



Professional Standards Bodies: Standards, Levels of Compliance and Measuring Success

A Report for the Financial Services Authority

Andy Friedman, William Hanson and Christina Williams

PARN (The Professional Associations Research Network)

25th September 2009



Table of Contents

Executive Summary	6
1 Introduction	8
2 Methods of Investigation	9
2.1 <i>Professional bodies interviewed</i>	10
3 Good Regulation: Criteria of Successful Regulation	11
4 The Three Pillars of Professional Standards	13
5 Entry Standards	17
5.1 <i>Minimum entry standard</i>	17
5.2 <i>Range of entry paths</i>	18
5.3 <i>Degree of central control of entry paths</i>	18
5.4 <i>Supervised practice (post-degree)</i>	19
5.5 <i>Specialist roles and particularly quality control roles</i>	20
5.6 <i>Interviews: Findings on initial professional qualifications and entry standards</i>	20
5.7 <i>Problems and difficulties</i>	21
5.8 <i>Trends and changes</i>	21
6 Complaints and Discipline (and Ethical Codes)	23
6.1 <i>Nature of the ethical code and formal links to disciplinary actions</i>	23
6.2 <i>Procedures for dealing with complaints and disciplinary hearings</i>	24
6.3 <i>Consequences of transgression and the range of punishments</i>	27
6.4 <i>Beyond dealing with code violations by 'exception' and dealing with firms</i>	28
6.5 <i>Interviews: Findings on complaints, discipline and ethical codes</i>	29
6.6 <i>Problems and difficulties</i>	30
6.7 <i>Trends and changes</i>	32
7 CPD and Positive Supports (For Trustworthy Professional Services After Qualification)	34
7.1 <i>Compliance policy</i>	34

7.2	<i>Level of CPD activity expected</i>	34
7.3	<i>Control over what activities are accredited</i>	36
7.4	<i>Positive support for CPD in general</i>	36
7.5	<i>Positive support specifically for ethical behaviour</i>	37
7.7	<i>Problems and difficulties</i>	40
7.8	<i>Trends and changes</i>	40
8	Assessing the Effectiveness of the Pillars Overall	42
8.1	<i>Which pillar is most effective?</i>	42
9	A Model for Measuring the Success of Regulation	44
9.1	<i>Directly measuring success of the regulatory body</i>	46
9.2	<i>Measuring success of the professionals and the profession</i>	47
10	Recommendations	49
	References	50

List of Tables and Figures

Table 1: The Three Pillars of Professional Standards and their Components	15
Table 2: Pillar 1 – Entry Standards: Variations between cases	20
Figure 1: Stages of Dealing with Complaints	25
Table 3: Punishments as a Result of Disciplinary Procedures	28
Table 4: Pillar 2 – Complaints and Discipline: Variations between cases	30
Table 5: Methods of Assessment of CPD Participation	36
Table 6: Strategies of Positive Support for CPD	37
Table 7: Support for Public Awareness of the Ethical Code	38
Table 8: Pillar 3 – CPD and Positive Supports: Variations between cases	39
Table 9: Ways of measuring the success of regulation	45
Table 10: A Model for Measuring the Success of Regulation	46

Executive Summary

This report aims to outline the structures and processes through which regulatory bodies uphold the professional standards of their sectors and to report on the particular structures and processes employed by five professional standards bodies. It examines regulators' views of the effectiveness of these ways of upholding professional standards and the methods they use to assess the success of their structures and processes. It is intended to inform policymaking in the FSA's Retail Distribution Review (RDR). A pivotal objective of the RDR is raising standards of professionalism amongst retail investment advisers. Standards should be delivered that inspire consumer confidence and build trust so that, in time, investment advice is seen as a profession on a par with other professions. This paper is intended to feed into the FSA's consultation on proposed arrangements for the governance of professional standards for retail investment advisers, covering initial and on-going knowledge requirements and standards of behaviour. The methodology used for this research was a set of telephone interviews with:

- ACCA (accountants)
- GMC (doctors)
- NMC (nurses and midwives)
- RICS (surveyors)
- SRA (solicitors)

Web research into their processes and public documents was conducted, as well as a review of PARN research previously undertaken. Data from PARN's latest International Benchmarking Survey 2009 is used to place this work in a wider context.

Different approaches to defining good regulation are considered and PARN's model of the *three pillars of professional standards* is presented. These three pillars are:

1. Entry Standards
2. Complaints and Discipline
3. CPD and Positive Supports for Ethical Behaviour

Each pillar is multifaceted. Different aspects of each pillar and choices available within each aspect make up the different elements of systems of professional standards. For each pillar literature on professional standards and evidence from the five case studies is presented. The model allows a comprehensive comparison of different professional body approaches to professional regulation. These sections include information on problems and difficulties with aspects of regulation, and trends and changes in professional regulation as perceived by interviewees.

Interviewee opinions on the importance of particular aspects of regulatory regimes revealed considerable disagreement. Some considered strict entry standards to be most important, some saw the severity of sanctions for unprofessional behaviour as the best deterrent, and some believed positive supports for ethical behaviour to be the key to maintaining standards. All followed a tripartite approach to standards and saw the three pillars as interconnected and crucial.

In addition, evidence is presented of different ways regulators attempt to measure their success at maintaining professional standards. Again, interviewees were united in finding this a complex exercise and using a variety of activities and data sources to evidence their success. These included:

- Surveying members, staff, employers and clients;
- Setting and measuring service targets;
- Analysing statistics relating to numbers and nature of complaints, disciplinary hearings and sanctions applied;
- Measuring demand for their services;
- Analysing number and nature of requests for ethical guidance;
- Observing media and public attitudes to the profession.

This information feeds into a model which classifies different approaches to measuring success and gives a comparison of the case studies. This report recommends regulators pursue a range of methods of measuring success.

1 Introduction

This report aims to outline the structures and processes through which regulatory bodies uphold the professional standards of their sectors and to report on the particular structures and processes employed by five professional standards bodies. A second aim is to report regulator views of the effectiveness of these ways of upholding professional standards and the methods they use to assess the success of their structures and processes.

After describing the methods used to inform this report, different approaches to defining good regulation are considered in Section 3 and PARN's model of the *three pillars of professional standards* is presented in Section 4. These three pillars are:

1. Entry Standards
2. Complaints and Discipline
3. CPD and Positive Supports for Ethical Behaviour

Each pillar is multifaceted. Different aspects of each pillar and choices available within each aspect which make up the different elements of systems of professional standards are described in Sections 5, 6 and 7. For each pillar literature on professional standards and evidence from the five case studies is presented. The model allows a comprehensive comparison of different professional body approaches to professional regulation. These sections include information on problems and difficulties with aspects of regulation, and trends and changes in professional regulation as perceived by interviewees.

Interviewee opinions on the importance of particular aspects of regulatory regimes are examined in Section 8 and evidence is presented in Section 9 of different ways regulators attempt to measure their success at maintaining professional standards. This informs a model which classifies different approaches to measuring success and gives a comparison of the case studies. Section 10 concludes with some recommendations.

2 Methods of Investigation

This report is based on a short research project. The project officially began on 27 August 2009 with the final report being delivered on 25 September 2009. Information about each of the five cases was gained on the basis of a single telephone interview along with some investigation of their websites and examination of materials provided by interviewees. In some cases we were able to ask follow up questions.

To investigate the design and effectiveness of professional standards regulation we first reviewed literature on the subject of professional standards and criteria for judging regulatory success. We then developed general models for each of these based on accumulated PARN knowledge in addition to this literature review. The models were explored and tested through telephone interviews with five professional bodies with responsibility for regulation of a sector of professional activity or their members. The five were chosen primarily by the FSA, though one of their choices could not be interviewed in time and a second choice had to be made. Those interviewed were: the Association of Certified Chartered Accountants (ACCA); the General Medical Council (GMC); the Nursing and Midwifery Council (NMC); Royal Institution of Chartered Surveyors (RICS) and the Solicitors Regulation Authority (SRA). Relevant documents and websites were examined for each of the selected bodies in addition to the semi-structured interviews.

These bodies have different relations with the professionals they regulate due to different legal authority they exercise over them. Some professions are licensed and others not. This is the status of the GMC, NMC and the SRA. These professionals must be registered with a relevant professional body in order to practice at all. The corollary of which is that if an individual is suspended or expelled by the professional body they lose their livelihood. Some professional bodies have exclusive royal chartered status and some have the exclusive power to confer chartered status on their members in their sector. This is the status of the RICS. While the consequences of being suspended or expelled may not be as great as for licensed professions, loss of chartered status can lead to a critical loss of advantage in the market. Some professional bodies confer status on their members through the perceived quality of their entry exams and their continuing support for technical and ethical competence of their members. It is possible to operate as a professional in the field without belonging to that particular professional body, though in some you must belong to one among several. In the accounting profession there is more than one body which can confer the term chartered. This is the case with the ACCA. The Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants of Scotland can confer the status of Chartered Accountant. Only the ACCA can confer the status of Chartered Certified Accountant.

There are many professions where there is no special title with legal status that the relevant professional bodies can confer. Membership of the professional body is voluntary and is based on member perceptions and evaluations of services and support provided, as well as established traditions of sociability and the maintenance of communities of practice through events and activities organised by the professional body. Suspension or expulsion is a factor affecting both the reputation of the individual within those professional communities of practice and may also affect client perceptions of quality.

Beyond these distinctions there are other variations in the nature of professional regulation concerning who or what is regulated. For some professions regulatory oversight is applied at the

level of the firm instead of, or as well as, the individual. By and large regulatory bodies regulate all activity undertaken by individuals in the profession, but some only regulate a title. For example with architecture, anybody can design a building (activity) however only those registered under the Architects Registration Board (ARB) can use the title Architect. This protection is enforced by statute (See *Architects Act, 1997*).

2.1 Professional bodies interviewed

ACCA is an international membership body for chartered accountants based in the UK. ACCA membership is based around their qualifications providing certification as an accountant. They hold a Royal Charter protecting the title Chartered Certified Accountant, however there is no restriction on any individual describing themselves as an 'accountant' or carrying out this type of work. ACCA have no authority to regulate firms of accountants however they do have a scheme whereby firms can be 'ACCA Approved' if they meet given requirements and this approval can be revoked if these requirements are not met. ACCA's regulatory functions are overseen by the Financial Reporting Council (FRC) who supply independent disciplinary arrangements for cases of high public interest involving accountants.

The GMC is the statutory regulator for all doctors in the UK; they work closely with the Royal Colleges which represent the many specialties which make up the doctor's profession. The GMC does not regulate practices (equivalent to firms) as NHS and private practices are regulated by the newly formed Care Quality Commission (CQC – see www.cqc.org.uk for further details). Empowered by statute under the *Medical Act 1983*, the GMC holds the medical register which is an exhaustive list of those allowed to practice medicine of any kind (activity) in the UK. It also administers and quality assures the standards of medical education and qualification which allows the honorific (title) Doctor to be used.

The NMC is the statutory regulator for Nurses and Midwives in the UK. They hold the register of all nurses and midwives that are fit to practice and issue 'notifications of practice' - essentially a licence to be a nurse to all those on the register. The NMC has regulatory responsibility only for individual nurses, again NHS and other practices and hospitals being governed by the CQC. The titles Registered Nurse and Registered Midwife are protected and these people may continue to call themselves such if they choose to allow their registration to lapse, however anyone undertaking (or intending to undertake) the activity of nursing or midwifery must be registered with the NMC.

The RICS regulate both individual practitioners and firms providing surveying services and have protection of the title Chartered Surveyor through a royal charter but lack the closure of function held by the GMC and NMC in that anybody can call themselves a surveyor or carry out valuation services. From a regulatory perspective this makes it difficult to prevent incompetent practitioners from continuing to work outside RICS.

