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GMC's response to PSA Performance Review strategy consultation

Thank you for the opportunity to comment on the Authority's proposals to review the performance review process. Please find our responses to the consultation questions on the following pages. We think that the greatest potential improvements to the performance review process could stem from:

- Greater transparency of the scale of the Authority's concerns, and also in the value or weight of evidence required to satisfy a standard. This would enable us to better target our work to engage in the process.
- Maximising linkages and alignment to ensure any thematic review process is offset by other efficiencies, but also to consider drawing on other sources of assurance to inform the Authority's performance assessments (i.e. making more use of a regulators local quality assurance processes).
- A stronger emphasis on how regulators learn and improve as the focus of the process, more so than the pass/fail assessment.

We've also welcomed our more regular engagement with our performance review team during the pandemic and feel that this routine style of engagement and discussion of performance on an ongoing basis is the type of engagement that could support an improved model.

We'd be happy to discuss our response in further detail.

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

We think the key concerns of the current process are captured by the consultation document and the Authority's focus questions. We think it is important that the focus questions aren't considered in relative isolation from each other. We believe some of the greatest potential improvements to the process would come from considering how the various elements interact as a whole.

We think that improvements could be made by maximising alignment across the various elements the Authority leads, but also with any local assurance mechanisms within regulators. We have previously expressed support for Thematic Reviews as an opportunity to draw out learnings and capture better practice. The benefits of introducing thematic reviews will only provide a nett increase in value from the process if they displace a significant volume of the work connected with the current performance review process. Without this assurance, we would be concerned that thematic reviews would reflect an increase in overall regulatory cost. Our recent experience of supporting the thematic-style review of Covid learnings, has been challenging – with timelines overlapping for fact-checking our performance review report, supplementary questions of interest to the Authority, and responding to this consultation. If thematic reviews were conducted in a similar fashion on a regular basis, we would have concerns about the sustainability of the model. Equally, we think that the review of the process should consider opportunities to maximise reliance on existing sources of local assurance in regulators (i.e. internal audit and quality assurance activity) to help the Authority target the frequency of their reviews of regulators.

We believe the regulatory cost of the current performance review is potentially disproportionate because of the limited transparency around decision making thresholds and weight of evidence. Considerable effort is expended in collecting evidence and undertaking data analysis explaining variation in performance. Much of this is driven by a lack of clarity about the weight of concern underlying the Authority's question, nor clarity on how much evidence is enough. On the latter point - a more transparent view of the relative weight the Authority accords evidence based on the evidence framework would mean that where a regulator fell short of the Authority's expectations there would be a more transparent means of developing the associated action plan to improve the control framework to meet the evidence threshold in future years. We also believe that the Authority should be able to share low-level points of concern received from stakeholders to help inform our view and understanding of issues, but not always require a formalised response of action. A more collaborative focus on improvement would see these transactions being more frequent between the Authority and regulators.

There is something to be said for the overall approach to engagement and supporting behaviours between the Authority and regulators. Reality is that regulators and the

Authority share a common purpose to protect the public. We accept that the review process must be objective and impartial. But drawing on our experience since the revised standards were introduced in 2012, on occasion we have felt a presumption of failure that we don't think supports the best outcomes. It doesn't encourage an openness of dialogue or as open reflection on emergent risks as the process should aspire to. Striking the balance between summative assessment of pass/fail versus formative assessment and understanding how a regulator learns and improves is key. Our more recent engagements with the Authority over the past 24 months and particularly during the pandemic, have been characterised by a more frank exchange of areas of concern and our view of risks and the necessary trade-offs being made for the long-term sustainability of care for patients. This has generally reflected an openness in that dialogue that we are collectively trying to protect the public in difficult circumstances, and it is not an easy path to tread. The broader adoption of these ways of working as a matter of course would considerably improve the value of the performance review process.

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?

We think that the areas identified by the Authority are appropriate. Our experience has suggested improvements to the process could come from the proportionality in execution.

- *Awareness and addressing* of risks to the public needs to be considered together with the *assessment* of risk and *prioritisation of risk control*. Risk exists across all functions but in the context of proportionality and finite resources there is an inevitable need to prioritise on the areas of greatest risk and impact. Risks within each function cannot be considered in isolation from the totality of all risks facing a regulator – and the inevitable trade-offs that need to be made. The Authority's consideration of how risk is assessed, needs to be proportionate and accept that on occasion, a regulators risk response is to accept it.

