Pharmaceutical Society NI

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Response to the Professional Standard Authority for Health and Social Care's Performance Review 2019/20

PHARMACEUTICAL SOCIETY NI

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1. This paper has been reviewed and endorsed by the Council of the Pharmaceutical Society NI.

2. The Pharmaceutical Society NI values and actively supports audit and performance measurement in improving our work and ensuring that we are adequately able to protect the public. To this end, we deliver our own internal audit strategy which produces regular reports with points of improvement identified and actioned and subject to an annual external audit by an independent auditor.

3. We also fully engage with and attribute considerable resources to the Professional Standards Authority's (PSA) annual performance review of our work. The performance review of the regulators of healthcare professionals presents a real opportunity to promote and support best practice and to boost public confidence in regulators. We also acknowledge the PSA's role to report when they consider that performance can and should be improved upon.

4. Regrettably, the PSA's approach to the performance review is focussed on a binary 'met' or 'not met' threshold for standards, in the absence of clarity around the performance required to meet or not meet a standard. This approach can result in the PSA's performance review report narrative being complementary to the regulator, based on its assessment of evidence, but the outcome nevertheless results in the failure of a number of standards. We also question the appropriateness of reporting that a standard is 'not-met' due to issues live at a certain point within the performance review period but which have been fully addressed before the end of the performance review period, resulting in the

regulator meeting the standard at the point at which the review is being carried out/completed.

5. We suggest that this is the result for the Pharmaceutical Society NI's 2019/20 performance review report which appears, on the basis of the evidence provided, to be largely complementary of our work and progress yet, 3 of the 18 Standards of Good Regulation were reported as not met.

6. Those unfamiliar with healthcare regulation, and the scope and extent of individual standards, may be confused by this approach and be unable to appropriately assess actual performance and improvement in performance because of the binary approach.

7. To be genuinely beneficial, audits and performance measurement need to be completed against clear and transparent standards that would allow an objective reader to make an assessment against the evidence provided. Where a standard has multiple facets, as most do, the assessment should, if operating a binary approach, call out specifically the elements of the standard that are met and those which are not and whether the issues were addressed before the review commenced, allowing for a meaningful comparison.

8. It should be apparent to an objective reader what meeting a standard requires. Where it is determined that a standard is not met, a clear, understandable and robust explanation should be given. Such explanations should clearly reference the evidence that has been assessed and substantiated to make conclusions.

9. We have also raised questions around the decision-making process, in particular that the evidence put before the PSA's internal decision-making panel is not made available to the regulator in order that it may adequately respond. There is no opportunity to directly address the decision-making panels and respond to any evidence being considered. The panel's decision is also final with no right to appeal.

10. Unfortunately, the PSA's 2019/20 performance review report fails to provide the clarity, rigour and substantiation we consider appropriate. This has resulted in the Pharmaceutical Society NI requesting, for the first time, that this submission be published alongside the PSA's performance review report.

11. We welcome recent consultation carried out by PSA into the performance review and we have already provided feedback on the issues we raise herein. We look forward to PSA modernising and improving its work in order that the extensive resources deployed in support of the review provide an effective deployment and value.

Standard 3:

12. **We disagree with the outcome in Standard 3 in relation to Council recruitment.**

13. The Pharmaceutical Society NI has no responsibility with regard to the recruitment of its Council members. The recruitment of Council members is the sole responsibility and entirely under the authority of the Department of Health as set out in the Pharmacy (Northern Ireland) Order 1976. Appointments are made by the Minister for Health.

14. The process of recruitment is operated by the Public Appointments Unit of the Department of Health and follows its strict guidelines. The collection of equality and diversity data is part of this process and is handled across all public appointments by the Northern Ireland Statistics and Research Agency (NISRA) – an agency of the Northern Ireland Executive - and this is advised to all candidates.

15. Appointments are made by the Minister for Health from a selection of suitable candidates. Under such circumstances, where the Pharmaceutical Society NI has no responsibility for appointments and where EDI data is appropriately collected and analysed by the Northern Ireland Executive, we see no see merit

in duplicating the process carried out by NISRA. We further support the principle set out by the Equality Commission NI that EDI data should only be collected where it can and will be used for an identifiable purpose and we ultimately recognise the Minister for Health's authority in relation to all these issues. The PSA's approach to this aspect of Standard 3 is outwith its own recommended 'Right Touch' approach to regulation and appears to wish to see activity for activity's sake.

16. In relation to the recruitment and appointment of Fitness to Practise (FtP) committees, Council has been extremely sensitive to the need to separate the case management and presentation arm of fitness to practise from adjudication. This extends to having entirely separate staff leads and teams. From the establishment of the new FtP Committees in 2012, Council has distanced itself from recruitment, instead, following a tender process. Council sub-contracts all aspects of appointment to an independent recruitment specialist.

