

Policy on responding to serious systemic concerns about the performance of a statutory regulator

May 2024

1. Introduction

- 1.1 The PSA is committed to promoting the health, safety and well-being of users of health and social care services and the public in line with our statutory remit. We therefore take seriously any concerns about the performance of the health and care regulators in our oversight.
- 1.2 The purpose of this policy is to set out how we will address those concerns that suggest or provide evidence of systemic failure. We are not able to address concerns about individual cases or decisions under this policy. However, we may activate this policy if we see evidence or patterns in an individual case which suggests systemic failure, or where individual concerns otherwise suggest systemic failings.

2. What should be done before raising a concern with the PSA?

- 2.1 Before approaching the PSA to raise concerns we would expect that an attempt would have been made to raise concerns with the regulator(s) concerned. The regulator will have its own process for responding to concerns, and this will often be the quickest way to put matters right.
- 2.2 We understand that there will be situations where it is not felt possible to raise a concern directly with the regulator before coming to the PSA. We will consider the reasons for not doing so carefully before reaching a decision on whether we can take a matter forward. It is more likely that we would act where there is reason to believe that (a) the regulator would cover up wrongdoing or malpractice (b) that the individual would be treated unfairly if they raised the matter with the regulator or (c) the regulator has not addressed the issues despite their having been brought to the regulator's attention.
- 2.3 Please contact concerns@professionalstandards.org.uk if there are concerns you want to report to us.

3. Whistleblowing

- 3.1 Concerns may be brought to the PSA's attention by an employee of one of the regulators who believes that they are acting as a whistleblower. Employee in the context of the Public Interest Disclosure Act 1998 includes contractors, trainees, agency staff and those working under a contract of employment.
- 3.2 Anyone wishing to raise a concern with us in this context should seek advice before they do so. We are not a prescribed body for the receipt of protected disclosures as set out in the Public Interest Disclosure (prescribed persons)

Order 2014 and it is important that the potential whistleblower understands the consequences of this in their own circumstances. The charity Protect offers legal advice to whistleblowers.¹

4. Confidentiality

- 4.1 We encourage those raising concerns with us to do so as openly as they feel able, as this will enable us to take any necessary action more easily. The PSA will do its utmost to protect the confidentiality of those who raise concerns with us. We will not disclose the identity of someone raising concerns with us without their consent unless required to do so by law, for example, under a relevant Court order, or in circumstances where we believe there is risk of harm to the person raising the concern or others.
- 4.2 If concerns are raised with us anonymously, or consent for the disclosure of identity is withheld, we will take a decision on how to proceed seeking legal advice where appropriate, and taking into account the wider public interest. If the situation arises where we cannot take forward the matter without disclosing the identity of the person who has raised concerns with us, we will discuss this with them.
- 4.3 Where there are concerns about the safety of the person raising concerns with us, or that of their colleagues, we will work closely with them to ensure that appropriate support can be accessed.

5. How will the PSA manage the disclosure of concerns?

- 5.1 If concerns are raised with the PSA that suggest systemic failings on the part of the regulator, the management of the response including any subsequent action will be led by a member of the Senior Management Team. Only a small group of staff would subsequently be involved and restrictions would be put in place in terms of access to the identity of the person raising the concerns and to any subsequent documentation.
- 5.2 Following receipt of information we will first establish that the matters disclosed fall within our remit. It may be the case that another organisation is better placed to respond.
- 5.3 Once the PSA has established that the concerns raised are within remit, a risk assessment will be conducted which will form the basis of the decision about what action, if any, the PSA will take. In particular, the PSA will consider:
 - How robust is that information supporting the disclosure?
 - What further enquiry or information will need to be made to corroborate the disclosure made?
 - How likely is it that the public, patients, service users, employers and registrants will be affected if the disclosure can be substantiated?

¹ www.protect-advice.org.uk formerly Public Concern at Work

- How severe would the impact be on the public, patients, service users, employers and registrants if the disclosure can be substantiated?
- Is the regulator aware of this area of concern and already making necessary improvements?
- As a result of the risk assessment one of four decisions may be made.

Take no action and close the matter

- 5.4 No further action may be decided upon for a number of reasons, for example because the PSA can be confident that the regulator is aware of the matter and is already making the necessary improvements to resolve the issue. The person who raised concerns will be notified formally of this decision. The PSA may ask the regulator to keep the PSA updated on the action it is taking and the effect the improvements are having on performance.

Seek further information

- 5.5 If further information is needed the PSA will seek this in writing. Consideration will also be given to holding a telephone conversation, online meeting or in-person meeting with the person referring concerns to us. Based on this additional information a further risk assessment will be undertaken and a decision made on the next steps the PSA will take. This process may occur more than once, until the PSA is in a position to take an informed decision.
- 5.6 If further information is needed from the regulator, and in order to obtain it the PSA needs to disclose the identity of the person who has raised concerns with us, we will seek their consent to do so. If consent is refused we will consider our position as described at paragraph 4.2.
- 5.7 If consent is given we will write to the regulator requesting the information required. We will be clear about the reason for the request, linking our request to the disclosure made to us and to the outcome of the initial risk assessment. Once this information is received we will conduct a further risk assessment which will form the basis of our decision about whether, and if so how, to take the matter forward.

Take the matter forward as part of our performance review process

- 5.8 It may be possible for the PSA to take the matter forward without a formal investigation, using one of our established scrutiny processes to determine whether there is evidence to substantiate the disclosure. This may be the case when the issues raised do not appear to pose a high risk to the public, patients, service users, employers and registrants, but could impact on a regulator's performance against the Standards of Good Regulation. It may also be where risk has been identified, but a regulator is aware of and is taking action to address issues. Any findings would be reported through the annual performance review, in which we will take account of the specific concerns raised with us.

Launch an investigation

- 5.9 If the SMT member leading the review takes the view that an investigation is required, the relevant Department of Health will be consulted and a

recommendation will be referred for approval to the Executive Leadership Team. This decision will be notified to the Board.

- 5.10 We will inform in writing the regulator and the person who raised concerns with us. The terms of reference of an investigation will be decided by the PSA but will be informed by the disclosure made to us. The terms of reference will usually be published on our website with a short press statement.
- 5.11 Once the investigation has concluded the PSA will publish our report and a press statement on our website. We will send copies of the report to the person who raised concerns with us, the regulator, the Departments of Health in the four UK countries, and the Health and Social Care Committee.

6. Communication with the person who raised concerns with us

- 6.1 The PSA will be proactive in providing updates to the person who raised concerns with us at all stages:
 - While we reach a view about the action we will take following the disclosure
 - When we have made a decision about the action to take
 - While the investigation proceeds
 - Before the publication of a report.
- 6.2 The PSA will provide a named contact and contact details for that person so that they have a key point of contact at the PSA. Updates will focus on the stage that has been reached and the activities taking place, but will not provide any information on emerging findings or the outcome, in advance of publication of the report.

7. Information governance

- 7.1 In the event that requests are received for information relating to the investigation these will be considered with reference to the PSA's obligations under the General Data Protection Regulation (GDPR) 2016 and the Data Protection Act 2018.

8. Complaints

- 8.1 If a complaint is received about our approach to the handling of concerns these will be dealt with under our corporate complaints policy.

9. Review and revision history

- 9.1 This policy should be reviewed annually from date of publication.

Version Control

Printed documents are uncontrolled. This document is only valid on the day it was printed.

Version	Status	Date Completed
1.0	Approved	2 April 2024