for revised Standards, however it would be important to ensure that some important concepts which are
currently covered – for example the requirements for the regulators’ standards to prioritise patient-centred care and to take account of stakeholders’ views and experiences - were not lost if they did not fit easily into the framework.

56. Fairness is an absolute requirement of good regulation and could be added, albeit that the criteria would need to be established carefully. Several regulators have data which shows that certain groups with protected characteristics within their registrant base are more likely than average to be subject to fitness to practise proceedings and a number are doing further work to try to understand this better. This could be for a range of reasons and we would not wish to see a regulator ‘fail’ in this area where reasons could be complex and multi-layered.

57. The efficiency of an organisation should be a matter for its senior management with oversight from the Board - it should not be for the PSA to measure or benchmark. If the Authority were to seek assurance on this front, we would prefer an opportunity to explain how efficiency is monitored and what systems are in place to re-allocate resource if necessary.

58. The binary pass/fail decision lends itself to Standards which can be measured (for example, timeliness, accuracy, or the presence/absence of a process) but does not work as well for those which are based on principles and focussed on outcomes. We broadly support the proposal to grade performance as suggested in the document, although the wording still centres around the met/not met paradigm. An alternative might be to use the audit methodology of substantial, adequate, limited or no assurance.

59. Particularly in relation to some of the broader Standards, this would reduce the risk of an isolated failing in one area leading to a Standard not being met. A more graduated scale would afford regulators an opportunity to display progress in cases where it might not be possible to move from ‘not met’ to ‘met’ in one review period.

12 September 2017