

Response to government consultation ('prompting professionalism, reforming regulation') on development of regulation of healthcare professionals in the UK

The National Guardian's Office (NGO) has provided formal submissions to the following questions set out in the consultation document.

Protecting the public

5 Do you agree that there should be fewer regulatory bodies?

Agree

6 What do you think would be the advantages and disadvantages of having fewer professional regulators?

Advantages:

The National Guardian's Office (NGO) provides leadership, support and guidance on speaking up in the NHS, and was set up in response to recommendations made in Sir Robert Francis' 'Freedom to Speak Up' review. It supports and guides a network of Freedom to Speak Up Guardians and reviews cases where good practice in speaking up appears not to be met.

The NGO is an operationally independent body, sponsored by NHS Improvement, NHS England and the Care Quality Commission.

Our response to this important and timely consultation focuses on how the current and proposed regulatory framework for healthcare professionals impacts on the ability of these professionals and others to speak up about matters which potentially impact on patient/staff safety and/or experience.

We are concerned about the inconsistencies and divergences in the current regulation of healthcare professionals, which may adversely impact on the ability of healthcare professionals to speak up. If individuals do not feel able to speak up, this puts patient/staff safety and public protection at risk. We are also concerned about inter-professional hierarchies that may act as barriers to staff speaking up about potential issues. We support efforts to reduce or eliminate these inconsistencies and hierarchies, and we recognise that a reduction in the number of professional regulators may serve this purpose.

Inconsistencies and divergences in the regulation of healthcare professions as a barrier to speaking up:

The existence of such divergences is supported by a range of evidence including a recent study conducted by Coventry University researchers who analysed more than 6,700 cases of misconduct. The study found that doctors found guilty of sexual offences, theft and fraud tend to receive lighter sanctions when compared to nurses and midwives (see here for the report: <https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/antecedents-and-processes-of-professional-misconduct-in-uk-health-and-social-care.pdf>). These divergences in the outcomes of fitness to practice proceedings could potentially deter staff from speaking up. For example, a nurse may be less willing to speak up about an issue if he or she is concerned about the potentially harsher ramifications that will befall them compared to their physician counterparts.

The potentially different standards applied by each professional regulator may also cause confusion among professions as to what are acceptable standards of behaviour among the different professions. A clearer understanding among registrants and other stakeholders (including patients) of the professional expectations placed on registrants may make it easier for all to speak up when those expectations are not met.

Inter-professional hierarchies as a potential barrier to speaking up:

We are also concerned about the existence of hierarchies among the professions which may be perpetuated by the current regulatory framework for healthcare professionals. The existence of such hierarchies has been supported by a number of studies, including the particularly famous Hofling hospital experiment. In 1966, the psychiatrist Charles Hofling conducted a study where nurses were ordered by unknown doctors to administer what could have been a dangerous dose of a drug to their patients. In spite of official guidelines prohibiting administration in such circumstances, the study found that 21 out of the 22 nurses would have given the patient an overdose of medicine.

As evidenced by the Hofling hospital experiment, such hierarchies among professions could potentially put patients at risk as they inhibit staff from speaking up. These hierarchies may be perpetuated by inconsistencies and divergences in the regulation of healthcare professions. For example, nurses may see themselves as professionally inferior to doctors if they receive harsher sanctions than doctors for the same conduct.

We support the elimination of any such inter-professional hierarchies so that any member of staff may speak up freely about an issue pertaining to another member of staff irrespective of their particular professions and grades.

Disadvantages:

It is important that any reduction in the number of regulators is mindful of differences among healthcare professions, and seeks to mitigate the risk that a consolidation erodes the expertise cultivated by each regulator. This is because well informed and robust regulation of healthcare professionals is an important component in promoting the confidence in individuals that issues they speak up about will be addressed appropriately.

Responsive regulation

8 Do you agree that all regulatory bodies should be given a full range of powers for resolving fitness to practise cases?

Agree

Further comments:

For the reasons stated in our response to question 5, we call for consistency in the regulation of healthcare professionals. All regulatory bodies should have the same powers for resolving fitness to practise cases. Analysis of outcomes should also be carried out to review and encourage consistency in the application of these powers.

9 What are your views on the role of mediation in the fitness to practise process?

Please provide below:

We would encourage the promotion of the use of mediation in the fitness to practise process. We would stress that mediation should only be used where all parties engaged in the process make an informed decision to use it. Mediators should also be neutral third parties and should have the appropriate training.

