

Comments on the Welsh Government consultation ‘Services fit for the future’

September 2017

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 voluntary 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 nine health and care professional regulators and report annually to Parliament on their performance
 - Set standards for and accredit registers of practitioners working in health and care occupations not regulated by law
 - 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. General comments

- 2.1 We welcome the opportunity to respond to this consultation from the Welsh Government on their proposals for reforms to health and care services in Wales. As the organisation with the remit for overseeing the statutory health and care professional regulators and accrediting occupational registers in the UK, our primary concern is public protection and ensuring a strong independent voice for patients in the regulation of health professionals. We are supportive of meaningful patient involvement in healthcare to ensure a patient centred approach.
- 2.2 We recognise that in Wales, as across the UK, the health and care system is coming under increased pressure and that Governments are seeking to implement reforms to improve efficiency of services and diversify the health and care skills mix to meet the needs of the population.
- 2.3 With relevance to the wider debate around service provision, the Authority oversees the Accredited Registers programme for organisations which hold

voluntary registers of practitioners who are not regulated by law¹. Registers are assessed to ensure that they meet our standard. There are currently over 80,000 practitioners on Accredited Registers including counsellors, sports therapists, public health practitioners, complementary therapists and foot health practitioners amongst many others. The scheme offers assurance to the public as well as employers, commissioners or GPs who may wish to refer patients on, about the practitioners on these registers. We believe that this is an underutilised workforce and we would be very happy to discuss with the Welsh Government how it might be possible to raise awareness of the scheme and how this group of practitioners might be able to contribute further to service provision in Wales.

- 2.4 With regard to the proposals in this consultation we have commented on those areas where we have experience or information which may be relevant to the Welsh Government in moving forward in the areas outlined.
- 2.5 As part of our role we share good practise and knowledge and promote our ideas around the improvement of regulation. We have recently published our ideas on radical reform of the health and care professional regulatory system in the UK to create clarity for patients, and allow greater flexibility of approach for regulators, employers, policy makers and others in shaping the workforce².
- 2.6 We also promote our concept of right-touch regulation³. Building on the principles of good regulation, right-touch regulation means understanding the problem before jumping to the solution and making sure that the level of regulation is proportionate to the risk of harm to the public.
- 2.7 The eight elements at the heart of Right-touch regulation are:
 - Identify the problem before the solution
 - Quantify and qualify the risks
 - Get as close to the problem as possible
 - Focus on the outcome
 - Use regulation only when necessary
 - Keep it simple
 - Check for unintended consequences
 - Review and respond to change.
- 2.8 We recommend use of this approach when considering the response to any regulatory problems and these principles guide us in our own thinking on the most appropriate course of action.

¹ Professional Standards Authority, *Our work with Accredited Registers*. [Online] Available at: <http://www.professionalstandards.org.uk/what-we-do/accredited-registers> [Accessed: 29/09/2017]

² Professional Standards Authority 2016, *Regulation rethought*. [Online] Available at: <http://www.professionalstandards.org.uk/publications/detail/regulation-rethought> [Accessed: 29/09/2017]

³ Professional Standards Authority, *Right-touch regulation*. [Online] Available at: <http://www.professionalstandards.org.uk/what-we-do/improving-regulation/right-touch-regulation> [Accessed: 29/09/2017]

- 2.9 We are supportive of the introduction of a statutory duty of candour for health and care providers in Wales. Although the duty of candour is now established in England in law and in the regulators' codes of conduct, we are not sure how consistently it is applied in practice. It will be important to consider how to embed this principle beyond legislation. With regard to the professional duty of candour for regulated professionals, we have recently raised concerns that in our experience this is not yet adequately recognised in professional regulatory proceedings⁴.
- 2.10 To ensure that patients receive safe and quality care, it is important that all bodies within the health and care service have a shared understanding of what is required to achieve this. We are therefore supportive of the proposals for shared standards across health and care services.
- 2.11 In *Regulation rethought*⁵ where we laid out our proposals for a transformation of the regulation of health and care professionals we called for a shared purpose for all regulators and also a single statement of professional practice for all health and care practitioners. The statement of professional practice would define the standards of conduct, behaviour and ethics required of everyone working in health and care, irrespective of their profession or occupation.
- 2.12 In relation to the proposals to replace Community Health Councils with a new patient organisation, we recognise the Welsh Government's intention to improve the involvement of patients in the delivery of health and care in Wales and to address some of the criticisms of the current system. However, we would suggest that in depth consultation with stakeholders on what a new model for patient involvement might look like will be important to ensure that strengths of the current system are retained and to develop a strong and independent patient voice in Wales.

