

February 2023

MPS submission to the Professional Standards Authority (PSA) on their strategic plan for 2023-2026

Executive summary

Medical Protection Society (MPS) welcomes the opportunity to respond to the Professional Standards Authority public consultation on their draft strategic plan for 2023-2026. We believe it is positive that you have decided to consult publicly on your strategic plan for the first time and we are happy to contribute to this process.

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world. Our in-house experts assist members with the wide range of legal and ethical problems. Of particular relevance to this consultation, membership to MPS provides members with the right to request support when faced with a regulatory investigation. In the UK, our expertise primarily relates to the role and work of the General Medical Council (GMC) and the General Dental Council (GDC). We also work closely with regulators around the world in over 10 different regions.

The perspective that we bring to this consultation comes from our experiences of protecting members through a regulatory process. As you of course know, professional regulators have a profound impact on the healthcare professionals they regulate. They make decisions that end healthcare professionals' careers. They can also conduct investigations in a way that fundamentally impacts healthcare professionals' wellbeing and mental health, with some considering abandoning the profession altogether following the stress of the process and some considering ending their life. We are currently reviewing the results of a survey of members who have experienced a GMC or GDC investigation which puts their experience into stark context and which we would be happy to share with the PSA once finalised.

We of course recognise that the primary purpose of the professional regulation is and should be patient protection. However, we think that the oversight of the work of the professional regulators, as carried out by the PSA, should be equally concerned with whether healthcare professionals are being adversely impacted more than is necessary by their regulator as they are with whether patients are being sufficiently protected. In an ideal world, we believe the PSA's statutory objectives should be amended to give the PSA this broader role and remit.

We do of course however understand that you need to proceed with setting out a strategy that is in line with your current statutory purpose and powers. We also recognise the good work the PSA have done to date in promoting right touch regulation that is targeted, proportionate, only intervening when necessary. Nonetheless, our feedback on your strategy is informed by our keenness to encourage the PSA to consider what more it can set out within its strategy to ensure healthcare professionals are better protected from the adverse impacts of professional regulation. Given the fundamental importance of retaining healthcare professionals in the workforce, we think that more work in this area from the PSA would contribute strongly to your purpose of protecting

the public, and also that it would relate strongly to your role in promoting best practice in regulation.

Consultation Questions

The context for our strategy

5. Which of the four themes in Safer Care for All do you think are most important for us to focus on? [tackling inequalities; regulating for new risks; facing up to the workforce crisis; and accountability, fear and public safety] and

6. Can you tell us more about how you answered question 5. This will give us more details and help us identify any themes and priorities.

MPS believes that the four themes are important.

We welcome the PSA's intention to focus on facing up to the workforce crisis. It is vital that the professional regulation debate is informed by the context within which professionals are practising, the challenges they and the wider profession face, and the changes that the workforce is going through. Given the fundamental importance of retaining healthcare professionals in the workforce, we would also welcome the PSA explicitly tackling the issue of how the adverse impact of regulation on healthcare professionals can be minimised in order to support retention of healthcare professionals.

We also welcome the intention to tackle inequalities. We are particularly concerned about the extent to which black and ethnic minority doctors as well as those who qualified overseas are overrepresented in fitness to practise processes. The PSA's commitment to being involved in this debate is welcome and we would encourage you to take an active role in assessing the extent to which all professional regulators are doing as much as they can.

7. Are there any recommendations and commitments in Safer Care for All that you think we should prioritise for action? You can find these here Please indicate which you think are the top three priorities for us and others to work on in the immediate term.

MPS believes that the PSA should prioritise the recommendation that government should use the current healthcare regulation reform programme to review the adequacy and effectiveness of the power of the regulators, and to ensure they have the agility to address the challenges brought about by new approaches. In particular, we would like the government to prioritise giving the regulators discretion to decide whether and how to investigate a Fitness to Practice concern and to remove the GMC Right of Appeal against MPTS decisions.

Giving the regulators discretion would help to address the current situation where thousands of health professionals go through an investigation each year even when it's apparent very early on that there will not be any regulatory action. It will also be in line with the PSA's right-touch regulation principles of targeted and proportionate regulation.

8. Are there other activities not included in the draft Strategic Plan that you think the Authority should prioritise in the period 2023-26?

We would encourage the PSA to also consider what more work it, the regulators and others could do to improve public and employer awareness of the role of professional regulation.

The professional regulators receive a very large number of referrals each year. Taking the GMC as an example, in recent years the GMC received an average of 8,600 enquires a year in relation to a doctor's fitness to practice but less than 3% of this number result in erasure, suspension or conditions. Clearly this would suggest that there is a significant disconnect between the expectations of those referring doctors to the GMC and the purpose and operation of the regulator.

