

NMC response to the PSA consultation on its approach to performance review

About us

- 1 Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of almost 725,000 nursing and midwifery professionals, we have an important role to play in making this a reality.
- 2 Our core role is to **regulate**. First, we promote high professional standards for nurses and midwives across the UK, and nursing associates in England. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.
- 3 To regulate well, we **support** our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.
- 4 Regulating and supporting our professions allows us to **influence** health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

Introduction

- 5 We welcome the opportunity to respond to [the PSA consultation on its approach to performance review](#).
- 6 PSA's work is of great importance to us, given its valuable public protection oversight role. In our view, the consultation offers an excellent opportunity for PSA to strengthen its work and increase its value to the public by being more targeted, streamlining its approach, and placing greater emphasis on improvement.
- 7 We look forward to further constructive engagement with PSA as it seeks to reform the performance review. We are ready to offer any further feedback or supporting information as may be useful.

Our response to the consultation questions

Question 1: Are there other concerns about the current performance review process that we have not identified here?

- 8 Our general observations are that:
- 8.1 PSA should take a central role in identifying and sharing good practice amongst regulators to help foster an improvement and learning culture.
 - 8.2 Performance review reports and communication should reflect PSA's values and consider language, framing and tone as part of its responsibility to drive positive change.
 - 8.3 PSA and regulators should work to create a more collaborative relationship. Our current relationship is primarily based on a written exchange of correspondence and this is not an effective dialogue that can foster a healthy exchange of views and partnership working. More regular, in depth engagement with PSA would be helpful, particularly to clarify issues or areas of concern before decisions are made.
 - 8.4 The performance review cycle should be more streamlined and agile. The current approach frequently results in the final report being released up to a year or more after the end of the reporting year it relates to. This risks creating an inaccurate reflection of regulators' current performance which reduces the value of the reports to the public. It also inhibits regulators' ability to learn effectively and improve quickly from the reports.
 - 8.5 The performance review should be driven by a greater focus on outcomes, specifically how regulators meet their over-arching purpose of protecting the public.
 - 8.6 We support PSA enhancing their risk based approach to the performance review and would encourage an assessment and reflection on the data, evidence and information, quantitative and qualitative, used to inform that assessment.
 - 8.7 PSA should develop and disseminate a clear and transparent approach to performance review assessment and audit which recognises the differences between regulators and the specific contexts in which they operate.
 - 8.8 The performance review and PSA's other activities must be proportionate so that their cost (which is ultimately borne by registrants) and impact on regulators does not outweigh the value to the public of PSA's work.¹

¹ NMC presently provides some 42% of the PSA's fee income (approximately £1.9M of a total of £4.5M).

Question 2: Do you have any comments on our role or the broad approach that we take to performance review as we have set out here?

- 9 We think that the broad approach outlined in the consultation is appropriate. We believe further emphasis could valuably be placed on understanding the different contexts in which regulators operate. We welcome the recognition of the impact of the performance review process on regulators and the commitment to a risk-based, proportionate, and targeted approach.

Question 3: Do you think we should continue to look at the regulators' performance against all of the Standards every year or could the scope of our reviews be more targeted?

- 10 PSA should continue to publish an assessment of performance against all the Standards every year, but the scope and extent in reviewing each of the Standards should be informed by a more risk-based and proportionate approach. An annual assessment of each regulator's performance against all of the Standards will be clearer and more valuable to the public than an assessment of performance against selected Standards only.
- 11 PSA's current approach to reviewing some of the Standards in detail is not always proportionate. We would welcome greater transparency about how PSA selects the Standards for review, chooses its questions and information requests during the review, what it does with data provided, how this impacts on judgements over whether Standards have been met, and how it considers impact and proportionality as part of this process.

Question 4: If we were to change our approach, are these the right factors for us to consider in determining the scope of reviews? Is there anything else we should be considering?

- 12 As noted in our response to question 3, in our view PSA should continue to publish an assessment of performance against all the Standards every year. Broadly speaking, the factors listed in the consultation will be relevant to PSA's decision on the intensity of the review to undertake against any standard.
- 13 PSA's should clearly focus on its statutory remit of how the professions are regulated, so that healthcare professionals on our register provide safe care to the public. This should reflect our strategic approach to regulation. We are concerned that some of the factors listed could extend PSA's remit to monitoring the organisation's general performance beyond its core regulatory remit.
- 14 As we made clear in our letter on thematic reviews of 31 January 2020, PSA also needs to make sure it can show due regard to the regulatory impact it creates, and the relative size of the financial burden which would be created for registrants if a widening of scope leads to fee rises.

Question 5: If we implemented a system as described above, do you agree that there should be a presumption that the Authority should actively review all of the Standards at regular intervals? What do you think an appropriate timeframe would be?

- 15 As noted in our response to question 3, in our view PSA should continue to publish an assessment of performance against all the Standards every year. An annual assessment will give a more balanced picture of performance to the public and will assist regulators generally by highlighting areas of good performance.

Question 6: Do you agree that we should introduce monitoring processes as described above? Do you have any comments on these suggestions?

- 16 The consultation document contains little detail on how the proposed formal monitoring process would operate. We would welcome greater clarity and further engagement before a decision is made.
- 17 In general terms, we would welcome a more collaborative approach to improvement, where it is required. Opportunities to discuss with PSA options for improvement in more detail and the ability to request an interim assessment of progress outside the formal performance review process could be valuable.
- 18 Close monitoring of a regulator's activities should take place only if there are very serious concerns about performance, and with due regard to proportionality and regulatory impact.

Question 7: Have we identified the right areas of our approach that we need to develop in this area? Is there anything else we should be considering?