3. Detailed comments

- 3.1 We have commented in further detail on some of the specific consultation areas below.

Duty of candour

- 3.2 As highlighted we are supportive of the proposals to introduce a statutory duty of candour for all health and social care providers but would highlight the importance of considering other ways to embed cultural change on this issue, alongside legislation.
- 3.3 The statutory duty of candour was introduced in England in 2014 through amendments to the Care Quality Commission's powers under the Health and Social Care Act 2008. However, there has been concern expressed that it is not

⁴ Professional Standards Authority, Review of Professional Regulation and Registration with Annual Report and Accounts 2016/2017. [Online] Available at:

[http://www.professionalstandards.org.uk/docs/default-source/publications/professional-standards-authority-review-of-professional-regulation-amp-registration\(annual-report-amp-accounts-english\)0bed19f761926971a151ff000072e7a6.pdf?sfvrsn=0](http://www.professionalstandards.org.uk/docs/default-source/publications/professional-standards-authority-review-of-professional-regulation-amp-registration(annual-report-amp-accounts-english)0bed19f761926971a151ff000072e7a6.pdf?sfvrsn=0) [Accessed: 29/09/2017]

⁵ Professional Standards Authority 2016, *Regulation rethought*. [Online] Available at:

<http://www.professionalstandards.org.uk/publications/detail/regulation-rethought> [Accessed: 28/09/2017]

becoming embedded within services and not leading to cultural change. The Public Administration Committee following a hearing on the duty of candour in 2015 concluded that: 'more work must be done to fully implement the statutory Duty of Candour' and 'urged the Department of Health to press ahead with training staff across all NHS organisations in applying this principle'⁶.

- 3.4 The Authority produced advice for the Department of Health on implementing the professional duty of candour in 2013⁷. This led to a joint statement from the professional regulators highlighting how they intended to incorporate this duty into their standards for registrants⁸. However, we have recently highlighted our disappointment that we have not subsequently seen the duty reflected in the allegations drafted against the registrant or references to the duty of candour in panel determinations⁹.
- 3.5 The Authority also carried out research in 2013 into candour, disclosure and openness, highlighting a number of barriers to health professionals doing the right thing¹⁰. These barriers can apply to reporting even extremely harmful and criminal behaviour. The report into the abuse and neglect of patients by staff at the Winterbourne View care home in Gloucestershire in 2011¹¹ shows that when people do speak up this has not always been acted upon by those with regulatory oversight and also demonstrates that those in positions of authority should not be able to claim ignorance as an excuse for failing to prevent abuse.
- 3.6 We would be very happy to contribute further information relating to our work on candour or provide any further input on how the Welsh Government can seek to embed the duty of candour in Wales.

⁶ Public Administration Committee 2016, *PHSO review: Quality of NHS complaints investigations - The statutory Duty of Candour*. [Online] Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/94/9407.htm> [Accessed: 28/09/2017]

⁷ Professional Standards Authority 2013, *Can professional regulation do more to encourage professionals to be candid when health care or social work goes wrong? Advice to the Secretary of State for Health*. [Online] Available at: <http://www.professionalstandards.org.uk/docs/default-source/publications/advice-to-ministers/Encouraging-candour-2013.pdf?sfvrsn=12> [Accessed: 15/08/2017]

⁸ Joint statement from the Chief Executives of statutory regulators of healthcare professionals, *Openness and honesty - the professional duty of candour*. [Online] Available at: http://www.gmc-uk.org/Joint_statement_on_the_professional_duty_of_candour_FINAL.pdf_58140142.pdf [Accessed: 11/08/2017]

⁹ Professional Standards Authority, *Review of Professional Regulation and Registration with Annual Report and Accounts 2016/2017*. [Online] Available at: [http://www.professionalstandards.org.uk/docs/default-source/publications/professional-standards-authority-review-of-professional-regulation-amp-registration\(annual-report-amp-accounts-english\)0bed19f761926971a151ff000072e7a6.pdf?sfvrsn=0](http://www.professionalstandards.org.uk/docs/default-source/publications/professional-standards-authority-review-of-professional-regulation-amp-registration(annual-report-amp-accounts-english)0bed19f761926971a151ff000072e7a6.pdf?sfvrsn=0) [Accessed: 16/08/2017]