The SRA is the independent regulatory arm of the Law Society with responsibility for the regulation of Solicitors in England and Wales. The SRA was formed in anticipation of the *Legal Services Act 2007* requiring the professional bodies for the legal professions to separate their regulatory and representative functions. They regulate both firms and individuals and as such control both the title of Solicitor and the activity of providing legal services. This allows them to target their regulatory interventions at either the individual or the firm level where appropriate.

3 Good Regulation: Criteria of Successful Regulation

What should good regulation look like in the 21st century? New technologies have transformed the way professionals in all sectors do their jobs. While technology has offered unexpected and unprecedented freedoms in the way professionals work (even 15 years ago who could have thought of filing a report from their laptop via the Wi-Fi connection at their favourite coffee shop?) they have also offered new means of control and regulation of professional activity.

As Townley (1993) describes (drawing on Foucault) before anything can be governed (or regulated) it must first be known; that is, what can be governed is dependent upon what can be known. The ever increasing power of computer processing has rendered tasks that would have once been incredibly time consuming and expensive much less so. This has led to changes to what is 'regulatable' – for every member of a profession to submit evidence of CPD would have once taken a mountain of paper and an army of clerks to analyse. This can now be undertaken in a much more manageable, largely automated, fashion. As much as technology has liberated professionals it has also provided new means for scrutiny, oversight and control.

Perhaps as a reaction to rising expectations of reliability of professional services in a society increasingly expecting risks to be removed or compensated for (Beck, 1992), and perhaps in response to scandals such as Shipman, Enron, and most recently the global banking crisis, trust in the professions has been shaken, if not actually eroded (O'Niell, 2005; Friedman and Williams, 2007; Friedman with Afitska, 2007; Ipsos MORI, 2007). According to some there has been a shift from the belief that trust is a necessary component of a client's relationship with a professional towards the idea of greater accountability (Gilbert, 2005; Owen and Powell, 2006). Nevertheless we consider trustworthiness as the ultimate goal of professional standards. However, when considering success of regulatory bodies we must supplement this ultimate goal into components that can be more easily measured, and in particular, more directly attributable to a regulatory body.

The cabinet office Better Regulation Task Force (2003) defined five principles of better regulation: Proportionality; Accountability; Consistency; Transparency and Targeting. These principles are designed to ensure fair, effective and affordable regulation that the public can have confidence in. As may be expected regulation of the professions has received a good deal of attention from government in recent years with extensive reformations of the statutory regulation of the legal and medical professions (See: *Legal Services Act, 2007*; *Trust Assurance and Safety...*, 2007). While there is a lowering of confidence in trustworthiness arising from initial qualifications (even if buttressed by more public complaints and disciplinary procedures) accountability cannot be perfect. There are therefore two conflicting tendencies arising from the view that traditional regulation of the professions has been inadequate. One focuses on accountability, dealing head on with concerns that the focus of disciplinary procedures in the past have been too oriented towards protecting the reputation of the professions and offering remedial action for practitioners found not up to standards, rather than protection of the public. The second still regards trustworthiness as a necessary goal and considers the problem to be one that needs to be focused on with positive support and encouragement of trustworthy behaviour. This is clear from the third of five markers of good regulation in healthcare laid out in the Department of Health's white paper (*Trust Assurance and Safety...*, 2007: 2) on the future regulation of healthcare professions.

1. *[A good regulator]'s overriding interest should be the safety and quality of the care that patients receive from health professionals.*
2. *Professional regulation needs to sustain the confidence of both the public and the professions through demonstrable impartiality. Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved in healthcare.*
3. *Professional regulation should be as much about sustaining, improving and assuring the professional standards of the overwhelming majority of health professionals as it is about identifying and addressing poor practice or bad behaviour.*
4. *Professional regulation should not create unnecessary burdens, but be proportionate to the risk it addresses and the benefit it brings.*
5. *We need a system that ensures the strength and integrity of health professionals within the United Kingdom, but is sufficiently flexible to work effectively for the different health needs and healthcare approaches within and outwith the NHS in England, Scotland, Wales and Northern Ireland and to adapt to future changes.*

These principles can easily be applied to professions in general. Safer practise, quality, impartiality, leadership, proportionality and flexibility are desirable qualities for all professional regulators. There are two dimensions to these qualities listed; those qualities to do with the regulation of individuals and those to do with professions more generally. Promoting safer practice and quality of service and ensuring fairness through proportionality and flexibility are to do with individual members of the profession. However leadership (as in sustaining, improving and assuring professional standards) refers to guiding the profession as a whole.

It is easier to imagine objective criteria for safer practice and higher quality service (reducing the number of complaints might be one). However, fairness, flexibility, leadership - these qualities are not easily assessed in an objective manner. The present research will attempt to sketch an outline of how to deal with this problem.

4 The Three Pillars of Professional Standards

We propose that professional standards can be usefully understood in terms of three supporting 'pillars'; two traditional ones and a new one. The traditional supports are:

1. Entry Standards
2. Complaints and Discipline

The modern one is:

3. CPD and Positive Supports (for ethical behaviour)

There is a key distinction to be made between the first two pillars and the third. The traditional approach to regulation was first to set and enforce minimum standards for entry into the profession and second, to ensure these standards are maintained by accepting and judging complaints made against qualified professionals and by disciplining those judged to be operating below standards required, generally either by admonition or by suspension or removal. Two underlying assumptions behind the traditional 'two pillars' of professional standards, were that the primary task of ensuring maintenance of professional standards was through knowledge, skills and awareness of ethical standards acquired during the entry process. After entry it was presumed that professionals would do whatever was required to keep up to date, that they would be responsible. Professionals themselves would be best placed to understand what was required as they operate in situations requiring highly individualised judgement and services. In addition they would be the best judges of what they might need for their own professional development. Individuals who did not understand the standards required, or individual 'bad apples', would be dealt with through complaints and disciplinary processes. However these processes were based on the fundamental principle of 'regulation by exception'; that is, they relied on complaints coming to the attention of the regulator from the field, rather than from active monitoring and evaluation of practise.

The modern pillar is based on the assumption that guaranteeing professional standards cannot rely so strongly on initial entry. Changes in technology, in services that could be offered, and in the legal and business environment in which professional services are delivered all require greater emphasis to be placed on the development of competence and ethical awareness after qualification and throughout the working life of a professional. Before the 1980s the activities now labelled under CPD were what professionals 'just did'¹. Now there is a need for these activities to be more visible and therefore more formalised. In recent times this has occurred under the heading CPD and is now seen as an important part of maintaining professional standards.

The third pillar therefore may also be distinguished from assumptions behind the traditional two pillars in regarding regulation by exception to be inadequate. Traditionally the ethical code is regulated through the vigilance of clients and other stakeholders. It falls down when clients or patients do not formally complain when they are disappointed in the service they receive or even if they consider themselves to have been abused. There are many reasons why they may not

¹ We are employing a wide definition of CPD here, rather than merely training courses we include informal

complain: because they do not realise the service was poor, because they fear reprisals, because they feel they will not get a fair hearing, because they feel that the outcome will not ensure that the problem will not recur, because they feel the harm done to them cannot be put right.

The difference with CPD is that it is usually actively monitored with more clearly stated standards of compliance specified than obligations in ethical codes.² CPD can resemble initial qualifications in thoroughness and breadth of regulation. It cannot only be monitored actively, rather than waiting on complaints, but also it can apply to all practitioners, rather than only those who are caught out. However we note that only some professional bodies have a compulsory compliance policy towards CPD, though there is a trend towards compulsory CPD, most newer professions and smaller professional bodies have voluntary policies (Friedman with Afitska, 2007).

There is another way the third pillar can be distinguished from complaints and discipline. It is based on positive support for compliance, as well as disciplining, monitoring and sanctions. It has two faces. One is guidance, templates, active encouragement and accreditation of activities as well as provision of mentors and helplines; that is positively educative and supporting actions from a professional body. The second is the discovery, judgement and application of sanctions for those who do not comply with the standard. The two faces are not equal. In some professions only the positive face of CPD is expressed, CPD is 'sold' as something good for the professional career and personal development as well as being good for clients and the general public. In those which express the disciplinary face, the emphasis is on sanctions which encourage problem cases into compliance, rather than punishment.

Sometimes the two faces are the responsibility of different types of professional bodies, professional associations for the first and regulatory bodies for the second. However this line is not always adhered to and arguably it is changing with regulatory bodies becoming involved in both more recently.

Each of the pillars may be thought of as fluted or grooved. That is, each is multifaceted; each facet representing a different aspect of the pillar. Within each aspect there are a variety of choices to be made. There are choices among policy directions that must be taken, and in addition there are choices as to which features are added to each category. For example, entry requirements can be set at higher or lower levels. At whatever level is chosen there may also be several different routes to entry. The overall entry requirement may be set at first degree or even a postgraduate degree level. However alternative routes may be added - via experience or managed apprenticeship for example - that are deemed to be equivalent to degree requirements. Similarly the burden of proof for disciplinary hearings may be balance of probabilities or beyond reasonable doubt, but the range of sanctions and the likelihood of more serious sanctions being applied will vary among regulatory bodies. Choices need to be made with CPD as well. Will it be measured by inputs or outputs? What will the compliance policy be? In addition the range of support resources provided will vary among regulators. In Table 1 we present a model of professional standards providing an overview of the pillars and the choices made concerning each pillar in broad terms. The succeeding discussion will follow this model.

² At least this will be so for CPD compliance policies that are compulsory, as are most for regulatory bodies.

Table 1: The Three Pillars of Professional Standards and their Components

Pillar	Aspects of Pillar	Choices / Options
Entry Standards	Min. Level of entry	Lower than degree Degree level Higher than degree
	Range of entry paths	Diploma/NVQ Degree Professional qualification Experience
	Degree of control of entry paths	Accreditation/ Quality Assurance Authentication of Certificates Own Qualifications
	(Post Degree) Supervised Experience	Pre-Qualification Post-Qualification
	Ethical code	Beneficiaries other than client Aspirational Actionable
Complaints & Discipline	Complaints	Public Private Handled internally Handled externally Use of ADR Informed complainant Compensation
	Complaints Processes	Filtering Investigation Disciplinary Appeals
	Committees	Investigating Disciplinary Combined
	Establishment of guilt	Balance of probabilities Beyond reasonable doubt
	Consequences of transgression	CPD Supervision order Suspension Expulsion Name and shame Removal of privilege Fine Quiet word/warning Public apology
	Appeals Process	Internal External (Courts)

Pillars	Aspects of Pillars	Choices / Variations
CPD & Positive Supports	Compliance policy	Mandatory
		Voluntary
		Obligatory
		Mixed
	Level of CPD requirement	Hours/ points
		No set requirements
		Competency framework
	Control over what counts	Accreditation of Suppliers
		Acceptable Activities
	Measurement	Inputs
Outputs		
Combination		
Support for CPD	Guidelines	
	Recording templates	
	Reflection templates	
	Helplines/advice	
Sanctions for non-completion	Mentoring	
	Expulsion	
	Suspension	
Support for ethical behaviour	'Held back'	
	Ethical dilemmas	
	Training on code	
	Requirement to sign up to code	
	Ethics Helpline / Advice	
		Access to code

5 Entry Standards

We may broadly classify entry paths by three different types of criteria: knowledge, skill and character. The balance between these different criteria has changed, with character being more important in the past, particularly for professions which emerged before the 20th century. The rise of universities from the late 19th century and their broadening subject bases has led to and been encouraged by perceived greater importance of the knowledge base of the professions. Skill has always been important and there appears to be a renewed emphasis on skills as expressed by a concern for competencies. Together these add up to both technical and ethical competence and encompass, but are more than, particular competencies. A particular competency is the ability to execute a professional service task: deliver a service or provide advice in response to a known requirement. Technical competence means knowing what to do and being able to execute it (from an array of possible services that could be provided) in terms of what is required to achieve the desired result - knowing what works and being able to do it. Ethical competence means knowing what to do and being able to execute it in terms of what is expected in terms of the professional code of ethics. This may mean forbearing from what appears to be the known requirement (what the client or patient expects or desires) in view either of expected consequences of the service for the client or patient or consequences for others, such as in terms of public health and safety.