The end result of this situation is negative for all parties. The patient may have built up expectations over a long period of time that an investigation will lead to some form of sanction is left disappointed. The healthcare professional involved has undergone a prolonged period of significant and unnecessary distress. And the professional regulators have had to divert resources towards cases that are more serious.

We would welcome work from the PSA aimed at exploring this area, and the opportunity to explore with you what more could be done to reduce the large number of referrals that are made to the regulators that would be more appropriately dealt with elsewhere.

9. Do you agree that our vision (safer care for all through high standards of competence and conduct in health and social care professionals) is appropriate for the work of the Authority?

MPS does not have any comments on this question.

10. Do you agree that our mission (to protect patients, service users and the public by improving the regulation and registration of health and social care professionals) is appropriate for the work of the Authority? Please explain your response.

As stated in our opening comments, we believe that the PSA should be equally as focused on protecting healthcare professionals from the adverse impacts of professional regulators as it is with the ability of professional regulators to protect patients.

The primary purpose of the professional regulators is and should be patient protection. But professional regulators have a profound impact on the healthcare professionals they regulate. They make decisions that end healthcare professionals' careers. They also conduct investigations in a way that can fundamentally impact healthcare professionals' wellbeing and mental health, with some considering abandoning the profession altogether following the stress of the process and some considering ending their life. We therefore think the role of the PSA, in providing oversight to the system of professional regulation, to ensure the right balance is struck.

We of course recognise that the primary purpose of the professional regulation is and should be patient protection. However, we think that the oversight of the work of the professional regulators as carried out by the PSA should be equally as concerned about whether healthcare professionals are being adversely impacted more than is necessary by their regulator as they are with whether patients are being sufficiently protected. In an ideal world, we believe the PSA's statutory objectives should be amended to give the PSA this broader role and remit.

We do of course however understand that you need to proceed with setting out a strategy that is in line with your current statutory purpose and powers. We also recognise the good work the PSA have done to date in promoting right touch regulation that is targeted, proportionate, only intervening when necessary. Nonetheless, our feedback on your strategy is informed by our keenness to encourage the PSA to consider what more it can set out within its strategy which is aimed at ensuring healthcare professionals are better protected from the adverse impacts of professional regulation. Given the fundamental importance of retaining healthcare professionals in the workforce, we think that more work in this area from the PSA would contribute strongly if to your purpose of protecting the public, and also that it would relate strongly to your role in promoting best practice in regulation.

Our strategic aims

11. Do you agree with our proposed Strategic Aim 1: To protect the public by delivering highly effective oversight of regulation and registration; and how we plan to deliver this aim and monitor progress? Please explain your response.

MPS is supportive of the principle of protecting the public and of the aim expressed by the PSA of reviewing and improving the processes used to ensure they are effective and efficient.

We would emphasise that this can only be done effectively by taking into account the views and experiences of those being regulated. In our view, only by listening to those delivering healthcare as well as to patients and service users, can the PSA best protect patients and the public. We believe that in conducting reviews of the regulators, the PSA should consult with those who are being regulated to better understand the experiences of doctors and dentists, who in many cases are subject to extremely lengthy and stressful investigations which often result in no sanction.

This is also in line with the principles of right-touch regulation, which established that regulation should aim to be proportionate, consistent, targeted, transparent, accountable and agile. For the PSA to be able to discern whether regulation is embracing these principles it is vital to listen and include the experiences of healthcare workers as they are the ones subject to regulation. We strongly support the principles of right-touch regulation, and we are willing to help the PSA in furthering that call.

12. Do you agree with our proposed Strategic Aim 2: To make regulation and registration better and fairer; and how we plan to deliver this aim and monitor progress? Please explain your response.

MPS is supportive of the PSA's strategic Aim 2. We particularly welcome the commitment to promote, influence and support regulatory reform, as well as to tackle inequalities and to review

your own processes, as well as introducing new approaches to assess EDI for the regulators and accredited registers.

We acknowledge and welcome the PSA report *Safer care for all*, which commits to reviewing and introducing new approaches to assess EDI for the regulators. In this context, we have also welcomed steps by the GMC to address the issue of disproportionate referrals of BAME doctors and those who graduated overseas.

It continues to be the case that individual cases continue to raise concerns and create further distrust of the regulator. Currently, far too many registrants do not trust their regulator and in the case of the GMC we believe that the removal of the Right of Appeal as part of the legislative reform that the DHSC is carrying out is crucial in restoring that confidence. This is why we strongly recommend that the PSA continues to engage with the government to ensure that legislative reform takes priority including the removal of the GMC's Right of Appeal.