- The pandemic highlights the incredible demands a number of key stakeholders across the health landscape have been under. In the same context of finite resources and the need for prioritisation, we accept that sometimes issues of importance to us, are lower on other stakeholders' relative agendas, and tailor our approach accordingly. The performance review process needs to consider this balance of risk across bodies proportionately and acknowledge that what presents the largest risk to one body does not always extend to another. Sometimes the most realistic and proportionate outcome is less than we would prefer, but also more than our stakeholder may have originally committed. So, in assessing how regulators work with others, it must be mindful of these constraints.

- The Authority is uniquely placed among bodies to oversee opportunities or gaps for greater regulatory alignment. The review process should also be an opportunity to identify and potentially explore some of those issues, to assist regulators, rather than reflect only on their individual approach.

- On the Authority's current tools for the performance review – we have found on occasion an over reliance on data to build a picture of regulator's effectiveness. The relative paucity of data on some functions, such as education and training or standards, can lead to what feels like a disproportionate focus on some functions relative to others.

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?

We are supportive of a more targeted approach of not considering all standards every year. We support reviewing every standard at least once over a defined-time frame, with the frequency of that review informed by an assessment of risk.

We believe there is an opportunity to use the less than annual frequency proposed to free up capacity in both regulators and the Authority to consider thematic reviews and there could be efficiencies or better practice to be drawn from considering some standards thematically more regularly – such as equality, diversity and inclusion.

The Authority suggests that the impact of failing Standards 1-5 might have a wider impact, they also relate to overarching organisational governance and culture. They lend themselves to scrutiny from governing Councils, Audit and Risk Committee's and internal controls and assurance such as internal audit. So, while the impacts of failure may be more wide-ranging, the likelihood of doing so may be relatively lower. There may be an opportunity for the Authority to better utilise existing lines of defence within a regulator to provide some assurance around the functions to inform targeting of the review. This should include recognition that the Authority scrutinises appointment processes for governing councils so there are already existing checks and balances on the overarching governance of regulators. Realistically too - these standards are heavily impacted by organisational culture and its broader governance arrangements which subject to the size of the regulator may make them less susceptible to large variations in assessment year to year. This latter factor we think should influence the Authority's timeframes for how regularly they need to be re-assessed if they have been found to be met.

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?

We agree with the principles set out of what should be considered to inform the scope of reviews.

We do have some reservations about the Authority's process for collecting the evidence needed to make the assessment against these criteria. If regulators are required to annually compile this evidence to prove that we don't meet the threshold for a review, then we don't anticipate any improved proportionality or greater efficiency than the current model. However, if the assessment in one year was clear that unless any substantial findings to the contrary were identified, the standard would not be covered the following year – this would improve the process. By way of example – the amount of effort to explain variations in the data set to enable the Authority to assess that it does not need to annually review the relevant standards, would require equivalent effort to the current process.

We accept that the Authority's job is not an easy one and will always remain a judgement call. But that judgement needs to remain proportionate. Not every deviation in delivery against business plans or targets is a failing of a regulator, and the way these assessments are made by the Authority to determine if a review is required shouldn't impede upon the proper governing and decision making of the Regulator's Council or executive, which may necessarily mean reprioritising or redeploying resources to different priorities than that set out in plans and key performance indicators.

Equally – the changing of a process or procedure is a reasonable question for the Authority to consider. However, the timing of the review of that change should be informed by the scale of the change and allowing sufficient time for the regulator to do its own lessons learnt exercise and readjust or fine-tune process changes accordingly before being subject to scrutiny in the review process. We've found it hard on occasion to provide evidence for the Authority's review because the timing has been in advance of already planned internal learning reviews, quality checks and internal audit reviews that we routinely schedule to assure ourselves. Equally, some guidance or quantification of the scale of change to a process would be important to guiding regulator's actions in what to identify to the authority to minimise the burden of evidence submission.

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?

