

Response to Pharmaceutical Society of Northern Ireland consultation on revised threshold criteria

March 2020

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. Key comments

- 2.1 We welcome the opportunity to comment on the Pharmaceutical Society of Northern Ireland's (PSNI's) revised threshold criteria to be used by the Registrar when making decisions on whether to refer a case to the Scrutiny Committee.
- 2.2 We are supportive of the intention to maintain a link to the to the PSNI Code in determining whether a case is relevant to consider and of the proposal to more explicitly link to the overarching objective and three limbs of public protection as these are criteria that will be considered by the Scrutiny Committee when making decisions on impairment.
- 2.3 We agree with the PSNI decision not to try to try to take into account a wider public interest test at this stage (including considering insight, remediation and proportionality) and to leave these more complex considerations to the more formal setting of the Scrutiny Committee.
- 2.4 We suggest that the PSNI may wish to review the clarity of the threshold policy to ensure that it is accessible as possible. Whilst we recognise that the PSNI may be constrained by the requirements within their own legislation with regard to how the criteria themselves are framed, there may be scope to provide more context or explanation alongside.

3. Detailed comments

Link to professional code and overarching objective

- 3.1 We are supportive of the proposal to retain the link with the professional Code as this is how professionals and members of the public will assess whether behaviour is likely to affect fitness to practise. It also seems logical, as the consultation proposes, to ensure a more direct link between the decision on referral and the overarching objective and three limbs of public protection as this is what the Scrutiny Committee will consider when looking at cases that reach the next stage of the FtP process.

Consideration of the public interest

- 3.2 We note that the PSNI has decided not to include more complex considerations relating to the wider public interest at this stage. We are supportive of this decision as we have previously highlighted the risk of an inconsistent approach by allowing considerations about remediation, insight and proportionality to be taken into account at this early stage.
- 3.3 Although for the PSNI this decision will be made by the Registrar so there is less scope for inconsistency we still agree with the rationale outlined in the consultation document that such complex assessments are best considered in the more formal setting of the Scrutiny Committee.

Registrar discretion to refer

- 3.4 At 4.8 within the draft threshold criteria policy in reference to the questions that will be asked by the Registrar it states: 'If the answer to all of the questions above is NO, the case will be closed'.
- 3.5 Whilst we recognise the value in clarity of process and note there is unlikely to be a circumstance that is not captured by the criteria, we suggest it may be beneficial to leave some discretion for the Registrar to still refer to the Scrutiny Committee if it appears to be overwhelmingly in the public interest to do so.

Language and clarity

- 3.6 It may be useful for the PSNI to review clarity of language and layout to ensure that the document is accessible to a wide audience including members of the public. As drafted, some parts of the document may not be easy to follow for anyone with limited understanding of professional regulation.
- 3.7 For example, the phrasing of the threshold criteria themselves ('The Registrar must refer an allegation to the Scrutiny Committee unless the evidence as a whole suggests that...') may be confusing to a layperson. We note that the document highlights at 1.1. that the PSNI legislation and regulations require the criteria to be written in a certain way, but it may be helpful to also include this explanation nearer to the threshold criteria themselves in the document.
- 3.8 For example, we recognise that the use of the questions for the Registrar at 4.6 is intended to address this issue but it may be helpful for the PSNI to clarify at this point in the document that the criteria themselves have to written

in a certain way to comply with the legislation but that they have also sought to outline the process that would be following in practice.

- 3.9 We also note that the tone used in the document varies for example at 4.5 and 4.6 the language used refers to '**may** consider', '**would** consider' whereas at 4.8 the language is '**must** be referred' and 'the case **will** be closed' (emphasis added). It may be useful for the PSNI to review for consistency of tone to ensure that it is sufficiently clear to anyone reading the document what is required of the Registrar at various points of the process.

Other issues

- 3.10 Paragraphs 2.3-2.5 are a little unclear about how the Registrar will decide whether to open an investigation when a case is received. Whilst we recognise that this section doesn't directly relate to the threshold criteria, the transparency and clarity of the document could be improved if this section were to elaborate on the factors the Registrar will take into account when deciding if the PSNI can act on the issues raised. For example, at 2.5 it might be better to link explicitly to the three limbs of public protection as the basis of decisions by the Registrar to open an investigation.
- 3.11 Section 4.8 – this section could be clearer how the Registrar will decide if advice is necessary.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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