5.1 *Minimum entry standard*

PARN research has identified a wide array of entry standards specified by professional bodies. The primary choice is whether the standard should be set below, above or at the level of a university degree and also how closely determined course content should be.

In the UK requirements for entry are most often set at or above degree level, this reflects a dual concern both with recruitment of graduates, and the setting of standards which reflect the complexity of professional activities. 'Traditional' professions, such as the legal professions, are more likely to employ standards of qualification and practical experience above degree level (Lester, 2008). For example the Bar Council requires that Barristers undergo a specific vocational training course above degree level followed by a period of professional training under a supervisor, akin to an apprenticeship, before full qualification is granted (Williams and Hanson, 2009). The NMC has recently moved to degree level entry as have social workers. The entry requirements for social workers have increased to all graduate entry since 2003 (see <http://www.gsc.org.uk>). Entry requirements for doctors have been rising for a long time and can now involve as much as eight years of specialisation after both a first degree and a period under supervision as a junior doctor. On the other hand some are adding alternatives to degree routes and ACCA have always branded themselves as open access.

A particular distinguishing feature is whether practical or practice-based requirements are used. As Lester (2008) noted the importance of 'practicing abilities' in initial qualification is increasing. This is evidenced in two parallel trends; firstly increases in the length of practical experience required and secondly more stringent competency criteria and assessments of professional practice being used. The NMC require universities to provide placements for student nurses as part of their qualification. There are specific outcomes for each of several placements required throughout the courses.

In addition to academic requirements and practical experience there is often a further requirement that entrants to the profession are people of good standing. Character checks generally merely involve checking criminal records, but may also involve harsh sanctions on what would be regarded as unethical behaviour during the initial qualification process. The SRA view character checks as one of their most effective deterrents against 'bad apples.' They noted that since the introduction of background checks there have been reductions in the severity of offences declared during the qualification process:

I would say that we have quite rigorous character and suitability checks in place, but at the same time... there is a judgement call to be made against the criteria. I think it is having an increasing deterrent effect. (SRA)

It is acknowledged in many professions that the skills required to achieve qualification and entry to a profession are not always synonymous with the skills required of a professional in their working life. There is a further choice to be made as to whether to require practical experience in order to qualify for entry to a profession or whether to allow entry, but ensure practical experience is gained under a period of supervised practice immediately after qualification. It was the view of the NMC interviewee that after qualification is where learning *really* started. The NMC are considering introducing a mandatory preceptorship period post-qualification to ensure newly registered nurses and midwives are both fit for purpose and fit for practise (see section 5.4). On the other hand the GMC require a year's supervised practice before qualification (full registration) and a further year's supervised practice post qualification.

5.2 Range of entry paths

There are often several pathways to qualification in a profession. Some have a complicated set of possibilities for entry; others are more straightforward and limited. Features involve the accreditation of unusual paths into the profession for those who do not choose the academic path when they are young. This can involve credit for other degrees and limited requirements for transition courses. It can involve accreditation of other prior learning and/or experience.

5.3 Degree of central control of entry paths

Professional bodies may administer their own courses and qualifications, or may accredit universities or other training providers. Most professions have an organisation that monitors providers of initial professional qualifications to maintain standards and also scrutinises individual cases where unusual routes are involved. For the former activity there are also choices and features. The key choices are whether to open entry to many different providers and in particular if there is an articles or apprenticeship component, how widely to allow this and how closely it is monitored. There are a range of options as to how closely to monitor the standard set. Some quality assure all university courses available which are accepted for entry. A more recent approach is to assess on a risk basis; that is, to accept self assessment if no evidence of problems are brought to the regulator's attention or only to assess client/patient critical features.

ACCA provide a detailed syllabus against which courses are assessed, they also inspect the providers to ensure they have adequate teaching resources and staff to deliver the course. An example of a more liberal approach to defining the standards of initial qualification was presented by the GMC.

The GMC accredit the teaching standards of the 27 universities and medical schools in the UK that provide initial qualification for doctors. Their philosophy is to allow a wide variation in the methods of delivery as long as they meet the required standards:

In the UK [accrediting medical education] has been led by allowing freedom [so] you will get a more varied approach to medical education. For example if you particularly want a traditional method of medical education you might go to somewhere like Cambridge or Oxford or Imperial, if you want to go somewhere that teaches with a problem-based learning approach you might go to Liverpool or UEA. The philosophy here has been that that's a good thing, it stops you producing identikit doctors, it allows you to have varied people entering the profession, provided you have an over-arching standards document and that you quality assure carefully against it. (GMC)

This is not to suggest that the GMC takes quality assurance lightly, the GMC describes their approach as “hard edged” and are keen to distance themselves from the historic perception of a ‘club mentality’. They include students and lay persons on their quality assurance teams. The NMC quality assures the courses against their standards and outsources responsibility for inspections to an independent company. Inspections are ‘targeted’ according to a risk model – self assessment is allowed for universities consistently meeting or exceeding minimum standards. The decision to bring this in was inspired partly by the Better Regulation Task Force’s (2003) principle of targeting regulation and also out of consultation with the universities providing the courses.

5.4 Supervised practice (post-degree)

Some professions specify a period after registration of controlled supervision, though the term supervision may not be used to distinguish the approach from practice activity which is part of the initial qualification. The category of a novice, as opposed to an expert, is given different labels. The NMC is currently considering such a category, which they call a mandatory preceptorship. NHS Scotland, employers provide ‘flying start’, a preceptorship programme for newly qualified nurses. The length of this period will vary according to the kind of role taken on, for example specialised roles may take longer than general nursing. It is interesting that the regulator is following an employer here, albeit the major employer in the sector. A distinction between fit for practice and fit for purpose can be made here. Fit for practice means that you have achieved the standards set by the regulator. Fit for purpose means that you can do the job or perform the role you are tasked to do. This may involve understanding the idiosyncratic working methods of any particular employment setting, but it may also involve more specialised knowledge (such as adult nursing intensive care). This may require formal post-registration training or less formal controlled supervision.

This may be regarded either as an extension of entry standards or a specialised form of CPD. Currently it is likely to be regarded as the former, but in time, with greater emphasis on CPD, it may come to be regarded as the latter.

5.5 Specialist roles and particularly quality control roles

The same argument can be made for specialists. Initially all specialist professionals (beyond pioneers) must be given either informal training by senior staff or formal training by employers. Eventually the role may become formalised and have attached to it formal professional standards of entry. The archetype profession of specialists is medicine where all doctors are expected to progress from junior doctor into a speciality, including that of general practitioner. Other professions deal with specialists through training and CPD, which may not have attached to it a specialist label and may only involve on-the-job training.

One way of dealing with the need for systems to ensure trustworthiness and quality of professional service delivery is to have specialist individuals with this responsibility. The other side of the coin, requiring supervision of novices, would be to control entry of those who supervise novices. A further development would be to ensure not only that novices, but also all others below the most senior levels, or even all, have someone specifically to manage the quality of their work. If this becomes a formal role, then the regulator may take responsibility to accredit such individuals (SRA).

5.6 Interviews: Findings on initial professional qualifications and entry standards

Based on our interview findings Table 2 (below) details various choices made by each of the professional regulators in our sample. Most set entry at or above degree level. Most were keen to do this as a way of standardising routes to entry in the interests of raising the minimum standards of the profession. ACCA were the exception, but acknowledged that although their open door policy allows access for candidates without a degree, many of these never progress out of the (lowest) technical category of membership. Entrants with a degree tended to progress furthest through membership categories.

Table 2: Pillar 1 – Entry Standards: Variations between cases

Aspects of Pillars	Choices / Variations	ACCA	GMC	NMC	RICS	SRA
Min. Level of entry	Lower than degree	✓	×	×	[✓]	×
	Degree level	×	×	[✓]	✓	×
	Higher than degree	×	✓	×	×	✓
Range of entry paths	Diploma/NVQ	×	×	✓	×	×
	Degree	×	✓	✓	✓	✓
	Professional qualification	✓	×	×	×	×
	Experience only	✓	×	×	×	×
Degree of control of entry paths	Accreditation/ QA	×	✓	✓	✓	✓
	Authentication of Certs.	✓	✓	✓	✓	✓
	Own Qualifications	✓	×	×	×	×
(Post Degree) Supervised Experience	Pre-Qualification	✓	✓	×	✓	✓
	Post-Qualification	×	✓	[✓]	×	×
Key:	✓	Regulator uses or provides this option				
	×	Regulator does not use or provide this option				
	[✓]	Regulator will provide this shortly				

Of the professional bodies interviewed only ACCA accepted entry by experience alone, their primary route being through their ‘in-house’ qualifications and secondarily by transfer from another accounting body with a requirement for a certain amount of experience. ACCA were the only body

to administer their own qualifications, all other bodies engaged in various amounts of accreditation and quality assurance of undergraduate and post-graduate university courses. The GMC made use of both pre-qualification and post-qualification supervised practice. The NMC are moving towards providing post-qualification supervision for all nurses, while ACCA, RICS and SRA all make use of a pre-qualification period of supervised practice.

5.7 Problems and difficulties

The interviewee from RICS pointed out the difficulty of maintaining consistency of entry requirements when attempting to expand into international markets. This concerned the difficulty of accepting education qualifications in certain other countries and mapping their equivalence to those available in the UK as well as the difficulty of evaluating quality in so many different national systems.

Where I sit, it is difficult to actually maintain that consistency post-qualification. The more fragmented the post-qualification practice and the more fragmented the way of qualifying, then I think it's very difficult to ensure a consistency of standard. (RICS)

The interviewee from the GMC noted that there is an intrinsic difficulty in assessing how effective the entry standards set by the GMC are, and that is the length of time between doctors beginning qualification and entering practice. The British Medical Association (BMA) produces research studies tracking cohorts of doctors from qualification through to practice. Although this information does give valuable insight into the career paths of doctors and the appropriateness of their initial qualifications, often by the time this information is gathered qualification of doctors has changed and the 'goal posts' have moved. As a means of combating this, the GMC carries out extensive consultation with employers to determine whether the qualification process is producing "the right kind of doctors".

5.8 Trends and changes

There are two almost opposite trends in professional education and each was clearly expressed by one of our interviewees. In general there has been, until very recently a trend towards rising academic entry requirements. The NMC interviewee stated that they were moving towards graduate entry and specifically mentioned that diploma nurses were 'fit for practise, but not fit for purpose in the 21st Century'. That is, they could not do some of the specialised work that may be required of them as roles change, but that presumably in a degree course they would get tuition and experience at this. However moving to graduate entry would not necessarily solve this problem completely and the NMC is considering mandatory preceptorships in conjunction with employers and based on outcomes.

The second and more recent trend in professional education derives from lower level education trends, towards competencies (see Lester, 2008). This has been at the heart of the government's skills agenda (Leitch Review of Skills, 2005; *World Class Skills...*, 2007). Originally this related to young people aiming for technical rather than professional work (though this distinction is itself becoming blurred). Gradually, through some of the Sector Skills Councils, this approach is being applied to professional qualifications. Reflecting this trend the SRA mentioned that they are moving to 'Day One' competencies in their approach to entry qualifications. This does not mean that degrees are no

longer the most common requirement, but it does mean that more direct ability to carry out tasks required of lawyers is being tested rather than relying only on general or academic knowledge on one hand, and on general recommendations from those running training contracts for solicitors on the other.

6 Complaints and Discipline (and Ethical Codes)

A small scale study into the complaints and disciplinary procedures of professional associations conducted for the Nuffield Foundation in 2002 concluded that there was room for improvement in the way professional bodies tended to handle complaints (Friedman, Phillips and Watts, 2002) based on criteria laid out by the Accountancy Foundation Review Board (2002). In what follows we consider the foundation document to guide what may be considered legitimate complaints, instances of incompetence and forms of misconduct; that is the ethical code and associated guidance notes. We then consider the process of dealing with complaints

6.1 *Nature of the ethical code and formal links to disciplinary actions*

PARN research into the formation of ethical codes runs along four strands: principles of good design for the code, the type of language used or the *modality* of the code, the types of obligations within codes and identification of beneficiaries – to whom are obligations owed. Some codes are short documents naming few obligations, others are long and detailed. Some codes are written in aspirational form, they indicate what is *expected* of professionals. Other codes are written in legal form, indicating what is *required* of professionals.