We agree that the Authority should periodically assure itself on each standard at least once in a defined interval. We think that a maximum of five years between reviews is appropriate. The latter point is largely influenced by our current Council member appointments which are for four years. We think that longer than this without review may not provide commensurate scrutiny or oversight to provide independent assurance of regulators. Longer than this also overlooks the value Council may draw from the independent view of the Authority.

There may also be efficiencies or greater value to be drawn from considering lower risk standards being reviewed across all regulators as part of the thematic reviews by exploring a unique dimension or risk angle of those standards.

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

We are supportive of the notion but are unclear how this differs from the current oversight of regulators provided by the current performance review and special investigation powers the Authority holds. We understand our Council papers including performance reporting, quarterly data set, feedback from the public and stakeholders, are routinely considered by the Authority throughout the year, rather than only during our performance review.

In relation to enhanced monitoring of specific risks or concerns that are identified, we are not persuaded that review more regularly than annually would be beneficial. In the context of reviews over a five year (or other duration) window – we appreciate annually would be relatively frequent, but we do not think they should be more regular than that. More frequent oversight and reporting in response to key issues can have a distracting and punitive impact to a regulators effort to make progress on the issues at hand. Many processes have third party inputs and change often impacts our professions and the health service (all of which face many competing demands) meaning that implementing change and improving processes can be challenging. Against this, we believe that annual review provides an appropriate window for reflecting on progress. The review process must strike the appropriate balance between routine formative assessment that shows learning and development, and a summative assessment approach of the current model, and any more regular scrutiny needs to be focussed on application of learning and adequacy of approach (but not necessarily regularly revisiting pass/fail or progress of implementation).

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?

We agree that the findings of the inquiries and reviews cited by the Authority highlight failings where patients were not adequately protected. We believe that the changes to the existing performance review process by the introduction of additional standards on learning from inquiries, and regulators' capabilities to understand the environment and identify risk has gone a significant way to better assessing performance in this regard (new standards 4 and 5). We think the Authority should further embed the new standards before introducing additional interventions, or any changes need to be informed by an assessment of why the new standards do not help mitigate the risks and challenges the Authority have identified.

Inquiries and reviews are incredibly powerful as learning exercises and a constant reminder of the need to challenge ourselves. But they often relate to events up to and over ten years in the past. We have invested considerably in major change over the same time frame to build stronger linkages with others, better utilise our data, and consider the tone of our engagement with the public and profession. Improving the quality of these interactions is one of four themes of our new corporate strategy. So, while the retrospective look is important and should be considered through the performance review, the appropriate balance to counter this view should be anticipation of major challenges. Anticipating risks needn't be through a heavily orchestrated process but can as equally be identified through more open and regular conversations across regulators, considering themes of published data on the professions, and themes of conferences across patient and health bodies. We believe that two critical risks have emerged from the pandemic that should occupy the attention and focus of regulators and key stakeholders for the foreseeable future. These include:

- The critical link between the **wellbeing of the professional**, enabling them to be available and equipped to deliver quality patient care.
- Pervasive **impacts of inequality** and its associated discrimination and disadvantage that risks workforce sustainability and ultimately impacts the quality of care received by patients.

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?

The best engagement approach is determined by the nature of the stakeholders, so it's difficult to comment on the approach. The approach suggested does not feel dissimilar to our experiences to-date of working with the Authority – where they routinely raise queries on our work although not strictly under the auspices of the 'performance review window'. We would make the observation that the most critical failings stem from, or are exacerbated by, the gaps between professional regulation, systems regulation, and the care environment. To meaningfully anticipate and act on these risks, the stakeholders need to reflect a broad set of input from across health providers, government, regulators, and patient groups.

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

We appreciate the simplicity of the overall met or not met binary approach. The reason we have been supportive of revisiting the approach previously is the absence of a transparent threshold for what constitutes having met the standard. In practice, the lack of clarity of the Authority's scale of concern on an issue or what evidence is enough to demonstrate performance, has driven disproportionate volumes of work to explain all elements of our performance. A more transparent framework, including metrics of what constitutes failure, and a clearer indication of the Authority's degree of concern, could improve the proportionality of the process, and retain the met/not met model. We

appreciate too that the ultimate decision is a judgement call and not one that can be completely translated into metrics.