13. Do you agree with our proposed Strategic Aim 3: To promote and support safer care for all; and how we plan to deliver this aim and monitor progress? Please explain your response.

MPS agrees and supports the strategic aim 3 of promoting and supporting safer care for all. We particularly welcome the commitment to review how safe spaces, individual accountability and a duty of candour can work together in the interest of patients; we would like to be involved in such discussions.

We welcome the commitment from the PSA to face up to the workforce crisis. We think the PSA has an important role to play by ensuring that regulators also play their part in ensuring that more healthcare professionals remain in the workforce. In 2022, we submitted evidence to the Health and Social Care Select Committee (HSCSC) inquiry on workforce recruitment and retention and focused on two areas that we believe have an impact on a healthcare worker's choosing to stay in the workforce: supporting healthcare workers' wellbeing and creating a culture of learning not blame.

We have been concerned with the wellbeing of the profession for several years. We have run different campaigns such as the [Breaking the burnout campaign](#).

More recently, we have focused on how being subject to a regulatory investigation has impacted our members' wellbeing. We would be happy to share these results with the PSA once published. If healthcare professionals are suffering unnecessarily long investigations which end up in no action, they will consider reducing their hours or even abandoning the profession as a result, which will negatively impact patient safety as there will even be less doctors taking care of patients.

On the issue of creating a culture of learning and not blaming, MPS has responded to the latest two consultations in Northern Ireland and Wales, and we would be very happy to participate in policy discussions in this area. We support a culture of openness in the healthcare sector, and we advise members that they should apologise when something goes wrong. However, we have long standing concerns that codifying this ethical principle into legislation, such as a statutory Duty of Candour, fails to provide the impetus necessary for behavioural change and it could prove

counterproductive to the development of an open learning culture in healthcare. For any statutory duty to be effective, a system will be required to monitor compliance and apply sanctions. Any such system will inevitably distract from the original objective of ensuring openness with patients and learning from mistakes. This is why cultural change rather than legislation is the appropriate way of creating safe, responsive, patient centred care and high-quality communication between professionals and patients. The legislation could instead result in a 'tick-box' reporting culture.

This is the reason why we advocate for a culture of openness and candour and we believe that when things go wrong in healthcare, the patient and/or the relatives deserve an apology and an explanation of what has occurred but also why, and what steps have been taken to mitigate this from happening again. This, however, cannot be achieved within the current system which is deeply adversarial and in which doctors and dentists fear being blamed by a genuine mistake and subject to months or years of regulatory investigations. This is why we believe that when considering a clinician's duty of candour and its interaction with safe spaces and individual accountability, safeguards need to be put in place to ensure there are no unintended consequences of being open and that it does not lead to a double jeopardy where being open in the context of the Duty of Candour is held against a healthcare professional in another forum.

In our view, it is only through cultural change – moving away from blame – that individual healthcare professionals will feel able and empowered to disclose when things go wrong, apologise to patients and learn from mistakes so that avoidable errors are reduced in the future, improving patient safety. Safe spaces are crucial for the creation of openness in healthcare and for the duty of candour to be effective, without of course disregarding individual accountability where there has been an adverse outcome.

Our future role

14. How do you think the role of the Authority should evolve in the future, particularly in the context of the reform of professional regulation in health and social care?

Please see our response to question 10 which also applies to this question.

Impact

15. Please set out any impacts that the proposals set out in the draft Strategic Plan would be likely to have on you and/or your organisation, or considerations that we should take into account when assessing the impact of the proposals.

MPS, as a medical defence organisation, is a member-owned, not-for-profit protection organisation for doctors, dentists and healthcare professionals. We support members with the wide range of legal and ethical problems that can arise from their professional practice. Of most relevance to the PSA, this includes assistance with medical and dental council inquiries.

The proposals set out in the draft Strategic Plan are therefore likely to have a big impact on our members, particularly strategic aim 2 aimed at making regulation fairer and better and aim 3 aimed at promoting safer care for all.

16. 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:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity⁶
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)

If you have responded 'yes' to any of the above, please explain why and what could be done to change this

As mentioned earlier, we welcome the work the PSA are doing to consider tackling inequalities. We are particularly concerned about the extent to which black and ethnic minority doctors as well as those who qualified overseas are overrepresented in all stages of the fitness to practise processes. The PSA's commitment to being involved in this debate is welcome and we would encourage you to take an active role in assessing the extent to which all professional regulators are doing as much as they can.

About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS is not an insurance company. We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association.

Contact

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact us.

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