The principles of good design of ethical codes for professional bodies have been laid out as accessibility, clarity, consistency and comprehensiveness (Friedman, Daly and Andrzejewska, 2005). Accessibility and clarity are closely linked, an ethical code must be unambiguous and readily understandable both by professionals and the general public (Friedman, 2007). Consistency and comprehensiveness both link closely to the usefulness of the code. If a code has multiple sections care must be taken to avoid inconsistencies and contradictions (Friedman et al, 2005). Comprehensiveness is based on the assumption that the code ought to cover all areas of activity a professional can expect to be engaged in. This makes it especially important that a code is kept up to date. If the code is to be useful for regulatory purposes it should use language which is unambiguous and actionable by disciplinary committees. This brings us to the importance of modality in ethical codes; codes which are aspirational employ prescriptive language (e.g.: should or shall) whereas codes which are more stringent use the language of compulsion (e.g.: will or must). A single code may employ multiple kinds of modality, but there must be consistency of modality for each issue treated by the code (Friedman et al, 2005). Inconsistent modalities can lead to confusion and render the code unsuitable for practical use.

In 2007 the SRA streamlined the Solicitors' Code of Conduct to make it more understandable and usable as a document both for their members and for use in disciplinary hearings. It codified into statutory roles what had previously been a combination of rules, principles and guidance.

[In] 2007 it changed fairly radically from the Guide – the Guide to the Professional Practice of Solicitors – that was a lengthy document with voluminous guidance and we now have a much more streamlined code of conduct which moved towards a principles based approach, yet contains detailed requirements and supporting guidance.

The GMC and RICS reported that they had also moved to a principles-based approach to regulation. The benefits of which were seen as flexibility and promoting a positive image of the profession. The interviewee from RICS commented that the flexibility afforded meant they could emphasise

compliance and bringing errant professionals back into the fold, rather than aiming to “hang people out to dry”. Also by resolving more cases before they reach the disciplinary stage the more serious cases that did come through could be afforded more attention.

Obligations can also be categorised by their beneficiaries. For example: Are obligations to the general public and to colleagues included in addition to those owed to clients or patients? The content and purpose of obligations will vary from profession to profession. Some codes will include explicit obligations for due care over billing or keeping competence up-to-date (Friedman et al, 2005).

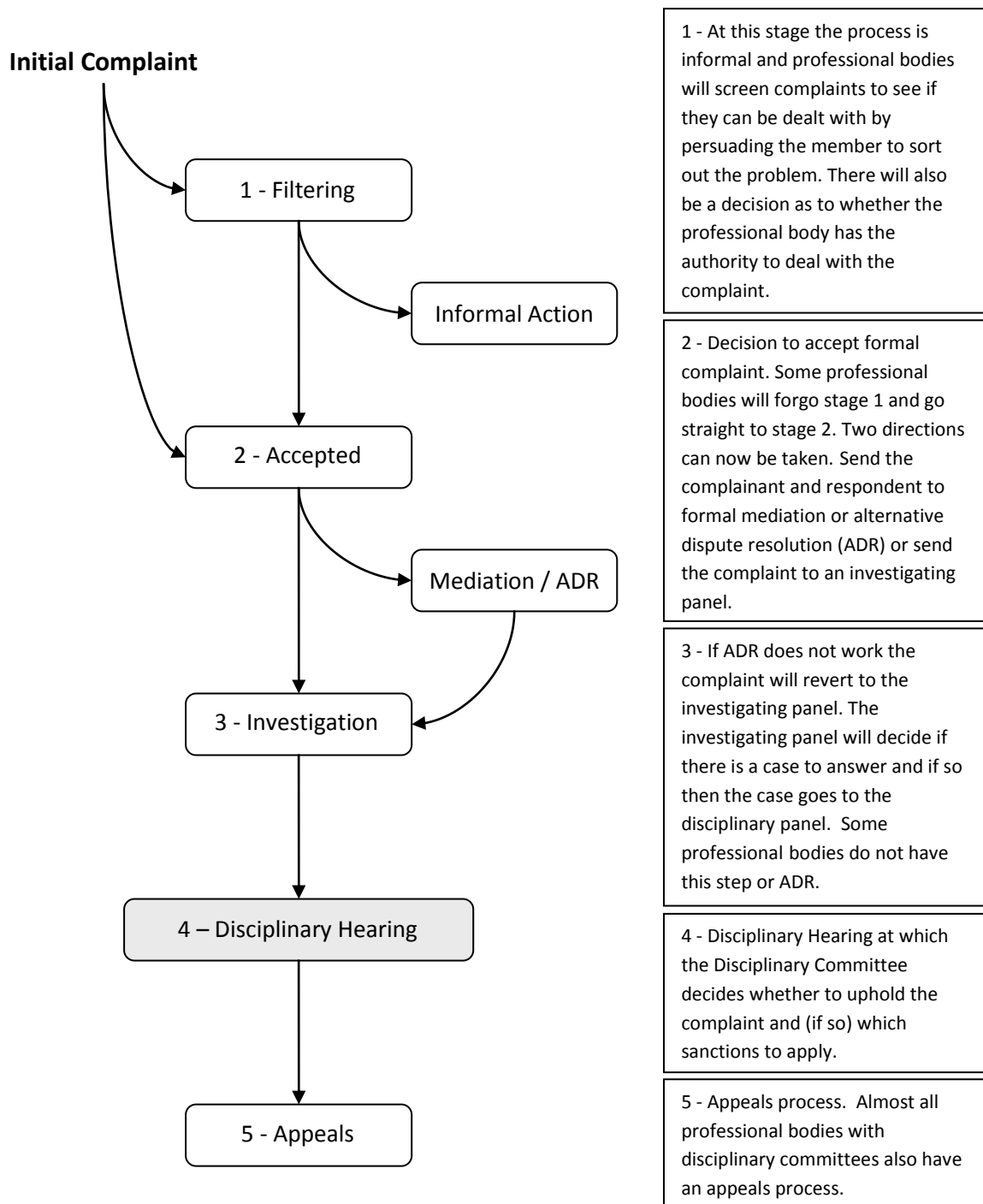
6.2 Procedures for dealing with complaints and disciplinary hearings

There are some interesting differences in procedures for dealing with complaints. Some strictly separate investigation of complaints from dealing with those found to have transgressed. Some regard complaints as information to be dealt with by the profession and provide little information on the consequences of investigation to complainants, while some keep complainants informed of how the process is proceeding. Traditionally disciplinary procedures took place behind closed doors and neither complainants nor the rest of the profession were informed of individual cases. This has been changing in response to bad media reports on not only incompetent or unethical cases of individual professionals but also impatience with perceived lack of response by regulators to these transgressors. Gradually professions are becoming more public with results of who has been punished and with providing complainants with information during the process to see how their complaint has proceeded. The process of dealing with complaints will typically go through the five stages shown in Figure 1.

There is little literature on complaints handling by professional bodies that is comprehensive. However there is a considerable and useful literature on complaints handling in public sector organisations. According to the Cabinet Office public sector organisation complaints systems should be:

- *Easy to access* and well publicised
- *Speedy* – with fixed time limits for action and keeping people informed of progress
- *Confidential* – to protect staff and those who complain
- *Informative* – providing information to management so that services can be improved
- *Simple* to understand and use
- *Fair* – with a full procedure for investigations
- *Effective* – dealing with all points raised and providing suitable remedies
- *Regularly monitored and audited* – to make sure that it is effective and improved (Cabinet Office, 1998)

Figure 1: Stages of dealing with complaints



Complaints Handling

Surveys undertaken by MORI in 1994 and 1997 (Page, 1997) concerning public perceptions of local authority complaint handling found that *speed of response* and *good communications regarding the progress of complaints* were valued most highly. Other issues emerging from the surveys were:

- The attitude of complaints handling staff is most important – complaining is made more difficult by unhelpful staff
- The public are not convinced that complaints are dealt with objectively
- It is important that information regarding how to complain, and who to complaint to, is clear and accessible
- It may be inevitable that the complaints process is going to be lengthy in order to be fair to all parties, but the complaints process should be explained at the outset
- More written decisions are required to account for decisions
- Apologies have a major effect on how complainants view an investigation
- Appeals procedures should be better publicised and explained

A particularly strong and telling conclusion by Page was that only half of those unhappy with public sector services bother to complain because they feel that complaining is futile. In a confidential report by PARN (Friedman, Phillips and Watts, 2002) it was noted that few of the 12 professional bodies studied published their complaints procedures on their website and none allowed online reporting of complaints. However one of the professional bodies encouraged its members to put details of how to complain to the professional body on their promotional material.

Disciplinary tribunals

According to the Franks Committee (1972 – cited in Council on Tribunals, 2000)³ *openness* is a basic required characteristic of tribunals. The process should be open to scrutiny and therefore hearings should be held in public. All parties should be kept informed of outcomes at key stages and there should be disclosure of evidence to complainants and respondents. Reasons should be given for all decisions. The appeals procedure should be well-publicised and accessible.

The list of desired characteristics for tribunals which would lead to effectiveness is:

- *Openness*
- *Accountability* – following from openness requiring publication of names and sanctions applied as well as reports on the professional body's own handling of complaints
- *Fairness*
- *Timeliness* – though speed should be balanced by thoroughness
- *Proportionality* – sanctions should be appropriate to the seriousness of the offence
- *Independence* – decision-making should be and be seen to be independent from the professional body itself

The 2002 PARN study concluded that there was a lack of awareness among most of the professional bodies they studied as to the importance of effective complaints handling both for perceptions of members and the public at large as well as in terms of benefits for the organisation.

³ These rules were designed for public authorities to ensure compatibility with the European Convention on Human Rights. Most professional bodies would not be considered public authorities, except those with statutory authority.

There is an interesting tension to be noted here. Traditional forms of regulation rely on complaints in order to 'discover' malpractice but the aim of a regulator in resolving the complaint is not simply to "satisfy the complainant" (as the interviewee from the GMC put it) but also to protect the public at large. Much of the time these aims will be convergent, but this is not always the case.

At an operational level there is a further consideration to be made when considering disciplinary tribunals and this is the standard of proof required by the proceedings. The choices are whether to opt for a 'beyond reasonable doubt' (criminal) standard of proof or a 'balance of probabilities' (civil) standard. The potential seriousness of the outcome of a tribunal, for example the loss of livelihood of the member under investigation, must be balanced with the need to protect the public and ensure consumer value.

Since the publication of the final report of the Shipman inquiry both the GMC and NMC have adopted a civil standard of proof. In view of the higher risks involved in malpractice in the field of medicine it was felt that it was more important to err on the side of the interest of protecting the public. The SRA approach this choice in a targeted fashion, a decision is made on which standard to work to dependent on the type of allegation made against the member although the disciplinary tribunal applies the criminal standard.

6.3 Consequences of transgression and the range of punishments

This will depend on the range of punishments available to the disciplinary committee but it will also depend on the link between seriousness of offence and level of punishment. The latter will depend to some extent on publication of prior rules as well as customs which are largely peculiar to each profession, though may be in the process of normalisation through the presence of lay members on disciplinary committees. Are billing errors merely pointed out and perhaps attract a reprimand or an order to correct and issue a letter of apology? Will finding that practitioners have used outdated techniques lead to suspension or an order to carry out CPD, or merely a reprimand and advice to undertake appropriate remedial learning? For practitioners who have been found to have transgressed to the extent of committing a civil or criminal offence, will they be suspended or expelled? Will there be circumstances that will allow readmission? What is the difference between the penalty for a first offence and for subsequent ones?

