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GMC's response to PSA Approach to Performance Review consultation

Thank you for the opportunity to comment on the proposed approach. Please find below our responses to the consultation questions.

Question 1: Do you agree with our assumptions? Please provide reasons for your answer.

We agree with the assumptions set out in the consultation. In particular:

- that proportionality is key to effective regulation and that the assumptions reflect an ambition to refine that balance. Our review experience over the last twelve months has mirrored many elements of the proposed changes and we have found this to be positive.
- that the performance review process should align with, and build on, existing sources of assurance and accountability, such as the role of governing Councils, rather than duplicate them and that it is proportionate to seek sufficient rather than total assurance.

- varying the timeframe of periodic review, when supported by ongoing engagement does not necessarily heighten the risk associated with oversight. The targeting of specific risk can effectively negate the need for an intensive and wide-ranging review of all functions at a single point in time.
- risk exists across all functions and that each regulator has its own organisational view of proportionality within finite resources across all its functions. The Authority's consideration of risk needs to be proportionate and able to accept on occasion that a regulator's risk response is to accept it if it frees up resources to mitigate another more significant risk to patient protection.

Many of the proposals for improving the process are about behaviours as much as process. The openness and regularity of the engagement between the Authority and the regulator is key to delivering a more proportionate and valuable process. All parties are accountable for modelling the right behaviours – with a clear emphasis on being transparent about why decisions have been made.

We support the Authority's ambitions to use the performance review changes to improve regulation. We think it important that the performance review itself is seen as the primary vehicle for doing this - by embedding elements of good practice within the evidence framework for the standards of good regulation that regulators draw upon. We have a shared ambition to rationalise and streamline the regulatory architecture and the clarity of messaging for all its users. We think that developing standalone guidance or products by the Authority, such as the proposed Complainant Code, risks clouding rather than clarifying or improving the regulatory landscape – so we are of the view that the improvements to regulation come from enhancing the performance review, not from efficiencies released from the performance review to develop separate standalone products.

Question 2: Do you agree with our proposed approach to periodic reviews? Are there areas that should be looked at as part of every periodic review. Please provide reasons for your answer.

We agree with the proposed approach to periodic reviews and that the detail and focus of what is covered would be informed by the risks identified.

We agree the Authority should take account of stakeholder views to shape their approach to the performance review process. Striking the right balance between sometimes competing interests of patients, the profession, and the health service can be challenging. There are opposing, but validly held differences of view. Against the Authority's ambitions to strengthen their understanding of stakeholder views to inform the review process, it is important they objectively consider the perspective

of stakeholders and not assume stakeholder concerns are necessarily performance concerns.

Question 3: Do you think the areas we will look at to form our evidence base are appropriate? Are there any other areas we should explore to enhance the evidence we collect? Please provide reasons for your answer.

We agree with the areas identified.

We would emphasise the importance of the review of *public papers* and *published information* on process changes. Some of the largest potential efficiencies to the process come from focussing more attention on material changes. On occasion we have found it challenging to navigate the threshold for where the Authority's interest falls and of what degree of change should be advised of – but we are of the view that all changes that meet that materiality threshold will be published in the public domain as a Council (or other Governance Board paper) or on our website or in guidance.

Question 4: Do you agree with our proposed approach to monitoring performance in the years between periodic reviews? Please provide reasons for your answer.

We agree with the proposals.

We note that the review approach will necessarily reflect the nature of the risk perceived by the Authority, so it is difficult to be prescriptive. However, to cultivate the right trust in the relationship the Authority should be transparent in its engagement with regulators by articulating not just the areas of interest, but the *why* and how it connects to risk. Where the Authority's interest is in good practice or general interest – this should also be clearly communicated so that regulators can prioritise their responses accordingly.

Question 5: Do you think we have identified the right factors to consider when determining the length of review cycle? Please provide reasons for your answer.

Question 6: Do you agree that a three-year cycle would be appropriate? Please provide reasons for your answer.

Yes, we think the factors set out in the consultation are appropriate.

We agree that less than annual is appropriate where the risks are assessed as such, but that longer than three yearly cycles could undermine the value of the

performance review process with stakeholders and governing Council's (as an external independent source of scrutiny they can also draw upon).

Question 7: Do you agree that these are the right factors for us to consider when deciding the areas we look at during periodic reviews? Are there any that you would like to see added, removed or amended?

Question 8: Do you agree that these are the right factors for us to consider when deciding to look in more depth at particular areas outside of periodic reviews? Are there any that you would like to see added, removed or amended?

Yes, we agree with these factors for the periodic reviews and consider they are reasonable.

Reiterating earlier messages of our response – we believe more important than the factors is the transparency and clarity with which the Authority communicates to the regulator how they have considered the factors and formed their approach. In the revised process we think that it is important requests for information or variations in approach are communicated to the regulator with a clear source of the Authority's interest.

Given the importance associated with, and confidence stakeholders and Council's draw from meeting (or failing) the standards of good regulation – we think that the Authority should only in exceptional circumstances, not act on a formal request from a Council to reassess against a failed standard and be transparent and clear on the circumstances why it would not.

Question 9: Do you agree that the factors for bringing forward a regulator's periodic review should be similar to those for undertaking reviews out of cycle? Do you think this is an appropriate threshold? Are there any that you would like to see added, removed, or amended?

Question 10: Do you agree that these are the right factors for determining the order for regulators in the cycle? Are there any that you would like to see added, removed or amended?

Yes, we agree with these factors.

Question 11: 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.

We do not have any specific impacts we wish to raise in addition to the information already provided.

Question 12: 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 [protected characteristics listed]:

No, we have no additional concerns.

I hope this is helpful – we look forward to continuing to work with you and would be happy to discuss at any point.

Yours sincerely,

Robert Scanlon
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