

Response to the Department of Health and Social Care's consultation on 'Disclosure of industry payments to the healthcare sector'

October 2023

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. General comments

- 2.1 We welcome the Government's work to implement the recommendations of the *First do no harm* report of the Independent Medicines and Medical Devices Safety (IMMDS) Review led by Baroness Cumberlege.¹ The report exposed the huge damage caused to patients by inappropriate use of the medicines and medical devices covered by the review. It also highlighted concerning findings in terms of conflicts of interests that may have contributed to harm. We agree that the system must change to greatly increase transparency around conflicts of interests and better protect patients.
- 2.2 We support the Government's proposal to place a duty on manufacturers and commercial suppliers of medicines, devices and borderline substances to report details of payments and other benefits they provide to healthcare professionals and organisations. We also welcome the work the Department is doing in parallel to this to improve conflicts of interest declarations from

¹ First Do No Harm – The report of the Independent Medicines and Medical Devices Safety Review: https://www.webarchive.org.uk/wayback/archive/20200721101148mp_/https://www.immdsreview.org.uk/downloads/IMMDSReview_Web.pdf

healthcare professionals. Ideally these two systems should be joined up to give patients a clear view of any potential conflicts of interest.

- 2.3 As we outlined in our report *Safer care for all - Solutions from professional regulation and beyond*,² concerns about financial conflicts of interest in the UK medical sector have gained prominence in recent years, and there have been a number of egregious examples of individual conflicts of interest affecting patient care. We recommended a cross-sector review of the effectiveness of current arrangements to address financial conflicts of interest among healthcare professionals.
- 2.4 The action the Government is now taking is an important step towards reforming the controls in place to manage conflicts of interest by increasing the transparency of the system.

3. Detailed comments

- 3.1 We have answered only those questions about which we have the knowledge or expertise to provide a response. The remaining questions have been omitted.

Question 1

The government proposes to make the following businesses subject to this reporting duty - the manufacturers and commercial suppliers of:

- medicines
- medical devices
- borderline substances

Do you agree or disagree with this proposal?

- 3.2 **Agree**

Question 2

The government proposes to require information about payments or other benefits provided to registered healthcare professionals, healthcare provider organisations and organisations connected to the provision of healthcare to be published, with regulations making no distinction between public or private sectors.

Do you agree or disagree with this proposal?

- 3.3 **Agree**

² Professional Standards Authority, 2022, *Safer Care for All: solutions from professional regulation and beyond*, available at: [Safer care for all. Solutions from professional regulation and beyond \(professionalstandards.org.uk\)](https://professionalstandards.org.uk)

Question 3

Do you or your business currently make payments or provide other benefits to registered healthcare professionals and healthcare provider organisations?

3.4 **No**

Question 4

Do you or your organisation currently receive payments or receive other benefits from manufacturers or suppliers of healthcare products?

3.5 **No**

Question 5

The government proposes to require information about payments or other benefits provided to any organisation involved in medical research or training to be published. Payments to charity arms of hospitals or similar organisations linked to healthcare providers should also be in scope. Which of the following organisations do you think should be included in the scope of these regulations? (Select all that apply)

- **Charity arms of hospitals**
- **Medical or clinical research organisations (including medical research charities)**
- **Professional bodies responsible for the core training of healthcare professionals (for example royal colleges, Membership of the Royal Colleges of Physicians (MRCP))**
- **Other medical education or training providers**
- **Patient advocacy organisations**

Question 6

The government proposes to require businesses to publish payment information on their websites with a link in a prominent place on the website's UK homepage.

Do you agree or disagree with this proposal?

3.6 **Agree**

Question 7

The government proposes to require businesses to report all relevant payments and benefits provided over the full year, if they supplied a product in scope at the beginning of the reporting cycle.

Do you agree or disagree with this proposal?

3.7 **Agree**

Question 9

Do you currently report any payments to Disclosure UK, a voluntary scheme run by the Association of the British Pharmaceutical Industry (ABPI)?

3.8 **No**

Question 11

The government proposes to require publication of a register of payments with entries containing the name of the recipient, the annual sum value of payments and benefits made, and a complete list of reasons for each payment and benefit. If the recipient is an individual, we would require businesses to publish their employer and professional registration number (if applicable and published by the professional body).