17. One of the benefits of using a recruitment specialist is an assurance that their recruitment practices are sensitive to longstanding equality and diversity categories and issues in Northern Ireland. Our recruitment specialists have assured us that we meet the requirements of the relevant legislation in every respect. The recruitment specialist collects equality data to this effect. We do, however, accept that we could collect EDI data separately and provide feedback to the recruitment agency, for some limited benefit.

Standard 15

18. **We disagree with the outcome of 'not met' against Standard 15 on all counts.**

19. The issues reported by the PSA around record keeping were identified in an audit carried out in 2018/19 which has not been repeated. We advised the PSA that compliance checks are completed each week on every case by two individual senior members of staff and that any non-compliances would be documented –

the absence of such documents demonstrates that compliance was found. We would expect that we are the only regulator that reviews every open case every week using two senior managers and would contend that if there was evidence of non-compliance, this would be swiftly identified and reported upon.

20. The report repeatedly suggests that these reviews should be documented. We question the value of writing a report every week to say there are no-non-compliance's rather than the exception reporting of only reporting issues. If a similar approach were applied to the largest regulators, they would be expected to generate thousands of compliance reports every week.

21. This is an example of the PSA failing to understand how small organisations work, in particular the communications, which are confined to a few individuals, do not need to be recorded in situations where exception reporting is in place. We have stated that a report will be made only where non-compliances are found and do not intend to change this approach.

22. We consider our approach to be an example of good practice and are concerned that appropriate comparative analysis, between larger regulators and smaller regulators, has not been made in this instance. We have been presented with no evidence that other regulators do weekly compliance checks against every case. This may have resulted in an inconsistent application of the Standards of Good Regulation.

23. The Jurisdictional Test and related compliance checks were introduced in the same month as we received the 2018/19 performance review report, June 2020.

24. At the time of the commencement of this review (which itself has lasted 7 months so far), we had introduced all the improvements and therefore meet the standard. This should be regarded as a positive achievement given that we were only formally advised of the issues in June 2020, some 4 months before the end of the review period under consideration and in the middle of a pandemic.

25. We advised PSA that we had identified some of the concerns ourselves and were already working on interim improvements. Some of the improvements were formally introduced in the same month that we received the outcome of the PSA's performance review report and the remaining improvements were made within a matter of months.

26. We do not accept that we should be expected to deliver improvements before we have been advised of their need and would suggest that, because all necessary improvements were introduced during the review year, we should be adjudged to have met the standard unless and until the PSA produce appropriate evidence that we did not.

27. Finally, we reject the 'not-met' outcome in relation to timeliness. Whilst most healthcare regulators are reporting significant backlogs as a consequence of the pandemic we have been able to confirm a minimal effect. The reason for a slight increase in time for us was a series of linked cases involving multiple registrants and an increase in adjournments, for which a full explanation has been given in all instances.

28. The PSA has made no recommendations of actions which need to be taken to minimise the adjournment rate in the future. With a small number of cases, it is extremely difficult to discern a meaningful trend over a period of 12 months. We contend it would be wrong to supress the number of adjournments in order to meet a PSA standard, unsupported by evidence that the adjournments were inappropriately granted.

Standard 18

29. **We disagree with the outcome of 'not met' against Standard 18 on all counts.**

30. We have grave concerns about the approach taken with regard to Standard 18. The essence of the decision that Standard 18 was not met in 19/20 is that we did

not introduce improvements in “response” to the 18/19 performance review report in a timely enough manner.

31. The 18/19 performance review report was sent to us on 20 June 2020. The review period runs until 31 October each year, meaning that we were advised of the failings in month 8 of the year currently under the review. It is simply unacceptable to expect full improvements to be made before the report is even issued.

32. We were aware of a number of the concerns raised during the audit and indeed had identified them prior to the commencement of the audit and had taken steps to address them. However, it would be remiss of any organisation to formally and finally implement changes in response to an audit without having sight of the final report.

33. The timings outlined above are the reason why we formally introduced the jurisdictional test and compliance checks in June 2020, ensuring that they met the exact concerns reported. Both were, however, being piloted prior to this date. In relation to the FtP Communications Strategy which was formally introduced in October 2020, this again was formalising many practices which had been introduced earlier in response to the audit. Had the PSA carried out a further audit in this area, or properly considered the evidence around exception reporting, they would have been able to substantiate this.

34. Formally adopting tests and strategies requires an element of internal governance and approval. This should be understood by the PSA and factored into considerations.

35. The PSA have not acknowledged that, from March 2020, all staff were home working and the period during which the improvements were introduced was against this backdrop. We regard full implementation within the review year as a significant achievement given the circumstances.

36. We contend that, at the time of the review, we had made all the necessary improvements and met this standard.

Summary

37. It is with great regret that we have been compelled to issue this response to the PSA Performance Review and we look forward to the PSA introducing improvements to its approach to the review to restore our confidence and to continue to justify the resources and time deployed by both organisations to improve objectivity, proportionality, effectiveness and performance rather than focussing on a binary met-not met which adds little to the understanding of performance.