These are difficult issues to deal with as they require substantial evidence of many disciplinary cases across many professions to say with any authority that one profession is more or less strict in imposing punishments than another.

There are also distinctions among:

1. the formal rules as set out in the ethical code and in any supplementary information on how the code will be applied,
2. expected application of the rules based on separate formal documents and the perceptions of members of the profession and the general public, and
3. actual application of the rules.

Here is an interesting area where professions have been criticised severely in the past. The codes have been presumed to be mere window dressing leading to the expectation among clients and the general public that the profession will only in absolutely extreme cases take action against one of

their own: that regulation is intended to protect the profession and individual professionals from criticism, not to protect the public (Beauchamp and Bowie, 1983).

Associated with this is a perception that the range of punishments actually handed out are limited. Either errant professionals receive a quiet word of warning or they are expelled. Expulsion can be a very serious punishment if someone's livelihood is lost as well as returns to the substantial investment represented by the long period required for qualification representing a loss of public investment in education as well as the cost to the individual of a long period of initial training. This then encourages far lighter punishment to be used, which then can bring the disciplinary process into disrepute. Most regulatory bodies have developed a wider range of punishments to fill the space between the two extremes, though the full range does not seem to be recognised by the general public. Suspension, demotion of grade, requirements for restitution to complainants, extra CPD as well as naming and shaming are examples. Table 3 shows the percentage of professional bodies using different types of sanctions according to PARN surveys of UK professional bodies carried out in 2006 and 2009.

Table 3: Punishments as a Result of Disciplinary Procedures

Disciplinary Procedures: Punishments	UK (2006)¹	UK (2009)²
Permanent Striking Off (Expulsion)	88%	95%
Temporary Striking Off (Suspension)	77%	77%
Removal of Privileges or Status	42%	42%
Proof of Competence (Re-Examination)	22%	21%
Fine Paid to Organisation	22%	19%
Fine Paid to Complainant	6%	9%
Name and Shame	48%	44%
Warning (or Quiet Word)	61%	63%
Public Apology	16%	12%
Additional CPD	N/A	16%
Other	11%	19%

¹Reproduced from Friedman (2007) based on a sample of 64 UK professional bodies.

²Based on 2009 PARN International Benchmarking Survey, sample size 43 professional bodies

The proportion of professional bodies using each of these sanctions appears to have remained more or less constant in recent years. From the above information we can see that expulsion and suspension are still the most widely available form of punishment, although these figures say nothing as to how often, and on what grounds in detail, these sanctions are implemented. The remaining sanctions cover a variety of other approaches, however only the warning (quiet word) option was reported to be used by more than half of the sample in each survey.

6.4 Beyond dealing with code violations by 'exception' and dealing with firms

The SRA now has the power to target firms as well as individuals. It has a Practice Standards Unit (PSU), which visits 10% of law firms (around 1000) per year evaluating compliance with the Code of Conduct and providing improvement advice. Where serious breaches are found these are referred

on for further investigation within the SRA. Quality assurance for firms is undertaken on a risk basis, by size of firms and their functional areas within law. Risk criteria are used.

Certainly we're making the move from regulating individuals to a balance of regulating firms and individuals. I think that shift of emphasis does provide an opportunity to look at how quality assurance operates in practice within firms. We would say that we are looking on a risk-basis at firms and how they manage themselves to ensure compliance with our requirements but also to deliver a good legal service. (SRA)

We may consider different ways regulation may be said to be risk based. It can be by function, that is, to concentrate mostly on those providing services that are most likely to cause serious harm if done badly. It can be by quality of those being assessed, that is, those found to be operating well at first visit will not be visited again for a long time.

The GMC were also keen to emphasise that they do not only regulate by exception:

I think [we are] moving away from being seen as the big stick that takes your livelihood away to being a body which is assuring patients' safety and the competence of doctors along the way, and trying to improve the standards of care that patients receive. It's moving away from being this punitive body that just comes in once it's all gone wrong to something more positive. (GMC)

An important aspect of this is that the regulator is respected and demonstrates leadership of the profession. This underlines the importance of gaining the opinions of members of the profession about the regulatory body as a means for measuring the success of these activities.

6.5 Interviews: Findings on complaints, discipline and ethical codes

As can be seen from Table 4, all cases included beneficiaries other than clients in their codes and all codes were described as actionable. All dealt with complaints in public and handled them internally. All had separate disciplinary and appeals procedures. While all used suspension and expulsion as punishments none of the other seven consequences of transgression were used by all the cases. Turning to facets of the second pillar that none of the cases used, none used alternative disputes resolution procedures, though those which dealt with conduct issues rather than 'business' issues (generally concerning fees) stated that a different body dealt with business issues which were more appropriately dealt with through ADR.

A few facets were used by all but one of the cases. Filtering was done by all but the RICS, naming and shaming by all but the GMC. On the other hand only the RICS used a public apology as a consequence of transgression.

There were a number of facets only taken up by the licensed professions: doctors, nurses and solicitors. These were having separate investigating and disciplinary committees and using supervision orders as a consequence of transgression. In addition the licensed three stood out as not ever ordering compensation for complainants.

Table 4: Pillar 2 – Complaints and Discipline: Variations between cases

Aspects of Pillar	Choices / Options	ACCA	GMC	NMC	RICS	SRA
Ethical code	Beneficiaries other than client?	✓	✓	✓	✓	✓
	Aspirational	(✓)	×	(✓)	×	×
	Actionable	(✓)	✓	(✓)	✓	✓
Complaints	Public	✓	✓	✓	✓	✓
	Private	×	×	×	×	×
	Handled internally	✓	✓	✓	(✓)	(✓)
	Handled externally	×	×	×	(✓)	{×}
	Use of ADR	×	×	×	×	×
	Informed complainant	-	×	✓	✓	✓
	Compensation	✓	×	×	✓	×
Complaints and Disciplinary Processes	Filtering	✓	✓	✓	×	✓
	Investigation	✓	✓	✓	✓	{×}
	Disciplinary	✓	✓	✓	✓	✓
	Appeals	✓	✓	✓	✓	✓
Committees	Investigating	×	✓	✓	×	{×}
	Disciplinary	×	✓	✓	×	✓
	Combined	✓	×	×	✓	×
Establishment of guilt	Balance of probabilities	-	✓	✓	✓	(✓)
	Beyond reasonable doubt	-	×	×	×	(✓)
Consequences of transgression	CPD	×	✓	×	✓	×
	Supervision order	×	✓	✓	×	✓
	Suspension	✓	✓	✓	✓	✓
	Expulsion	✓	✓	✓	✓	✓
	Name and shame	✓	×	✓	✓	✓
	Removal of privilege	×	✓	×	✓	✓
	Fine	✓	×	×	✓	✓
	Quiet word/warning/Consent Order	×	×	×	✓+	✓
	Public apology	×	×	×	✓	×
Appeals Process	Internal	✓	×	✓	✓	×
	External (Courts)	×	✓	×	×	✓

Key: ✓ Regulator uses or provides this option
 × Regulator does not use or provide this option
 (✓) Regulator uses both of these (usually exclusive) options
 {×} Currently provided by another professional body
 ✓+ RICS use privately agreed consent orders to bring the firm back into compliance
 - Not currently known

Other facets seemed genuinely to be taken up by some and not others without obvious logic. These issues included using CPD as a consequence of transgression of the code as well as removal of privileges, fines, and quiet word/warning. This also applied to whether the appeals process was internal or external (relying on the courts). This may suggest changes in the incidence of these facets in future.

6.6 Problems and difficulties

One problem reported by the NMC was the difficulty of convincing employers of nurses who have made a transgression to report the incident to the NMC. In part this is due to a conflict of interest between the employers' duty to help protect the public and their desire not to draw attention to the

shortcomings of their staff. Often an employee that should be brought before the NMC is just quietly sacked.

As is noted above, the Franks Committee recommended fairness as an important characteristic of a good tribunal. An interesting approach to ensuring and 'measuring' fairness in their disciplinary procedures has been adopted by the SRA. The SRA had, through monitoring its regulatory activity, identified that Black and Minority Ethnic (BME) solicitors were over represented in regulatory decisions. After receiving complaints from their members the SRA commissioned an independent review to research the issues and to make recommendations for improving their approach to fair regulation (SRA, 2008). The review was led by Lord Herman Ouseley and supported a working party established by the SRA comprising key BME solicitor representatives which was chaired by Anesta Weekes QXC. Lord Ouseley's recommendations included the need for the SRA to develop visible and demonstrable leadership on equality and diversity in order to encourage an organisational culture and ethos that respects and values equality and diversity as positive, valued and key to organisational success. Further to this that equality and diversity should be embedded into all aspects of the SRA's change programme, business planning processes and risk management.

The SRA responded to the recommendations by publishing its first Equality and Diversity (E&D) strategy supported by a two year action plan. The strategy provides a framework for strategically embedding Equality and Diversity throughout their regulatory approach (SRA, 2009). The key points of this strategy are given below:

Embedding diversity by...

- Training for professional standards staff on key issues in E&D
- Embed E&D in their Communications Strategy
- Promotion of E&D in the profession through annual report and other communications
- Developing and embedding E&D competencies into the competence and performance management frameworks
- Integrating equality and diversity requirements into their tendering and contractual documents
- Improving and developing engagement opportunities and partnership working with key equality practitioner groups
- Embedding E&D into HR policy and practice and using positive action to address under-representation in the workforce
- Setting up committees with specific E&D responsibility: SRA Board Equality and Diversity Group, Diversity Working Group, External Implementation Group.

Measuring performance by...

- Actively seeking feedback from their stakeholders
- Improving their collection and use of equality data and undertake and commission sound and ethical research where appropriate and necessary to underpin their impact assessment programme
- Quarterly reports to the SRA Board
- External review of their performance on equality and diversity twice a year

- Monthly reporting to External Implementation Group (chaired by Lord Herman Ouseley).

The SRA's recent interim review by Lord Ouseley found:

- The SRA is providing leadership in the promotion of E&D
- Improved engagement with BME solicitors
- Protocol for handling complaints of discrimination had been successfully implemented and complaints were being addressed more thoroughly
- Change in staff culture from one that was defensive to one in which staff are more willing to be engaged with the equality and diversity agenda and open to learning.

This new strategy is an example of interesting practice in embedding equality and diversity. The openness and energy of the SRA response is evidenced through the process of reporting to an external and independent implementation group. Many of the above actions make up part of the BIS (Department for Business Innovation and Skills) recommendations within their professional recruitment guide (developed by PARN) which is designed to help professionals and firms employing professionals embed equality and diversity in the workplace (See: http://www.dius.gov.uk/higher_education/widening_participation).

PARN recommend that all regulators should seek to embed E&D in their regulatory approach and ensure this through regular external audits of their E&D policies.

6.7 Trends and changes

The interviewee from the NMC picked out the ethical code as the vital part of the complaints and discipline processes.

The code is the most important [aspect for supporting standards]... because it actually underpins every nurse and midwife's practices. The code is a benchmark and it's a requirement in the code that they look at each other and compare themselves and to report any lapses in care. (NMC)

What we find is when people [go to a disciplinary hearing] they suddenly have a light bulb pop up above their head as they start to hear the charges read out against the code they suddenly realise how important it is. (NMC)

As was discussed above the change in emphasis from rules based to principles based ethical codes and guidelines reflects a broader change in emphasis in the ways regulators think about regulation. Among the regulators we spoke to there is a movement away from the idea that finding and punishing professionals not meeting minimum requirements is all that is required to uphold standards. More important is increasing the members' understanding of the principles behind the code and how they can incorporate them into their practice.

I would probably say... as a regulator, that the hardest part is not the system - it's probably the members' understanding of the system. They don't necessarily understand it, and they certainly don't understand a lot in relation to how this framework, and how a regulator might apply this framework, will affect their business. They really don't

understand a lot of the time the balance if there is a conflict between the public interest and the member. (RICS)

This shows the importance of the final of the three pillars, 'CPD and positive supports'.