- 19 Broadly speaking, we agree these are the right areas for PSA to concentrate on. We would suggest that the PSA also considers how performance review can:
- 19.1 Support improvement by sign-posting good practice;
 - 19.2 Reflect PSA's values in tone and content and support a culture of safety, learning, and improvement;
 - 19.3 Best focus on outcomes and include the right balance of qualitative and quantitative evidence.
- 20 The proposals are not currently costed and we are concerned that they are likely to result in higher costs for regulators, which will be borne ultimately by registrants.

Question 8: How could we best engage with stakeholders, to ensure that we are aware of key risks to public protection? Is there any other evidence that we should be seeking to inform our performance reviews?

- 21 We support the PSA's intention to engage with a wider and more diverse group of stakeholders, and to inform the performance review effectively it would be important to ensure a range of views from:
- 21.1 Public and patient organizations.

21.2 Organizations with expertise in particular protected characteristics.

21.3 All four UK nations.

21.4 Professional bodies and unions representing nursing and midwifery professionals.

22 More qualitative input from stakeholders to complement the existing quantitative evidence could be an important way to provide a rounder perspective.

23 We would welcome more regular and sustained engagement with PSA to help clarify issues and target opportunities for learning and improvement, and to minimise the impact of compressed periods for formal exchange of correspondence.

Question 9: Should we retain the binary system or adopt a more nuanced approach?

24 We do not believe the binary 'met/not met' approach is the best measurement, given the breadth of some of the Standards and the extent of our regulatory activities. The current approach means that a regulator can meet all but one element of a Standard and still be considered to have 'not met' it. Although the accompanying narrative provides the context, the binary approach is not as clear and transparent for the public as a more nuanced system would be.

25 A graduated approach would give a better sense of a regulator's capacity to improve than the current binary system and is used effectively by other large regulatory organisations such as the CQC.

26 We would welcome more clarity about how PSA reaches decisions on performance. Although the Standards provide a generally clear framework, it is not readily apparent how PSA considers the scale and context of individual regulators in reaching its decisions. It would be helpful if PSA would adopt a transparent audit and assessment approach, based on key lines of enquiry and clear thresholds.

Question 10: If we were to adopt a different approach, what alternative approach would you prefer and why?

27 We do not have a specific view on what graduated rating system to adopt. In our view, the system should:

27.1 Be clear and transparent for the public;

27.2 Focus on areas of good practice and areas of improvement;

27.3 Use language that fosters a culture of safety, learning and improvement.

28 Adopting such an approach would help to send a clear message that the PSA is prioritising improvement as an outcome of its reporting process.

Question 11: Would these changes support the regulators to learn from our work and that of other regulators, in order to better protect the public?

- 29 We welcome PSA's intention to do more to support regulators to learn and improve. We strongly support the proposals to do more to identify good practice and to support cross-regulatory working. We welcome proposals to make meaningful recommendations to individual regulators about options for improvement, although we caution against over-specific recommendations on the detail of operational processes. We welcome proposals to make meaningful recommendations to all regulators, although we have reservations about thematic reviews for the reasons explained below.
- 30 We would value more dialogue with the PSA during and after the performance review process. This would give more opportunity to clarify issues, focus on meaningful learning and improvement, and provide public confidence that problems are being addressed effectively.

Question 12: Do you think thematic reviews would assist us in our scrutiny of the regulators and enhance our public protection role?

- 31 Although we can see the potential value in principle, at this point, we do not believe that the case has been made for an additional thematic review process. On the information provided to date, we believe the introduction of thematic reviews is highly likely to increase the overall cost of PSA's activities and the impact on regulators.
- 32 We welcome the PSA's commitment to identifying efficiencies in the performance review process. However, there isn't sufficient detail at this point to assess how realistic that is. We are concerned that thematic reviews will create substantially more work for regulators and increase the PSA's fees, which are borne ultimately by registrants.
- 33 The priority at this point should be to improve the performance review process to make it more efficient and ensure it is as valuable as it can be to the public and to regulators.

Question 13: Please set out any impacts that the proposals set out in this paper would be likely to have on your organisation or considerations that we should take into account when assessing the impact of the proposals.

- 34 Currently, we pay fees to the PSA of roughly £2 million a year and collating and providing the evidence required for the annual performance review is very resource intensive. The importance we assign to performance review means that we make a substantial commitment of resource at all levels within our staff structure and within our systems to ensure timely and high quality submissions.
- 35 We welcome PSA's consideration of impact and once the detail of proposed changes are further advanced, a full Regulatory Impact Assessment exercise should be undertaken, with the option for regulators contribute and help develop the proposals collaboratively. New proposals should be tested against the potential workforce and resource burdens that they generate and a key principle should be that the new proposals do not increase workload or overall cost.

- 36 The focus should be on improving the value to the public of the performance review without an increase in workload or cost. Better engagement and collaboration with regulators, and a more targeted and proportionate approach would help to improve the efficiency of the process.

Question 14: Are there any aspects of these proposals that you feel could result in differential treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)

If yes to any of the above, please explain why and what could be done to change this.

- 37 We welcome PSA's consideration of equality, diversity, and inclusion and once the detail of the proposals are further worked up, a full Equality Impact Assessment should be undertaken. On the information provided so far, we believe the proposals are likely to lead to an increase in costs which will be reflected in the PSA's fee. The potential fee increase is borne ultimately by registrants, and disproportionately by nursing and midwifery professionals. Any increase in fee is likely to affect people with lower incomes disproportionately. People with certain protected characteristics are likely to have lower income, including women, disabled people, and minority ethnic people.

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