¹⁰ Professional Standards Authority 2013, *Candour, disclosure and openness - Learning from academic research to support advice to the Secretary of State*. [Online] Available at: <http://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/candour-disclosure-and-openness-2013.pdf?sfvrsn=6> [Accessed: 15/08/2017]

¹¹ Department of Health Review: Final Report, *Transforming care: A national response to Winterbourne View Hospital*. [Online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf [Accessed: 18/08/2017]

Common standards and joint investigations across health and social care

- 3.7 As highlighted we are supportive of common standards across health and social care bodies and also a common or joint approach to investigating complaints across health and social care. It is becoming increasingly clear that a closer alignment between the health and social care sectors is necessary as care for individuals often spans both and also crosses organisational boundaries. To ensure safe and quality care for patients, it is important that all bodies within the health and care service have a shared understanding of what is required to achieve this.
- 3.8 In *Regulation rethought* where we laid out our proposals for a transformation of the regulation of health and care professionals we called for a shared purpose for all regulators and also a single statement of professional practice for all health and care practitioners. The statement of professional practice would define the standards of conduct, behaviour and ethics required of everyone working in health and care, irrespective of their profession or occupation¹².

Representing the Citizen in Health and Social Care

- 3.9 In relation to the proposals to replace Community Health Councils with a new patient organisation, we recognise the intention to address some of the criticisms of the current system and welcome the intention to create a stronger public and patient voice with a remit across health and care which meets the needs of a changing service.
- 3.10 To ensure that such a body meets these aims and provides a strong voice for the public in Wales, it will be important to consult widely and ensure that a new system learns from the best of what is already in place and achieves buy in from relevant stakeholders. We note the ideas put forward by the Board of Community Health Councils on what a new body should look like, following consultation with members of the public¹³.
- 3.11 The Welsh Government references the Scottish Health Council as a model that they would emulate when creating a new body for Wales. Whilst there is merit in taking learnings from other parts of the UK, we note that the Healthcare Improvement Scotland is currently consulting on changes to the Scottish Health Council following criticisms of certain aspects of the current model by the Health and Sport Committee, including its lack of independence¹⁴.
- 3.12 In its report on the health and care system in Wales, the OECD states that: 'CHCs are a key feature in the architecture of Wales, with a clear role to engage with and ensure that the patient voice is heard,' whilst highlighting the lack of

¹² Professional Standards Authority 2016, *Regulation rethought*. [Online] Available at: <http://www.professionalstandards.org.uk/publications/detail/regulation-rethought> [Accessed: 28/09/2017]

¹³ White Paper: Services fit for the future – A response from the Board of Community Health Councils in Wales. [Online] Available at: <http://www.wales.nhs.uk/sitesplus/documents/899/Board%20of%20CHCs%20White%20Paper%20Response%20%28FINAL%29%20%282%29.pdf> [Accessed 29/09/2017]

¹⁴ Health and Sport Committee, *Letter to the Scottish Health Council*. [Online] Available at: http://www.parliament.scot/S5_HealthandSportCommittee/General%20Documents/20170209_NF_to_SHC.pdf [Accessed: 29/09/2017]

clarity around certain functions and suggesting changes to improve public scrutiny of the NHS in Wales¹⁵.

- 3.13 We believe that in consultation with stakeholders and the public it will be possible to develop a new system to represent the public voice in Wales which fits the current context and meets the challenges of the health and care service and learns from what has been effective in Wales and elsewhere. We would be very happy to be involved in any further discussions in this area and share experience from our role in representing the interests of the public in health and care professional regulation.

Inspection and regulation

- 3.14 We are supportive of proposals to align more closely the regulatory systems across health and social services where practical. As noted previously, care for individuals frequently crosses sector boundaries and it therefore makes sense to take a common approach to regulation also. However, it is important to note that inspection, regulation and quality improvement are different things. The role of regulation is primarily to control quality and ensure minimum standards rather than to improve quality.
- 3.15 We would also highlight the need for closer alignment between system and professional regulation. In *Regulation rethought* we put forward proposals for shared objectives for system and professional regulators along with greater clarity of roles to ensure clarity of purpose and alignment of effort towards common goals. We would be very happy to discuss any of our proposals for reform in more detail on this area or more broadly.

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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¹⁵ OECD Reviews of Health Care Quality: United Kingdom 2016. [Online] Available at: http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/oecd-reviews-of-health-care-quality-united-kingdom-2016_9789264239487-en#.WcuSMTVry2w#page227 [Accessed: 29/09/2017]