What information do you think should be published?

- **Name of the recipient**
- **The annual sum value of payments and benefits**
- **Complete list of reasons for each payment and benefit**
- **If the recipient is an individual, their workplace and professional registration number (if applicable and published by the professional body)**

Question 12

The government proposes to require declarations to remain in the public domain for at least 3 years. Please choose your preferred timescale from the following options.

3.9 **At least 5 years**

Questions 13

Should compliance with the requirements be monitored?

3.10 **Yes**

Question 14

How should suspected non-compliance be reported?

- **Contactable phone line**
- **Email**
- **Online platform**

Where non-compliance is reported directly or flagged through the monitoring process, an investigation of compliance with the requirements could be triggered. Should all cases identified as potentially non-compliant be reviewed in full?

3.11 **Yes**

Question 16

Do you consider that financial penalties would be an effective and fair deterrent for non-compliance?

3.12 **Yes**

Question 19

The government proposes to exempt businesses from reporting payments which may disclose commercially sensitive information under the condition that they publish their rationale for using the exemption and declare that they have applied the exemption.

Which, if any, of the following options do you agree with?

3.13 **Don't know**

3.14 We do not have the expertise to comment in detail on arrangements for disclosing information which may be commercially sensitive. However, in order for disclosures of industry payments to be effective it is vital that businesses are not able to circumvent the controls. This provision must therefore not become a 'loophole' that can be easily exploited. Should the Government proceed with this exemption we would wish to see a narrow definition of information which is 'commercially sensitive' and monitoring of the use of this exemption and its effect.

Question 20

The government proposes to exempt businesses from reporting payments and benefits made under contractual obligations where the healthcare provider organisation pays the business at fair market value, including discounts on prices that meet these criteria.

Do you agree or disagree with this proposal?

3.15 **Don't know**

- 3.16 As above, any exemptions should be monitored to ensure that they are being used appropriately.

Question 28 Do you think the proposals will change patient relationships with their healthcare professionals?

- 3.17 **Yes**

If yes, how do you think these proposals would change patient relationships with healthcare providers?

- 3.18 **I think it would improve the relationship**

- 3.19 Healthcare professionals are already under an obligation to act in the best interests of their patients at all times. In 2017 nine of the healthcare professional regulators we oversee issued a joint statement making clear that professionals must put patients' interests before their own and 'ensure their professional judgement is not compromised by personal, financial or commercial interests...'³.
- 3.20 Many regulators also issue separate guidance to the same effect. For example, GMC guidance states that 'you must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.'⁴ It goes on to say that where a medical professional refers a patient to an organisation in which they have a commercial interest they must tell the patient and record it in their medical record.
- 3.21 Most healthcare professionals already comply with the standards set out above. However, we know that in a small number of cases professionals fall short of these high standards. When this happens, not only can it harm the individual patient(s) involved, it can also undermine the trust and confidence of the public at large. Greater transparency around industry payments should help healthcare professionals in exercising their professional responsibilities in this regard. The public being able to check industry payments to the institution or individual treating them may also help to increase wider public confidence. This has the potential to improve the relationship between healthcare professionals and patients.

Question 29

Do you think these proposals would increase impartial decision-making from healthcare professionals and organisations?

- 3.22 **Yes**

³ GCC, GDC, GMC, GOC, GOsC, GPhC, HCPC, NMC, PSNI, 2017, Joint statement from the Chief Executives of statutory regulators of health and care professionals. Available at: <https://www.nmc.org.uk/globalassets/sitedocuments/otherpublications/conflicts-of-interest-joint-statement.pdf>

⁴ General Medical Council, March 2013, Financial and commercial arrangements and conflicts of interest. Available at: https://www.gmc-uk.org/-/media/documents/gmc-guidancefor-doctors---financial-and-commercial-arrangements-andconflicts-of-interest_-58833167.pdf

3.23 As set out above, healthcare professionals are already under an obligation to act in the best interests of their patients, and the vast majority do so. However, greater transparency over industry payments has the potential to improve impartial decision-making by the small number of healthcare professionals who may otherwise fall short of this obligation.

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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