The Francis 'Freedom to Speak Up' review called for greater consideration to be given at an early stage to the use of mediation to resolve conflicts, rebuild trust or support staff who have spoken up. Francis argued that 'poor working relationships can be a risk to patient safety where they impact on communication, morale and willingness to speak up. These need to be addressed, through more proactive management and training in having honest conversations and giving feedback, and through the use of neutral third parties such as a trained mediator' (see here for the full 'Freedom to Speak Up' review: http://webarchive.nationalarchives.gov.uk/20150218150953/https://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf).

In our case review of the speaking up policies, processes and culture at Southport & Ormskirk Hospitals NHS Trust in autumn 2017, we also recommended that the trust should take steps actively to promote the use of mediation, where appropriate, to resolve issues arising from speaking up.

10 Do you agree that the PSA's standards should place less emphasis on the fitness to practise performance?

Agree

Further comments:

For the reasons stated in our response to question 5, we call for consistency in the regulation of healthcare professionals. A more consistent approach is likely to be adopted with regards to fitness to practise performance and other work carried out by professional regulators if this expectation is clearly set out from the top by the PSA.

12 Do you think the regulators have a role in supporting professionalism and if so how can regulators better support registrants to meet and retain professional standards?

Agree

Further comments:

We believe that regulators have a key role in supporting the professionalism of their registrants, and that speaking up and listening well needs to be a part of this support.

We would suggest that professional regulators are particularly well placed to provide this support, owing to their unique relationship with their respective registrants and professions. By supporting the professionalism of their registrants, regulators will better protect patients, engender public confidence in the professions they regulate and reduce the likelihood (and associated risks to the public) of registrants falling below required standards.

Regulators have an important role in ensuring that suitable individuals enter the professions they regulate and that potential future issues are identified and dealt with at an early stage. With this in mind, we would argue that one way that regulators can better support the professionalism of their registrants is to require speaking up awareness and training to be incorporated into all mandatory and recommend courses that regulators require their registrants to undertake, including listening and responding when colleagues speak up.

There is evidence that individuals entering a healthcare profession do not necessarily have the skills, knowledge or confidence to speak up about patient safety issues. This was identified in a recent study of junior doctors in the United States, which found that 'new doctors are less likely to speak up about a colleague's unprofessional behaviour than they are about traditional threats to patients' safety', even when they perceive high potential for harm to patients' (see here:

[http://careers.bmj.com/careers/advice/Junior doctors hesitate to speak up over unprofessional behaviour%2C study finds](http://careers.bmj.com/careers/advice/Junior_doctors_hesitate_to_speak_up_over_unprofessional_behaviour%2C_study_finds)).

The inclusion of speaking up awareness and training into courses will help foster what the 'Freedom to Speak Up' review identified as a 'culture of raising concerns' (see Principle 3 of the review). In other words, a culture where speaking up about anything that gets in the way of delivering great care is a part of the normal routine business of any well-led NHS organisation. Such a culture will give future healthcare professionals the confidence, skills and knowledge to speak up and, thereby, protect patients and encourage a continuous improvement approach.

Similarly, we would encourage incorporating bullying awareness and training into courses that registrants are required to undertake. The 'Freedom to Speak Up' review found that a bullying culture among staff, in addition to being an issue in itself, is a threat to patient safety because it could put staff off from speaking up about potential issues of concern to the public. As a result, the 'Freedom to Speak Up' review called for a 'culture free from bullying' (see Principle 6 of the review).

We know from the NHS Staff Survey commissioned by NHS England that bullying is an issue across the NHS. Similarly, a 2016 Guardian online survey of more than 1,500 doctors,

nurses and other health workers in hospitals, primary care and community settings, also found that 81% of respondents had experienced bullying and for almost half of them (44%), it was still ongoing (see here: <https://www.theguardian.com/society/2016/oct/26/nhs-staff-bullying-culture-guardian-survey>).

The promotion of bullying awareness and training could contribute towards achieving a 'culture free from bullying' in the NHS.

In addition to ensuring that the right individuals with the right skills, knowledge and confidence enter the healthcare professions, professional regulators also have a role in continuing to support the professionalism of their registrants. This could include regulators keeping in regular contact with their registrants, to share learning and good practice. As mentioned in our answer to question 5, the NGO provides leadership, support and guidance to a growing network of over 500 Freedom to Speak Up Guardians (Guardians) across England. This support and guidance include, among other things, weekly bulletins that we send to Guardians. The bulletins provide information on a range of issues, as well as sharing and showcasing learning, good practice and innovative approaches to improvement in speaking up culture.