7 CPD and Positive Supports (For Trustworthy Professional Services After Qualification)

This is new: not new in that professionals have always carried out activities to maintain their competence and develop themselves. Long before the coming of CPD, most professionals read relevant journals; many attended meetings and seminars on their subject and some took formal courses after initial qualification. What is new is that these activities, since the coming of CPD in the 1980s and 1990s, have come to be the subject of formal policies by professional bodies. What marks most CPD policies is that they are monitored. Therefore what professionals do to maintain competence and develop themselves becomes (potentially) transparent to regulators, to other professionals and to the general public.

7.1 Compliance policy

There is a continual debate among those running CPD programmes in professional bodies as to whether CPD should be voluntary, obligatory or compulsory. The difference between compulsory and obligatory policies is that compulsory CPD carries with it the option of imposing sanctions where requirements are not met and the presumption that whether requirements are being met will be actively monitored. Obligatory policies carry the same weight as other obligations contained in the ethical code, but may not be monitored or may lack actionable sanctions. Most regulatory bodies have a compulsory CPD policy. Smaller and recently formed professional associations tend to have voluntary policies. Some of the more traditional professions have obligatory policies.

ACCA introduced a mandatory CPD policy four or five years ago and supported that via the provision of CPD activities. However, they are reviewing the level of their provision with a view that professionals need to take more responsibility for their own learning.

I think that there is a feeling within ACCA that more of the responsibility needs to be placed on the shoulders of the individual member. We've certainly felt that we should be providing as much direct help as we could. The feeling now is that maybe it should be the responsibility of the individual professional to pursue his or her own training needs, and of course to declare to ACCA what's been achieved. (ACCA)

7.2 Level of CPD activity expected

Some professional bodies choose to set a minimum CPD requirement, usually expressed in terms of hours of CPD activity. Sometimes there are more complex rules as to how those hours are achieved, that is, some activities may count at more or less than the standard hourly rate. For this a points system is generally used. A 2008 PARN report on linking Professional Bodies with Higher Education Institutes regarding provision of CPD, notes that 32% of professional associations distinguished between higher-value and lower-value CPD activities (Friedman, Williams, Hopkins and Jackson, 2008). Examples of CPD activities which were deemed to be of higher value are 'formal', 'structured' or 'accredited' activities.

Not all CPD schemes set a minimum recommendation or requirement. Rather they monitor forms of outputs from CPD activities. Outputs can arise from different stages of the so-called CPD cycle. Most expressions of the CPD cycle have four stages: planning, activities, evaluation and reflection. Outputs may be attached to planning (evidence of professionals taking active control over their CPD),

evaluation and reflection. Evaluation may be of learning outcomes, behaviour outcomes or practice outcomes in terms of service quality for clients and/or employers (Friedman and Woodhead, 2008).

The first choice is to measure inputs or outputs. Measuring by inputs leads to the choices noted above concerning level of CPD activity expected and degree of control over what activities are accredited. The problem with measuring by inputs is that there is no direct connection between the purpose of CPD, or what PARN has called professional development value, and what activities are undertaken. This is why input measures are usually accompanied by stricter accreditation of activities (Friedman and Woodhead, 2008). While we generally regard output measures to be superior to input, at PARN we regard points systems or a weighting system towards hours to be preferable to merely counting hours. Some hours spent on CPD are clearly more valuable than others and if the regulator is judging which hours count at all, it is better also to judge which hours should count for more than others.

Output measures can involve (in increasing levels of objectivity but also increasing cost) self assessment, self assessment with audits, third party assessment such as by examination and peer assessment in practice situations. However, they are aimed more directly at assessing Professional Development Value.

This is recognised by the NMC who now expect their registrants to produce a personal profile which encourages them to take responsibility for their development.

There is a misunderstanding with nurses and midwives in that they expect their employers to provide funding for CPD and they think they have to go on courses, and we deliberately set out not to do that because you can go on a course but you might not learn anything from it, or put the learning into practice. What we want people to do is to learn from good practice, introduce it and evaluate... we wanted people to examine their specific area of practice. (NMC)

Some professional bodies are moving away from inputs but have not quite established measurement by outputs. This was an issue for the RICS who are attempting to build a CPD system using a principles-based approach rather than stipulating the amount of CPD a surveyor should undertake. However, they found that if a minimum requirement is not specified then CPD is not necessarily undertaken.

In the old days we had an hours-based requirement... We wanted a principles-based requirement along the lines of 'members will ensure that they maintain their competency and keep themselves up to date' and clearly for some that will be more onerous than others.... So we put the principles-based approach in and waited to see what happened. Without an hourly requirement it would seem that some professionals make the decision that they are perfectly competent and therefore they may not have to do anything at all. So we are now providing guidance that sits under the principles that says 'you are unlikely to be able to maintain your competence if you do less than X hours and if you do so you'll have to explain in detail how you've maintained it. (RICS)

Table 5 shows the different levels of assessment of CPD based on a 2007 PARN survey on CPD and the percentage of respondents to the survey employing each method. The most commonly used

method of assessing members' CPD was to predefine a minimum number of hours. Just 17% of responding professional bodies indicated they were currently using a points system.

Table 5: Methods of Assessment of CPD Participation¹

Measurement Type	Assessment	Percentage
Inputs	Hours	46%
	Points	17%
Outputs	Matching to competencies set by their professional body	13%
	Matching to competencies set by another body.	4%
	Matching to competencies each member sets for themselves	31%
	Evidence of reflecting on practice	41%

¹Reproduced from Williams and Friedman (2008); based on a sample of 54 professional bodies

7.3 Control over what activities are accredited

Some professional bodies accredit CPD activities and some accredit suppliers. Accrediting which activities are acceptable and the attachment of points can be quite elaborate. Accreditation is a general term that covers a range of assessment levels: from merely recording acceptable activities on a register and relying on complaints to initiate procedures to remove them, to requiring forms to be completed, to carrying out physical inspections using specialist assessors.

7.4 Positive support for CPD in general

There is a plethora of supports professional bodies can provide for CPD: guides and guidelines for what to do and how to record and evaluate what is done, templates to fill in and examples of good practice, helplines and advice centres, and mentoring services.

Table 6 shows the proportions of professional bodies offering various support for CPD either online or via another medium. From the table we can see that support is most likely to be provided via the internet. We can also observe that there is no kind of support that was common to all professional bodies that responded, however nearly all (98%) provide some kind of guidance for CPD either online or over the phone, on paper or face to face. Next most common were to provide help recording (95%) or to promote opportunities for CPD (90%).

Further to these methods of support professional bodies also engage in the promotion of CPD schemes and CPD more generally. Promotion can occur both within the membership and outside of it; among members' employers and other stakeholders. From a survey of 72 professional bodies in the UK, Friedman et al. (2005) report the most common ways of promoting CPD were to advertise on the professional body's website (91%), through newsletters (64%), dedicated brochures (51%), in journals (51%) and through branch networks (50%).

Further PARN research has shown that professional bodies seek to promote CPD to employers because they believe CPD is highly relevant to the workplace or because they recognise that without the support of employers it can be difficult for members to fulfil their CPD requirements (Philips, Doheny, Hearn and Gilbert, 2005).

Table 6: Strategies of Positive Support for CPD 2009¹

Type of Support Provided	Online	On Paper / In Person / By phone	Not Provided
Guidance	73%	61%	2%
Promoting Opportunities	76%	54%	10%
Help Planning	56%	37%	15%
Help Recording	71%	34%	5%
Help Reflecting	51%	22%	12%

¹Based on PARN International Benchmarking Survey 2009, sample size 41 UK professional bodies.

7.5 Positive support specifically for ethical behaviour

This is particularly important for encouraging actual behaviour to approach that expected from aspirational codes, or it may be viewed as a way of reducing the frequency of resorting to disciplinary procedures. The cornerstone of most professional bodies' promotion of ethical behaviour is the ethical code. Often providing support for and promoting ethical behaviour is a key part of the *raison d'être* for the professional association. In fact, PARNs definition of a professional body includes an ethical code as a requirement (Friedman, 2007).

Friedman (2007) suggests there are several ways to support an ethical code, two fundamental aspects of which are making it accessible to the profession and making it accessible to the public. For the profession there are a wide range of strategies that can be pursued: supplying cases of ethical dilemmas, offering training on the details of the ethical code and how it is being interpreted, making the code readily available, even having new recruits sign up to it or take an oath. For the public the key elements are transparent and easily understood phrasing, making it available on the professional body's website homepage or no more than one or two clicks away from the homepage, and making leaflets available to member's clients and the general public.

Table 7 shows the results from two PARN surveys of UK professional bodies carried out in 2006 and 2009 asking what ways professional bodies are promoting their ethical codes. If we take these samples as being representative of professional bodies in general from this table it is immediately obvious that the most popular tool used by professional bodies for promoting their ethical codes is the Internet. A majority of respondents in 2009 stated that their ethical code is promoted somewhere on their website, unfortunately this question was not asked in 2006. There was a rise in the proportion who promote their code on the homepage of their website.

All of the bodies we talked to underpinned their ethical codes with guidance. For some this guidance is general and sits underneath a set of ethical principles. In other cases, guidance papers are produced on a variety of topics as and when issues arise. For example, the NMC interviewee

mentioned new guidance on the care of the elderly which arose from the Patients Association publication of evidence of abuse in the NHS.

It was specifically targeted because recently it was identified that there is a problem... So it's based on the Code, it's all underpinned by the Code, it's just really to reiterate... (NMC)

Table 7: Support for Public Awareness of the Ethical Code

Type of publicity for members of the public	UK (2006) ¹	UK (2009) ²
Available on PB's Homepage	35%	50%
Elsewhere on website	N/A	65%
Leaflets available for public / clients	31%	46%
Compulsory reference from professional to client	8%	19%
Encouraging ethics articles in newsletters	N/A	27%
Other	18%	12%

¹Reproduced from Friedman (2007), based on a sample of 100 UK professional bodies

²Based on PARN 2009 International Benchmarking Survey sample of 96 professional bodies

Education on the ethical code was also seen to be of major importance. The interviewee from ACCA in particular emphasised how the re-launch of their qualification introduced for the first time a compulsory ethics paper, and that ethics was also key to CPD.

[Trust in the profession] has got better because of our training, the way in which ethics is now taught as an essential component of the teaching process including CPD so that the principles of right and wrong are inherent in the qualification.... An ethical declaration is an annual part of the CPD declaration as well, so that ethical competence is there and recognised by the accountants and increasingly by members of the public. (ACCA)

7.6 Interviews: Findings on CPD and post qualification 'positive supports'

Table 8 (below) shows less unanimity on CPD among the cases compared with the other pillars, particularly compared to complaints and disciplinary procedures. There was a common approach only in that all had ethics helplines and a commitment to access to the code. However this is set to change dramatically. All will soon have CPD guidelines and recording templates and in addition compulsory CPD will soon be common. The last of these requires some further explanation. The GMC is not introducing compulsory CPD directly. Their approach to continuing competence is to introduce revalidation. However revalidation once every five years will include a requirement to produce evidence of continuing CPD activities.

Interestingly there were no features where the licensed professions solidly differed from the other two. On almost all issues there was a mix of approaches which did not seem to follow a clear pattern. This reflects a number of factors.

First, this is a relatively new pillar. Arguably CPD is still a rapidly evolving phenomenon. It has also evolved from many different sources. Different professional bodies have traditionally taken very different approaches to it. As recently as earlier this year the UK Interprofessional Group CPD Forum

staged a debate as to whether CPD should be voluntary or compulsory. Techniques for developing output measures are new and rapidly developing (Friedman and Woodhead, 2008).

Second, CPD began more as a policy of professional associations rather than regulatory bodies. What is taken on by a particular regulatory body will depend on the policies of other professional bodies in serving the profession: associations and learned societies. Positive supports for CPD (and for ethical behaviour) are still generally thought of as member services rather than regulatory tools. There seems to be a quiet debate going on within many professions as to which type of professional body should take responsibility in this area. Some would argue that the revenue generating aspect of CPD is inappropriate for the regulator to take on. Others would say that the regulator is best placed to provide advice on how to comply.

