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Title: Safeguarding project

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Paper for information

Open paper

How does this work contribute to Strategic Objective Two (To make regulation and registration better and fairer) of our Strategic Plan 2023-26: We said that we would know if we had achieved our aims if there is comprehensive coverage of appropriate safeguarding checks for those working in health and social care.

1. Issue

1.1 This paper provides an update on the safeguarding project, which considers the current arrangements regarding criminal records checks for the statutory regulators, and Accredited Registers.

2. Recommendation

2.1 The Board is asked to:

- Note progress on the safeguarding project and the timeframes for remaining work.

3. Background

3.1 Criminal records checks are an important part of keeping patients and the public safe. The framework for these checks is managed by different agencies, depending on where in the UK the work is being carried out. Employers carry out most of these checks.

3.2 The highest level of check is an enhanced check, with a check of the barred list. To be eligible for this type of check, someone must be working in “regulated activity”. The work of people in roles that require registration with a statutory regulator to practise by law is regulated activity.

- 3.3 People working in roles that are not required by law to be registered with a statutory body can choose to register with an Accredited Register. The PSA accredits these bodies, to provide assurance to patients and the public. Depending on the nature of their work, some Accredited Register practitioners will be working in regulated activity, but others are not. This means that some AR registrants will not be eligible for higher level checks.
- 3.4 In June 2022, we completed a pilot scheme¹ aimed at addressing the current gap in checks of self-employed Accredited Register practitioners. From November 2022 to February 2023, we ran a public consultation to seek views on whether to widen these checks in future by introducing new requirements for Registers within our Standards.
- 3.5 The Government's Independent Review of the Disclosure and Barring Regime² ("the Bailey Review"), which looked at arrangements for self-employed workers more broadly, was announced in February 2022 and published its findings in April 2023.
- 3.6 In July 2023, the Board considered the findings of our public consultation on introducing requirements for Accredited Registers to access criminal records checks. It found the findings of the consultation and those of the Bailey Review both raised issues which are relevant to the registration of all healthcare professionals. We published the findings of the consultation in August 2023.³
- 3.7 From September 2023, we widened the focus of our work on safeguarding to consider the wider regulatory landscape to gain a better understanding of the inherent risks, with a focus on arrangements for self-employed registrants. The scope of this work is to:
- Further liaise with the Government (UK health departments, Home Office and Ministry of Justice) on potential changes to the legislative framework underpinning criminal records checks and broader safeguarding policy.
 - Assess the risk of harm to the public, and to public confidence, of any weaknesses in the current approach taken by the Accredited Registers and regulators to safeguarding and criminal records checks. This will be informed by data available from our own processes, the ARs and the regulators, external literature, and engagement.
 - Engage and consult as needed to better understand the risks and issues presented by the Accredited Registers and regulators current arrangements for criminal records checks.
 - Develop our policy position about the current arrangements in place for criminal records checks by the Accredited Registers and the regulators, and wider Governmental policy.
 - Decide whether to revise our requirements for the regulators and Accredited Registers criminal records checks and other safeguarding measures such as mandatory duties for reporting.

¹ <https://www.professionalstandards.org.uk/what-we-do/accredited-registers/accredited-registers-safeguarding-pilot>

² [Independent Review of the Disclosure and Barring Regime \(accessible\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/independent-review-of-the-disclosure-and-barring-regime)

³ [PSA | Report on findings from Safeguarding consultation \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk/what-we-do/accredited-registers/accredited-registers-safeguarding-pilot)

- Review if there is more we can do ourselves to strengthen safeguarding, such as reviewing our own reporting policies and facilitating greater sharing of information between the Accredited Registers and the regulators.

3.8 An internal project team was set up, with members from the Accreditation, Performance Review (PR), and policy teams. Work was absorbed within existing capacity. The project is jointly sponsored by the Director of Standards and Policy, and Director of Regulation and Accreditation.

4. Analysis

4.1 An update on work in relation to the scope of the project is set out below.

Assessing the risk

4.2 Since September, we have focused on supplementing work undertaken to date with Accredited Registers, with an understanding of the current arrangements in place for criminal records checks by the statutory regulators.

4.3 Currently, there are differing approaches across the statutory regulators to undertaking criminal records checks. Generally, the regulators do not undertake criminal checks as part of their registration processes, including for those who are self-employed. The rationale for this is that the risks of registering someone whose criminal record history makes them unsuitable is mitigated by other arrangements that are in place.

4.4 Many registrants will have a criminal record check by their employer. Additionally, all registrants are asked to make self-declarations about criminal convictions. Underpinning the effectiveness of this as a mitigation is that dishonesty in self-declaration could lead to loss of registration, and consequently the right to practise. Additionally, many regulated professionals who have qualified in the UK will have been subject to criminal records check by their education and training institution.

4.5 Currently, the only regulator to carry out criminal records checks directly is the General Osteopathic Council, which does so as part of its registration processes. Many osteopaths work in independent practice, where they may be self-employed.