We seek regular feedback from Guardians on how well we are supporting them and incorporate this feedback as appropriate into the support and guidance we provide. This constant feedback loop ensures that the support we provide caters to the real-time needs of the Guardian network. We would encourage regulators to do the same with their registrants.

We would also encourage consideration of how professional regulators can work together, as well as working with employers and other bodies, to help their registrants meet and maintain required professional standards. By working together, and intelligently sharing information, regulators can ensure that they are made more quickly aware of potential issues arising among their registrants. By doing this, regulators will ensure that they can focus their efforts on where it is most needed, and be confident that their regimes are better equipped to deal with the rapidly changing face of healthcare.

In addition to the proactive efforts to support the professionalism of their registrants, we also think that there is merit in a more formal assessment by regulators of registrants continued suitability, not only in terms of competences but also conduct. To this end, we think that there is merit in the GMC's five-year revalidation programme for doctors and the NMC Revalidation programme, and would suggest consideration of whether a similar process could be adopted by other regulators/professions.

However, we would highlight the need that such a revalidation process is adequately safeguarded against potential abuse. We know anecdotally that there are cases of doctors for whom inappropriate revalidation recommendations have been made after speaking up, causing detriment. Consequently, the GMC have revised their revalidation process in light of this concern. While it is too soon to assess how effective this measure is at protecting doctors who speak up, we would encourage all regulators to consider whether and how their attempts to maintain the professionalism of their registrants could be abused to cause detriment to registrants who speak up, and what they as the regulator can do to eliminate/minimise such a risk.

Efficient regulation

13 Do you agree that the regulators should work more closely together? Why?

Agree

Further comments:

Please see our answers to questions 5 and 12 on why regulators should work more closely together.

Regulators could learn from each other's successes and mistakes through closer cooperation with each other, working together towards achieving good practice across the board. By working together in this way, regulators could potentially achieve greater efficiency, thereby freeing up more of their resources.

14 Do you think the areas suggested below are the right ones to encourage joint working? How would those contribute to improve patient protection? Are there any other areas where joint working would be beneficial?

Agree

How would those contribute to improve patient protection?

We agree that the areas suggested in the consultation document are the right ones to encourage joint working.

We are aware of anecdotal cases of where individuals have difficulty figuring out which regulator regulates which profession, making it more challenging to speak up about an issue with the correct regulator. A shared online register, search engine or online portal for all registered healthcare professionals could make it easier for individuals to bring an issue to the attention of the right body.

We agree that a single set of standards for conduct for all healthcare professionals, as well as a single adjudicator for all fitness to practise decisions across all professions, could also contribute towards better protection for patients. Both would encourage consistency in the regulation of healthcare professions, both in relation to the ongoing support provided to registrants as well as during the fitness to practise process. As mentioned in our answer to question 5, greater consistency in this regard could encourage speaking up.

We would also suggest that a single adjudicator for all fitness to practise decisions, consisting of a panel drawn from a range of professions, could provide a level of insight that may be missing from a profession specific adjudicator. The range of biases that may colour the decision making of a profession specific adjudicator may be more likely to be challenged by a cross-profession adjudicator. Such a panel may also contribute towards eliminating inter-professional hierarchies which, as discussed in our answer to question 5, is a potential barrier to speaking up.

20 Should each regulatory body be asked to set out proposals about how they will ensure they produce and sustain fit to practise and fit for purpose professionals?

Agree

Further comments:

We believe that regulatory bodies should work together to produce consistent proposals, and that all regulatory bodies should then set out their proposals.

Impact assessment and Equality analysis

22 How will the proposed changes affect the costs or benefits for your organisation or those you represent?- an increase- a decrease- stay the same. Please explain your answer and provide an estimate of impact if possible.

Not Answered

Please explain your answer and provide an estimate of impact if possible:

As explained in our answers to previous questions, barriers to speaking up could adversely affect patient safety and public protection. Therefore, we believe that any assessment of the proposed changes take account of the impact it could have on those who have spoken up and may want to speak up in the future.

24 Do you think that any of the proposals would help achieve any of the following aims:- Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 and Section 75(1) and (2) of the Northern Ireland Act 1998?- Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?- Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it? If yes, could the proposals be changed so that they are more effective? If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

Yes

If you agree, could the proposals be changed so that they are more effective?

The Francis 'Freedom to Speak Up' review found that certain groups of workers, including BAME (black, Asian and minority ethnic) staff, were particularly vulnerable when they spoke up about issues and were more likely to be victimised.

We would suggest that reforming the regulation of healthcare professionals so that barriers to speaking up are eliminated or reduced may contribute towards the elimination of discrimination, as well as contributing towards the advancement of equality of experience in speaking up.