Table 8: Pillar 3 – CPD and Positive Supports: Variations between cases

Aspects of Pillar	Choices / Options	ACCA	GMC	NMC	RICS	SRA
Compliance policy	Mandatory	✓	[✓]	✓	✓	✓
	Voluntary	✗	✗	✗	✗	✗
	Obligatory	✗	✗	✗	✗	✗
	Mixed	✗	✗	✗	✗	✗
Level of CPD requirement	Hours/ points	✓	✗	✓	✗	✓
	No set requirements	✗	✓	✗	✓	✗
	Competency framework	✗	{✗}	✗	✗	✗
Control over what counts	Accreditation of Suppliers	✗	✗	✗	✗	✓
	Acceptable Activities	✓	✗	✓	✗	✓
Measurement	Inputs	✓	✗	✓	✗	✗
	Outputs	✗	✗	[✓]	✗	✓
	Combination	✗	✗	✗	✓	✗
Support for CPD	Guidelines	✓	[✓]	✓	✓	✓
	Recording templates	✓	[✓]	✓	[✓]	✓
	Reflection templates	✗	[✓]	[✓]	[✓]	{✗}
	Helplines/advice	✓	✓	✓	✓	{✗}
	Mentoring	✓	✗	✓	✗	✗
Sanctions for non-completion	Expulsion				✓	
	Suspension				✓	
	'Held back'				✓	
Support for ethical behaviour	Ethical dilemmas	✓	✓	✗	[✓]	[✗]
	Training on code	✗	✓	✓	✓	✓
	Requirement to sign up to code	✓	✓	✓	✗	✗
	Ethics Helpline / Advice	✓	✓	✓	✓	✓
	Access to code	✓	✓	✓	✓	✓
Key:	✓	Regulator uses or provides this option				
	✗	Regulator does not use or provide this option				
	[✓]	Regulator uses both of these (usually exclusive) options				
	{✗}	Currently provided by another professional body				
	[✓]	Regulator will provide this shortly				
	[✗]	Another body will provide this shortly				
	-	Not currently known				

Third, and this is a general factor leading to differences in approach among the cases towards all three pillars, the configuration of professional bodies is strikingly different among the cases as described in section 2. The strong role of the Royal Colleges for supporting and regulating medical

specialities, the existence of a separate Legal Complaints Service, the complex set of competing professional bodies in accounting, make for interesting differences in what is left for the GMC, SRA and ACCA to do.

7.7 Problems and difficulties

The primary problem we can foresee is the difficulty of regulating something professionals in the past just did. There is a strong set of opinions in the field that CPD should be either voluntary or obligatory. That making it compulsory will lead to a rule following or tick box approach. Certainly this has been a problem with using input measures: people scrambling to fulfil their CPD requirements by taking whatever courses or attending whatever events are available and convenient rather than activities that will genuinely support their competence and development.

In addition, as mentioned above, there is the complication of regulatory bodies taking on what has most commonly been the responsibility (and the opportunity) of representative bodies. There is a danger of the two types of organisations giving professionals inconsistent messages.

In terms of supporting the ethical code in general, the interviewee from the GMC pointed out the challenge of writing guidance which strikes the right balance between being too prescriptive and not giving enough detail.

I think from my side of the fence that writing guidance about how to be a good doctor and pitching it so that you're not making doctors have to be plaster saints, not putting requirements on them which for resource or organisational reasons they can't fulfil, or not sounding like a hopelessly flabby compromiser that's just saying 'do your best, we know it's difficult'... I tell you, that's a challenge! (GMC)

This may be an issue relating to principles-based, rather than rules-based, ethical codes.

7.8 Trends and changes

There appears from PARN research to be a general trend towards output measures of CPD. One of the interviewees (NMC) stated that they were planning to introduce output measures. Regulators have in the past generally preferred input measures because they are perceived to be more straightforward to assess. However it is possible to develop standardised output forms through the use of planning frameworks and reflection templates (see Friedman and Woodhead, 2008)

Another interesting aspect of our findings is that in relation to support for ethical behaviour there appears to be a strong trend towards providing examples of ethical dilemmas to the practitioners. The RICS are planning to add these themselves. According to the SRA the Law Society has recently commissioned research on ethical dilemmas and training on their Code, recognised the need for ongoing training in these subjects. In addition there may be a trend towards requiring a specific declaration of commitment to the ethical code. Currently three of the interviewees noted that this is required on entry. However in addition ACCA has recently introduced 'An ethical declaration [which] is an annual part of the CPD declaration as well, so that the ethical competence is there and recognised by the accountants and increasingly by members of the public.'

Arguably the primary trend towards most aspects of this pillar - more emphasis on CPD and positive supports both for CPD and for ethical behaviour and a trend towards output measures - is due to bad publicity concerning the perceived failings of the other two pillars. In particular the regular

appearance of damaging cases of misconduct or incompetence across a wide range of professions has created a climate of opinion that existing forms and structures of professional regulation are inadequate. In part we may regard the appearance and extension of the third pillar as a response by the professions to this bad publicity.

8 Assessing the Effectiveness of the Pillars Overall

The three pillars represent three ways of ensuring that professionals are competent and trustworthy and provide professional services that meet expected standards. On their own each or even two of the pillars are insufficient, and this was recognised by the interviewees in this study.

I think it's very, very difficult to pick one pillar as the most important. I think they knit together and both define a profession and also how it should operate. (SRA)

High entry requirements without the other two may be thought of as simple restraint on trade and unjustifiable monopoly. Arguably, the combination of high entry standards and enforcement of an ethical code through vigorous complaints and disciplinary procedures has been the traditional model for professional standards. It is arguably sufficient for occupations where technology and other environment features do not change much. However, what may be called the new professionalism requires a continuing commitment to lifelong learning through continuing professional development, both in order to maintain and develop competence and to support continuing ethical behaviour. In particular the coming of CPD may reduce criticism of professional behaviour and standards that has grown since the 1960s.

It's an organic whole. It's like a giant watch – if one cog goes wrong then it all falls apart.... You can have the best entry standards in the world but if you don't do anything after someone goes out to practice then it's pretty useless.... I think it's a tripartite approach to professionalism and I don't think you can separate one from any of the others. (RICS)

8.1 Which pillar is most effective?

Bearing in mind the difficulty in separating one pillar from the others, we asked the question 'which pillar is most effective at maintaining and raising professional standards?' Answers were different among interviewees. According to the ACCA interviewee, most important is high entry standards. "It is the qualification itself which we must get right." The interviewee believed that the term 'trusted accountant' was being used more and more and that this was mainly due to ethics being taught as an essential part of initial training, though he also mentioned the ethical declaration made on an annual basis as being a contributor.

The SRA interviewee was "loath to pick one pillar" as it is important that high entry standards are in place but that when things go wrong the regulatory body must act promptly and, where necessary, robustly. The deterrent effect of the after-the-event regulation is high, however prevention is probably the more effective model. She also said that the key principle for good regulation is clarity of expectations in terms of what happens if you transgress.

A somewhat different view was expressed by the interviewee at the NMC. For him the Code is most important of the NMC's standards. However he also said that applying sanctions is a salutary lesson and makes registrants realise how important the Code is.

The approach of the interviewees at the GMC was different again. For them what is most important for maintaining standards is the sense of professional ethos and values of the registrants; their visceral understanding of what is required leading to individual self regulation. Interviewees from

the GMC said categorically that disciplinary procedures are least effective for maintaining good standards. They come after harm is done. What is important is guidance and delivery of guidance during all stages of education.

I think the most important thing for maintaining standards really is a sense of professional ethos and values, that people understand what the profession is about, what the standards of behaviour expected of them are, and so it's trying to get a visceral understanding of that... to actually understand what it means... In a way, it's the regulation that doctors do of themselves. In a way I think the actual disciplinary procedures are the least effective measure we have for maintaining good standards, they are coming in after things have gone wrong and after people have suffered harm of some kind or another. So although they may have some effect in encouraging the others by erasing bad doctors from the register, it's not our preferred path and I don't think that it's a particularly effective way of changing behaviour and attitudes. I think it's in the guidance and the delivery of the guidance during the stages of education that can actually make the most impact on doctors. (GMC)

We may regard the rise of the third pillar as evidence of concern with effectiveness of the first two pillars. Acquisition of knowledge, skills and ethical competence throughout one's working life may mean that reaching certain standards on these issues at the point of qualification becomes less important. It points to recognition that novice professionals may not be as effective as those with a certain number of years of experience, no matter how strict or high the standard of entry, especially if that experience is acquired in line with CPD compliance. Also the regular monitoring of CPD may point to dissatisfaction with complaints and discipline as a mechanism for ensuring continuation of meeting standards among professionals after qualification. Certainly complaints and discipline can be improved by more rigorous application of disciplinary procedures. However it is not merely monitoring and sanctioning those found with deficient CPD which will compensate for the deficiencies of traditional complaints and disciplinary procedures.

9 A Model for Measuring the Success of Regulation

How do professional standards bodies measure the success of their activities within each of the three pillars? This is something that all interviewees considered to be difficult to measure directly.

I think that's an extremely difficult thing to do. One of the questions we've been asking ourselves over the last couple of years is 'how do we know if our guidance is any good? Is it changing anything?' and having thought about it I think our conclusion is that the best you can ever have are some proxy measures... (GMC)

So what might those proxy measures look like? Interviewees reported a number of ways they try to measure the success of their regulatory activities. We also examined from websites the kinds of evidence they offer in Annual Reports and other reports to suggest that their regulatory activities are successful. Table 9 lists some of these ways. This table is not exhaustive. It reports all that we have been able to uncover during this project. Some of the regulatory bodies may do more than is shown in the table, as evidenced by particular reports commissioned in the past, or as reported in internal documents not readily available on their websites.

We can consider the different ways in which professional standards bodies measure their success by focusing on three fundamental distinctions.

First, we distinguish direct assessment of the regulatory body from assessment of those being regulated. Some bodies survey their members on the services they provide as an indication of success, some survey clients or the public about individual professionals or the profession as a whole.

Assessment of the latter is harder to regard as criteria of success because the regulator will not be the only influence on these views or on the behaviour of individual professionals. However, in the end it is the performance of the profession which is the way success of the regulatory body should be judged. Attempts should be made to measure this even if ways of measuring are imprecise or complex.

Second, we distinguish local or micro criteria/procedures from macro criteria/procedures for assessing the success of the profession and professionals. Micro assessment would be asking a patient for feedback on their doctor, macro assessment would be an opinion poll on trusted professions.

Finally, we distinguish direct evaluations of competence and trustworthiness of individuals and groups in the form of opinions, from measures of outcomes from professional services provided. This third distinction applies to measuring the success of the regulatory body as well as the profession. These distinctions are illustrated in Table 10.