We also agree that there are other ways to communicate the nuance of the review other than through the overarching assessment outcome. The conciseness of the Authority's web page summary of the regulators performance review report tends to provide a more balanced and easily digestible snapshot of performance than the detailed report (highlighting good performance as well as areas the Authority probed further). A stronger focus on highlight points and one-page summary visuals could help communicate the rounder set of messages regulators often seek when challenging the met not-met binary approach.

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

We don't have a strong preference out of the outlined models in the consultation. Our primary area where we think improvement could be had is on the transparency of thresholds or the burden of proof required to assure the Authority of performance relative to the assessment outcome. If there are insurmountable barriers to giving regulators a clearer view of what falls either side of the 'met' or 'not met' assessments, then we believe a more nuanced four tier model could be appropriate. We do not support a three tier (red/amber/green) model or other equivalent that leaves a degree of ambiguity for patients and stakeholders about where a regulators performance falls at the 'amber' level. We do believe the assessment needs to be definitive in communicating a view on the adequacy of performance.

We would welcome a model where the evidence framework provided a clearer indication of the value the Authority connected to the evidence so that we could prioritise what evidence we supplied or where the Authority felt our controls were deficient, more readily identify responses or improvements that we could put in place to address those concerns.

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?

We agree that the Authority has a valuable role to play in identifying and sharing good practice, as part of continuous improvement and learning across all professional regulators.

We don't support formalising this in recommendations to regulators. This does not reflect the reality that individual regulators are ultimately expert in their jurisdiction and already seeking to identify and prioritise their response to a range of risks including the wide range of recommendations that emerge from other statutory inquiries and reviews. We would welcome the Authority's view on risks they think should be considered in this context, but don't think that it reflects the autonomy or responsibility of individual

regulators to bring to bear their expertise and accountability in implementing an appropriate response. It's also difficult to imagine a scenario when this would lend more value than what the Authority can already provide as reflections they make now when highlighting if performance falls short of expectations.

We think the Authority could play a useful role in aiding regulators to raise the profile of wider-system challenges that we know impact the ability of our professions to provide quality patient care.

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

We think that thematic reviews could be used to rationalise or reduce elements of burden in the Performance Review process as per our earlier responses. These could be used as a means to both gain assurance across regulators and identify good practice or emergent risks. While we believe the thematic reviews could be useful, the unintended consequences of a further 'product' should also be considered. There is some risk that thematic reviews set a range of de facto recommendations on top of regulators existing commitments and improvement programmes by citing good practice from one regulator that becomes an implied recommendation to others to adopt.

A key concern is that the workload to support thematic reviews is fully offset with efficiencies to the performance review programme. If this is unable to be achieved, then we would prefer the Authority invest in drawing out good practice or learning through the existing performance review process.

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.

It's important that there is balance in the consideration given to quantitative insights from the data set and more qualitative indicators. The current review process can over-emphasise timeliness of process-throughput at the expense of quality and the experience of those we work with. Each year we tend to find common underlying drivers of case length based on complexity, timing of when allegations emerge, and delays from third parties and statutory notice periods. We have found our discussions with the Authority on our data more valuable when we discuss the checks we have in place to assure ourselves there isn't unnecessary delay, rather than focussing purely on the metric. Striking this balance could considerably reduce the resources we need to commit to the process, as our ability to explain variances in our data is particularly resource-intensive and requires significant allocation of data analyst skills with a high opportunity cost.

The review might also consider the datasets current breakdown of total statutory functions into interim-stages, particularly in fitness to practise. There is a risk with these

interim stages that the review focusses more on individual data point movements rather than the overall outcome sought (and delivered). For example, initiatives that enable regulators to address less complex cases quicker and at earlier stages in the process, will result in medians for later stages in the process ostensibly worsening, although this is likely to be a reflection of us progressing more of the most complex and challenging cases to later stages in the process, having more effectively dealt with lower-level concerns.

Whether the Authority accepts any of the suggestions around clarity of thresholds and scoring for evidence will also impact the operational impacts of the proposals.

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.

If these changes remain cost neutral, then we anticipate limited change in impacts. In so much as the costs of the Authority are borne by levies charged on regulators, and we recover our costs through fees passed onto our registrants – there may be implications if the Authority's costs should increase and these were passed on and how that may disproportionately impact registrants across regulators. We make available the protected chrematistics data that we hold on our registrant base through our website.