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Dear John,

Consultation on the Authority's requirements for 2020/21 in respect of its regulatory oversight and standards functions

Thank you for the opportunity to comment on the Authority's requirements for 2020/2021 in respect of its regulatory oversight and standards functions. Our response is set out below and reflects the key points of discussion between Charlie Massey and Alan Clamp on 17 October 2019.

Question 1. Do you think that our proposals for our work in 2020/21 are reasonable?

We think that the work proposals set out to deliver the Authority's functions are reasonable, and highlight some further points on specific areas below.

Revised Standards of Good Regulation

We support the introduction of the revised Standards of Good Regulation, as set out at paragraph 6.23, while highlighting a key point based on our experience of piloting the new Standards, earlier this year.

In assessing our understanding of our purpose, the Authority raised a concern based on the perceived conflict between *supporting* the profession and our role as a regulator. The Medical Act establishes our purpose as protecting the public, promoting and maintaining confidence in the profession, and promoting and maintaining proper professional standards and conduct for the profession. While we deliver our statutory functions in pursuit of our purpose, they are not our sole purpose, and are not delivered to the exclusion of all else. Targeted upstream interventions that support the profession *to deliver better patient outcomes* reflect key elements of right-touch regulation, including getting as close to the source of the problem and using regulation only when necessary. We discussed these

concerns on 8 October 2019 and I'd understood we may have reached a common view, however the final pilot report reiterated the perceived tension between supporting professions (to deliver better patient outcomes) and the role of regulators. We hope that in the formal introduction of the Standards, there will be a more complete consideration of the purpose of regulators as set out in their legislation, and recognition that moving upstream in our interventions is supportive to, rather than conflicting with, our role as a regulator.

While recognising that the Authority's Board has committed to continuing with the binary 'met/not met' approach to assessment against the Standards, we reiterate our past expressed view that this model does not allow sufficient nuance to the assessment, and does not make clear the threshold for meeting or not meeting the standards. We think the approach could be complemented by providing further detail to regulators on where their performance lies against this threshold. For example, a 'met, but...' or 'met, and...' approach could provide more value to regulators in understanding how to improve their performance.

Introduction of thematic reviews

We welcome the Authority's intention, as set out at paragraph 6.24, to consider questions of wider good practice through thematic reviews. Some areas of potential focus for these reviews include:

- Good practice upstream interventions to balance the strong focus of the performance review standards on statutory functions.
- How regulators can work collaboratively, aligned with discussion at the Authority's November Symposium, to maximise impact by aligning regulatory activity.

We would be happy to contribute to further discussion on potential areas of focus if this would be helpful.

Consensual disposal

The consultation paper raises the question of whether the Authority's appeal powers would need to be extended to cover changes to consensual disposal. We accept the principle that if more decisions are being made at consensual disposal level, these need to be subject to scrutiny and potential appeal by the Authority, to ensure decisions are sufficient to protect the public. However, we believe the approach to scrutinising consensual disposal decisions must be proportionate and not significantly offset net efficiency gains expected to come from the changes.

Question 2. Are you aware of any legislative changes for example Section 60 orders you are proposing that will impact on the Authority in 2020/21?

As the Authority will be aware, DHSC is currently pursuing two Section 60 orders: one on regulator Governance and Operations; the second on FtP, which would introduce consensual disposal changes. Given the current political environment the timing and potential impact of these is uncertain.

In the meantime, we continue to liaise with the Authority and the Department of Health and Social Care (DHSC) on the potential legislative changes.

We are also in discussions with DHSC about two further S60s. We are highlighting these for awareness, although in neither case do we foresee any direct implications for the Authority:

- Relating to international registrations, this is aimed primarily at facilitating entry to the registers to have a more flexible and proportionate approach which in turn will help address workforce pressures. This S60 Order is expected to include similar types of provisions requested by some of the other regulators. We do not know if or when this is likely to come into force but the earliest possible date would be end of 2020.
- Some form of further S60 will be needed to legislation for the regulation of physician assistants and physician assistants in anaesthesia. Work on developing the regulatory model has only just begun, and we would not envisage anything in force before mid-2021.

Question 3 - Do you think that our assumptions regarding the number of Section 29 cases we will receive are reasonable? Can you provide us with estimates of the number of cases you will conclude during the year ahead?

With regards to the volume of fitness to practise cases we will conclude during the period consulted on, for several years we have agreed on an approximate figure of 4,000. Based on overall trends, we would expect this figure to be slightly lower for 2020/21. However, volumes of cases remain subject to factors beyond our control, and the numbers we conclude in any given time will also depend on the seriousness of cases. As such, these figures fluctuate, however on balance we think that the assumptions the Authority has set out relating to the number of Section 29 cases it is likely to receive are reasonable.

4. Do you think that our assumptions regarding the recovery of costs are reasonable?

We think the assumptions you have detailed regarding the recovery of costs are reasonable.

5. Do you agree with our proposed budget?

We agree that the Authority's proposed budget is reasonable.

We'd be happy to provide any further information or clarification on any of these points.

Yours sincerely

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