Table 9: Ways of measuring the success of regulation

What do they look at?	How do they do it?	Who does it?
Demand for their activities	Measure rise in demand for professional qualifications	ACCA, RICS
	Measure rise in firms signing up to be regulated	RICS, ACCA
	Offer statistics on registration enquiries	NMC
	Evaluate quality of applicants in terms of character	SRA, NMC, GMC
Views on the body itself	Survey members' views	ACCA, RICS
	Survey staff views	ACCA, RICS
	Survey employer views	ACCA, GMC
	Customer satisfaction with complaints process	RICS
Views on profession/professionals	Consumer feedback on interactions with professionals	SRA, GMC, RICS, NMC
	Study of public attitudes towards the profession	SRA, GMC, ACCA, RICS, NMC
	Observe positive media coverage	RICS, GMC, ACCA, NMC
Consulting with stakeholders	Commission independent research on regulation	GMC, NMC
	Engage with stakeholders via working groups	GMC, NMC
	Observe government seeking advice from body	RICS
Descriptive statistics	Number and nature of complaints, disciplinary hearings and sanction outcomes	GMC, RICS, SRA, ACCA, NMC
	Service targets set and measured	GMC, SRA, ACCA, NMC
	Number and nature of ethics helpline calls	SRA, NMC
Inferential statistics	Measure the drop in complaints against firms following monitoring visits	SRA, NMC

Table 10: A model for measuring the success of regulation

	Direct assessment of regulatory body	Assessment of profession/professionals	
		Micro	Macro
Outcome measures	Complaints against regulator. Service targets regarding complaints. Proportion of appeals. Positive supports for ethical competence. (ACCA, GMC, SRA, NMC, RICS)	Number of complaints against professionals and changes in this over time. (GMC, RICS, SRA)	Growth of the sector, export performance of the sector, positive media view of the profession, growth in entry to the profession. (ACCA, RICS, NMC)
Evaluation by Opinions	Is the regulator fair? Transparent? Effective? Flexible? Surveys of members, staff, employers. (ACCA, RICS)	Is your known professional competent and trustworthy? Feedback from clients. (SRA, GMC)	Trustworthiness of profession in general and compared with other professionals. Opinion polls. (specifically mentioned by ACCA, but evidence generally available for doctors, nurses and lawyers as well)

The only category for which we found evidence of use by all the professional bodies interviewed was assessments of the regulator itself via ‘objective’ or outcome measures. This is the most obvious success criteria/procedure for a regulator, though it is arguably limited in that the ultimate success of the regulator should be judged on the basis of measures of the performance of those they are regulating.

9.1 Directly measuring success of the regulatory body

Direct measurement of the success of the regulatory body is divided into gathering the opinions of direct stakeholders in the regulatory body and direct outcome measures. The former would involve questionnaires or focus group discussions among professionals being regulated as well as among their clients or even members of the general public. Questions may include whether respondents are aware of the regulatory body and understand its role and aims, as well as more specific evaluations of its performance: fairness, effectiveness. The latter would involve a range of possible measures associated with the functioning of the regulatory body: speed of response, evidence of transparency, evidence of complaints against it, proportion of disciplinary decisions that are appealed. In addition outcome measures could include whether the regulatory body provided

educational materials and activities to support ethical competence⁴: training on ethical codes and guidelines, mentoring, publication of ethical dilemmas as well as a range of supports for continuing professional development.

9.2 Measuring success of the professionals and the profession

Micro criteria/procedures involving gathering opinions include assessments of professionals by key stakeholders: clients/patients, employers or other professionals they work with. Evidence could be collected after professional service delivery, or from regular employee appraisals or projects worked on by inter-professional teams. Questionnaires and focus groups could be conducted by the regulatory body or an independent organisation. This may involve a level of self-assessment or audit via CPD requirements.

Outcome micro criteria could be the number of complaints submitted against members of the profession or the number of professionals who have been found guilty of misconduct or incompetence. These criteria presume regulatory processes will either reduce the chances of incompetent or unsuitable individuals entering the profession, or that those that do will be deterred from acting insufficiently or inappropriately by the visibility and clarity of the threat of regulatory sanctions. Success would be measured by reductions in these numbers over time. A difficulty with such measures is to separate out new initiatives and changes in effectiveness of acting to encourage complainants to come forward or in reporting to the regulatory body by employers.

Macro criteria/procedures mirror those of micro ones in that they may rely either on the opinions of direct stakeholders or on indirect evidence from proxies for professional standards of trustworthiness. Macro criteria/procedures would be to gather general opinions of trustworthiness of a particular profession as opposed to another: information of this sort is regularly produced by MORI in the UK and Gallup in the USA (see www.ipsos-mori.com and www.gallup.com for further details).

Outcome macro criteria/procedures would be to develop broad economic indicators of the sector of the profession. For example the turnover of firms or individuals within a profession and/or the number of professionals practicing in it (Garoupa, 2004; Paterson, 2006). Under-regulated professions in one country, for which many members are deemed to act recklessly, inappropriately or incompetently, may be supposed to be vulnerable to being displaced by professionals from other countries which are better regulated. In addition provision of typical services from such professions may be displaced by those of other professions. Under-regulation can therefore affect the long term success of the profession as a whole. Indeed it has been suggested that due to the difficulty faced by

⁴ Professionalism means much more than just expertise and this should also be reflected in professional development. It is important to recognise that a 'complete' professional should not just know how and when to apply their expertise but also whether they should; both whether they should in terms of technical success, achieving the stated objective, for the client of advice or services delivered (technical competence), and also whether they should in terms of overall well being of the client and other stakeholders, taking into account likely consequences of the advice or services delivered (ethical competence – see Friedman, 2007).

the public in judging the quality of professional advice, a free market approach to regulation may lead to an overall lowering in standards as dishonest or unprofessional firms would have an advantage (*Legal Services Bill...*, 2006).

Professions can also be over-regulated and this has been shown to have a negative impact on the total productivity of a profession, though paradoxically not always for its individual members (Paterson, 2006). Regulation can affect overall health and growth of a professional services sector.

One could be more specific and judge a regulator by success of the profession in international markets. This could be measured by the demand for qualifications issued by professions in one country from foreign nationals. It could be measured by the share of the global market for particular professional services accounted for by professional services firms operating out of a country, or controlled by firms in that country. In addition these macro indicators will also depend on the overall regulatory system of a country beyond the efforts of individual regulators.

A problem with the above measure is that it is difficult to distinguish the role of the regulator on professional services success from that of other factors (such as the success of national industries that employ the profession). Another problem with the above measures is that the mission of the regulator is often defined as protection of the public and sometimes more specifically consumer protection rather than raising the effectiveness of the profession.

There are problems with all of the criteria/procedures we have distinguished. In general, relying on opinions suffers from different levels of expectations, which in turn depends on degrees of experience and understanding of what standards should be achieved. Outcome measures rely on proxies for the overall broad aims of the regulatory body and it is difficult to separate out the effect of the regulatory body on the outcome. For these reasons we recommend a combination of criteria/procedures, preferably including something in all six categories in Table 10.

10 Recommendations

We may regard a particularly important policy to be the linking of the pillars by analysis and review of types of complaints and the complaints and disciplinary process to feed into educational materials both for initial training and for CPD. In effect the different pillars should feed into each other.

Training for members of professional standards committees and particularly for participants in the complaints and disciplinary processes should be provided.

Overall we recommend a comprehensive approach to identifying success criteria and measuring them. Table 10 shows that regulatory bodies pursue only a limited range of success criteria/procedures. Measuring success is important for the motivation of those working in regulatory bodies and for supporting the reputation of the profession. It will also be important to facilitate the successful implementation of the FSA's RDR proposals on standards of professionalism for investment advisers. Many of the procedures for measuring success might be used to yield valuable implementation of the RDR. The difficulties of directly measuring achievement of the overall goals of professional regulation mean that a range of criteria/procedures should be pursued.

References

- Accountancy Foundation Review Board, 2002. *Complaints and Disciplinary Procedures*. London: Accountancy Foundation
- Architects Act 1997 (C.22)* London: HMSO
- Beauchamp, T. & Bowie, N., 1983. *Ethical theory and business*. Englewood, NJ: Prentice Hall
- Beck, U., 1992. *Risk Society: Towards a New Modernity*. New Delhi: Sage
- Better Regulation Task Force, 2003. *Principles of Good Regulation*. London: HMSO
- Cabinet Office, 1998. *How to Deal With Complaints*. [Online] Available from: <http://archive.cabinetoffice.gov.uk/servicefirst/1998/complaint/b5summ.htm>
- Council on Tribunals, 2000. *Model Rules of Procedure for Tribunals*. London: HMSO
- Friedman, A. & Williams, C. with Hopkins, S. & Jackson, L., 2008. *Linking Professional Associations with Higher Education Institutions (HEIs) in Relation to the Provision of Continuing Professional Development (CPD)*. Bristol: PARN
- Friedman, A. & Williams, C., 2007. *Distinguishing Canadian Professional Bodies*. Bristol: PARN
- Friedman, A. & Woodhead, S., 2008. *Approaches to CPD Measurement*. New York: IFAC
- Friedman, A. with Afitska, N., 2007. *Professionalism and Sustainability in the Professional Associations Sector: UK and Ireland*. Bristol: PARN
- Friedman, A., 2007. *Ethical Competence and Professional Associations*. Bristol: PARN
- Friedman, A., Daly, S. & Andrzejaska, R., 2005. *Analysing Ethical Codes of UK Professional Bodies*. Bristol: PARN
- Friedman, A., Phillips, M. and Watts, D., 2002. *The Complaints and Disciplinary Procedures of Professional Associations*. Bristol: MRC, Bristol University
- Friedman, A., Senior, E., Harper, H. & Jessop, W., 2005. Survey Results. In A. Friedman, ed. *Critical Issues in CPD*. Bristol: PARN. Ch.2
- Garoupa, N., 2004. Regulation of the Professions in the US and Europe. A Comparative Analysis. *American Law and Economics Association Annual Meetings* [Working Paper, No.42] London: BEpress
- Gilbert, T., 2005. Impersonal Trust and Professional Authority: Exploring the Dynamics. *Journal of Advanced Nursing*. 49(6), pp.568-577
- Ipsos MORI, 2007. *Trust in the Professions*. [Online] Available from: http://www.ipsos-mori.com/_assets/polls/2007/pdf/trust-in-professions-2007.pdf
- Legal Services Act 2007 (C.29)* London: HMSO
- Legal Services Bill: Full Regulatory Impact Assessment*, 2006. London: HMSO
- www.parnglobal.com

- Leitch Review of Skills, 2005. *Skills in the UK: The Long Term Challenge*. London: HMSO
- Lester, S., 2008. *Routes and Requirements for Becoming Professionally Qualified*. Bristol: PARN.
- O'Neill, O., 2005. Accountability, Trust and Professional Practice: The End of Professionalism. In N. Ray, ed. *Architecture and its Ethical Dilemmas*. New York, Taylor Francis. Ch.8
- Owen, T. & Powell, J., 2006. "Trust", Professional Power and Social Theory. *International Journal of Sociology and Social Policy*. 26(3/4), pp.110-120
- Page, B., 1997. Complaints: Handle With Care. *Customer Services Management*. (Dec) p.28-29
- PARN, 2010, forthcoming. *Examination Processes for Professional Qualification: Report for the Joint Examination Board of CIPA and ITMA*. Bristol: PARN
- Patterson, I., 2006. Regulation of Professional Services: Lawyers & Notaries, Accountants, Architects & Engineers, Pharmacists. In OeNB (Oesterreichische Nationalbank) *Proceedings of OeNB Workshops: Strategies for Employment and Growth in Austria - No.10*. [Online] Available from: http://www.oenb.at/en/presse_pub/period_pub/volkswirtschaft/workshops/workshops.jsp
- Philips, M., Doheny, S., Hearn, C., and Gilbert, T., 2005. Supporting CPD: Employers and Professional Bodies. In A. Friedman, ed. *Critical Issues in CPD*. Bristol: PARN. Ch.8
- Solicitors Regulatory Authority, 2008. *Independent Review into Disproportionate Regulatory Outcomes for Black and Minority Ethnic Solicitors*. [Online] Available from: www.sra.org.uk
- Solicitors Regulatory Authority, 2009. *Equality and Diversity Strategy 2009-2011*. [Online] Available from: www.sra.org.uk
- Townley, B., 1993. Foucault: Power/Knowledge and its Relevance for Human Resource Management. *Academy of Management Review*. 18(3), pp.518-545
- Trust Assurance and Safety – The Regulation of Health Professionals in the 21st Century*, 2007. (Cmnd. 7013) London: HMSO
- Williams, C. & Friedman, A., 2008. *Online Support for CPD: Lessons from Current Practice*. Bristol: PARN
- Williams, C. & Hanson, W., 2009. *Examination Processes for Professional Qualification: Report for the Joint Examination Board of CIPA and ITMA*.
- World Class Skills: Implementing the Leitch Review of Skills in England*, 2007. (Cmnd. 7181) London: HMSO