4.6 We expect that it is likely that there will be some self-employed professionals who are registered with statutory regulators who have not been subject to a recent criminal record check by the regulator. Further information is needed to understand whether this presents any risk that people whose previous convictions might make them unsuitable to practise in regulated activity are currently registered. Since self-declarations are in place for all registrants, the nature of the risk lies in the possibility of registrants failing to disclose relevant convictions. We are aware of examples of registrants failing to disclose convictions, but not how widespread it may be or of the consequences for public protection.

4.7 Key data for assessing this risk include:

- Scale – The number of registrants who are self-employed, who have not been subject to a criminal record check.

- Likelihood – Assessing the likelihood that registrants do not self-disclose (intentionally, or unintentionally) relevant convictions during registration and/or renewal processes.
- Impact – Understanding the potential for harm arising from undisclosed criminal records checks.

4.8 We are planning to gather this data between June and August 2024. This will include surveying the regulators, and reviewing the data we hold about final fitness to practise decisions. We will use these findings, and further discussion with the regulators to assess whether any risks arising from the current arrangements are adequately mitigated.

Liaising with the Government on potential legislative change

4.9 The Bailey Review made Recommendations about strengthening the disclosure and barring regime in England and Wales to the Government. The most relevant to this project is Recommendation Four:

‘Self-employed persons seeking to work with children or vulnerable adults are rendered eligible to apply for an enhanced DBS certificate with barred list check.’

4.10 At the time of writing, we await the Government’s response to the Bailey Review. We continue to liaise with the Home Office and Ministry of Justice in the meantime. We understand that consideration is being given to Recommendation Four and hope further information will be available later this year.

4.11 We know from our consultation with ARs that some would have practical challenges if required to implement criminal records checks. We expect this may be similar for the regulators. A mechanism for self-employed people to apply for an enhanced DBS certificate with barred list check could therefore help increase the coverage of checks. If one is introduced, we would want to consider what role the ARs and regulators should play in relation to self-employed registrants.

4.12 A further issue with ARs remains that not all registrants are currently defined as working within regulated activity and are therefore eligible for this type of check. The definition of regulated activity is currently determined by the Government and varies in relation to work with children and with adults, and across the four countries of the UK. We have made the Government aware this means that not everyone on an AR is currently eligible for an enhanced criminal record check, with a check of the barred list.

Requirements for the regulators, and ARs

4.13 We will be reviewing our Standards for both the statutory regulators and the ARs in 2024/25. This will involve public consultation and engagement and presents an opportunity to seek wider input on considerations relating to criminal records checks.

4.14 The Board will be asked to approve any changes to our Standards in March 2025. By this point, we should have gathered the further information required to assess the risk of the current approach. We hope that there will also be greater clarity about any relevant legislative changes.

- 4.15 In the meantime, we have identified other options for strengthening safeguarding within our role. This includes exploring the arrangements for sharing information about concerns between the statutory regulators, and the ARs. We are also reviewing how we handle information about safeguarding concerns that we receive, for example through information submitted by members of the public about a regulator or and AR, through our Share Your Experience process.

5. Finance and Resource

- 5.1 There is no additional budget, or resource allocated to this project. As reported to the Board in January and March, there have been some resourcing issues affecting the level of contribution available from the policy, Accreditation and PR teams. We expect this to continue for the next few months. This is due to the need to reallocate staff to other priorities, and the transfer of the Head of Accreditation, who is currently acting as project manager, to another role.

6. Impact Assessment

- 6.1 We maintain an Equalities Impact Assessment for this project. Key groups affected by this work are patients and the public, and registrants of ARs and regulators. A key consideration for any recommendations arising from this work is the need to balance the rights of people with a criminal record, with the need for public protection.

7. Timescale

- 7.1 Key milestones for the project are:
- August 2024: Complete data collection from the statutory regulators.
 - August-October 2024: Seek views on the current arrangements through the Standards review consultation.
 - November-December 2024: Develop recommendations, informed by public consultation, data analysis and Government response to the Bailey Review recommendations (tbc).
 - January 2025: Board considers recommendations for any revisions to the Standards for ARs and/or statutory regulators (through the Standards review project)
 - March 2025: Board approval of any revisions to the Standards, and any additional recommendations identified.
- 7.2 The timetable for the Government's response to the Bailey Review recommendations has not been set out. If not published by November 2024, we may need to delay the final recommendations to the Board.

8. Communications

- 8.1 We continue to keep internal and external stakeholders updated through our newsletters, dedicated webpages⁴, and engagement.

9. Internal Stakeholders

- 9.1 This is a cross-organisation project, with input from the policy, Accreditation, PR and Section 29 teams.

10. External Stakeholders

- 10.1 Key stakeholders are the ARs, statutory regulators, the Government (Home Office, DHSC, and Ministry of Justice), criminal records agencies, patients and the public, and groups representing the rights of ex-offenders. Incorporating consideration of this issue within the Standards review consultation will enable us to seek views from a wide range of stakeholders. We will undertake targeted engagement with groups most likely to be affected.

⁴ [PSA| Strengthening safeguarding \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk)