

Response to Social Work England consultations on fitness to practise guidance: triage, pre-hearing case management, and sanctions

11 October 2019

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the nine health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.
- 1.3 We welcome the opportunity to respond to these three guidance documents on pre-hearing case management, triage, and sanctions. We are submitting one consolidated response to all three, as we feel there is merit in these documents being considered together.

2. General comments across all three documents

- 2.1 Overall, we found that there were a number of areas where the guidance was strong:
- The triage guidance was clear and comprehensive, and we welcomed the cautious approach to assessments of insight and remediation at the early stages.
 - Across both triage and sanctions, we were pleased to see an emphasis on decisions being clearly recorded and capable of third-party scrutiny.
 - We welcome the strong emphasis throughout the decision-making guidance on all three limbs of public protection.
- 2.2 There were also some areas where we felt the guidance could be improved. In particular:

- We would have liked to see a greater emphasis on SWE's role in supporting service users who bring complaints in both the triage and the case management guidance.
- The concept of seriousness, which was used extensively in both decision-making documents, needed to be defined, given the scope for subjective interpretation.
- The sanctions guidance was not sufficiently clear on the role and structure of the impairment decision.

2.3 Further, more detailed comments can be found below.

2.4 Finally, there were some important areas that were covered only partially, or not at all, by these documents, that we would have expected to be put to public consultation:

- Investigations
- Voluntary removal
- Case examiner decision-making and reaching agreement on accepted outcomes
- Interim orders (partially covered in the sanctions guidance)
- Conditions bank
- Restoration
- Review of orders

2.5 The remainder of our comments relate to each guidance document in turn, working our way through the process from triage to sanction.

3. Detailed comments

Triage guidance

- 3.1 Overall, we found this document relatively clear and comprehensive. In particular, we welcomed the emphasis on all three limbs of public protection throughout.
- 3.2 We also support the cautious approach to assessing insight and remediation at this early stage, where there will be little information for the triage officer to rely on for such an assessment.
- 3.3 We welcome the statements on Reasoning on page 27, as we agree that any decisions, particularly to close a case, must be capable of being reviewed and understood by a third party, including the Professional Standards Authority.
- 3.4 We are also supportive of SWE's stated approach to scrutinising investigations by other bodies – such as being careful to review what the other body investigated; assessing whether the investigation obtained all possible evidence; if it resolved conflicts of evidence, on what basis; considering if there is any reason to question the strength of those findings; and exercising

its own judgement about seriousness by reference to SWE's overarching objective.

- 3.5 Below, we suggest some improvements that might be made to the document.

Input from the service user as complainant

- 3.6 We would have liked to see some guidance about supporting service users who bring complaints. People with lived experience of social work are likely to be more vulnerable than many others in society, and if they have had a difficult experience with a social worker, they may be distressed and find it difficult to express their concerns. The onus is on SWE to provide the service user with the support they need and to work through the complaint with them, to enable SWE to extract the information they need.¹

Complexity of decision-making

- 3.7 The decision-making framework set out in the triage guidance is complex and nuanced. The guidance would perhaps benefit from the addition of a flowchart or decision-tree setting out the sequence of decisions to be made and the considerations that are relevant at each stage.
- 3.8 We were not convinced that the guidance would, on its own, deliver consistent outcomes – we could conceive of a situation where two very similar cases led to different decisions that affected the outcome. It will therefore be important for these decisions to be subject to some form of quality check (before the decision is made) and audit (of a sample of decisions made) particularly while the guidance and processes are bedding in, as well as on an ongoing basis.

Concepts of seriousness and misconduct

- 3.9 We found the use of the concept of seriousness in the triage guidance unclear. Perhaps if it were more clearly defined, it would help to explain, in particular, the relevance of the underlying questions on pages 13 to 15. We discuss this concern in more depth in our comments on the sanctions guidance.
- 3.10 In addition, we felt that the definition of misconduct at pages 6 and 7 could be tightened up. Part of the definition is circular (*'examples of misconduct include dishonesty or sexually motivated misconduct'*), and the example which appears to try to deal with the subtleties is not clear (*'for example, an error of judgement may be a performance issue whereas making the wrong judgement due to failing to ask for all relevant information first may be a misconduct issue'*). We were however pleased to see set out in the guidance the position that misconduct could arise from a registrant's conduct in their private life.

Use of language

- 3.11 We suggest it might be helpful to use language consistent with the wording of the over-arching objective throughout the document – we noted in particular

¹ This was an area where we identified concerns in our Lessons Learned Review of the Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital. Available at: <https://www.professionalstandards.org.uk/publications/detail/nmc---lessons-learned-review-may-2018>

some variation around the wording relating to the professional standards limb of public protection. This applies within this guidance document, as well as across the triage and sanctions documents.²

- 3.12 In addition, it was not clear to us how references to (poor) ‘*performance*’, for example in the first and third paragraphs of page 7, were intended to relate to (lack of) ‘*competence or capability*’, which is used further down the page, and reflects the wording of the statutory ground for impairment. Generally, competence – what I can do – and performance – what I do do – are considered to be distinct concepts in fitness to practise. It might be helpful to define these and other key terms that are used throughout the document in a glossary.

Referencing EU legislation and European context

- 3.13 We felt that the section on ‘*Not having the necessary knowledge of English*’ on page 9 of the guidance could make reference to the EU Directive on Recognition of Professional Qualifications.³ This Directive sets out the legal framework within which SWE will be able to assess the English language competence of EEA-qualified social workers, while the UK remains in the European Union.
- 3.14 In addition, we might have expected to see a placeholder paragraph in the document relating to the UK’s planned exit from EU.

Pre-hearing case management guidance

Vulnerable witnesses

- 3.15 We found that the guidance on page 11 relating to vulnerable witnesses was not sufficiently detailed to ensure correct and consistent decisions about who might qualify as a vulnerable witness. We recommend that the guidance include a list of criteria to guide these decisions, and make clear that witnesses in cases of a sexual nature are very likely to qualify as vulnerable.
- 3.16 In addition, there should be clear guidance about what measures might be appropriate to minimise any negative impacts on vulnerable witnesses, and what those impacts might be. By way of example of both the above points, the General Medical Council sets out guidance in this area in Rule 36 of its Fitness to Practise Rules as follows:

‘Vulnerable witnesses

36.(1) In proceedings before the Committee or a Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness-

(a) any witness under the age of 18 at the time of the hearing;

² For example: ‘maintaining standards of social workers’ (Triage Guidance, p 6 and p 20), ‘setting [...] standards for social work’ (Triage Guidance, p 15), ‘to promote and maintain standards across all social workers’ (Triage Guidance, p 15), ‘standards of professional performance of social workers’ (Sanctions Guidance, para 111, p 22).

³ Directive 2005/36/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0036>.

- (b) any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- (c) any witness who is significantly impaired in relation to intelligence and social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and
- (f) any witness who complains of intimidation.

[...]

(3) Measures adopted by the Committee or Tribunal may include, but shall not be limited to-

- (a) use of video links;
- (b) use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning by the Committee or Tribunal;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee or Tribunal consider necessary in the circumstances, in order to prevent-
 - (i) the identity of the witness being revealed to the press or the general public; or
 - (ii) access to the witness by the practitioner; and
- (e) the hearing of evidence by the Committee or Tribunal in private.

(4) Where-

- (a) the allegation against a practitioner is based on facts which are sexual in nature;
- (b) a witness is an alleged victim; and
- (c) the practitioner is acting in person, the practitioner shall not without the written consent of the witness be allowed to cross-examine the witness in person.

(5) In the circumstances set out in paragraph (4), in the absence of written consent, the practitioner shall no less than 7 days before the hearing appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the MPTS shall appoint such person on behalf of the practitioner.⁴

3.17 We suggest that SWE consider including this level of detail in its guidance to ensure that vulnerable witnesses are adequately protected.

Ensuring the panel has the full picture

3.18 On page 3, the guidance stipulates that only the disputed 'questions about the social worker's fitness to practise' will be put to the panel. We are concerned that only putting part of the case to the panel could hamper its ability to look at,

⁴ Rule 36, General Medical Council (Fitness to Practise Rules) 2004. Available at: https://www.gmc-uk.org/-/media/documents/consolidated-version-of-ftp-rules--as-amended-29nov17-_pdf-72742310.pdf

and question, the facts of the case and conduct of the social worker *in the round*.

- 3.19 It might have been helpful if the guidance had explained more clearly which aspects of a case can be agreed before the hearing – assuming it is open to a registrant at the case examiner stage to contest:
- some but not all of the allegations, and/or
 - that the facts amount to impairment, and/ or
 - the proposed sanction.
- 3.20 We would have liked to understand which elements of a case can be agreed by case examiners, and therefore not be put to a panel for further scrutiny.
- 3.21 Finally on this point, we would like to know how SWE will ensure that there is sufficient transparency surrounding the parts of the case agreed between the parties outside the hearing.

Should directions be binding on the panel?

- 3.22 On page 4, the draft guidance states that ‘*case management directions are normally binding [...] unless there is a significant unforeseen change in circumstances*’. In our view, this position could hamper the panel’s ability to direct a hearing as they see fit, to enable them to reach a decision on facts, impairment, and sanction. This is particularly important if legal expertise is not systematically sought at the case management stage.
- 3.23 We suggest that the directions should be binding on the panel unless the panel has good reason to deviate from them.

Who does what?

- 3.24 It would have been helpful if the guidance had explained more clearly the different roles involved in the process, and what powers each one has.
- 3.25 We note that Rule 25(b) of the SWE Fitness to Practise Rules requires all case management meetings to be conducted by an adjudicator for cases that are to be heard by adjudicators. This is not made clear in the draft guidance, which states that hearing case management officers will run the process and issue directions unless the parties turn down the proposed directions (see the penultimate paragraph on page 3). This appears to contradict what is in the Rules.
- 3.26 In addition, on page 5 the document refers to the role of the hearing management officer, while elsewhere it talks about hearing case management officers. Perhaps these are meant to be the same role.

Which cases require case management?

- 3.27 We found the guidance unclear on how hearings would be managed where they are not subject to case management. Page 6 includes a section on ‘*Cases requiring directions*’, and explains that they would not be needed in every case. The Standard Directions set out in Annex A are described lower down on page 6 as being common to ‘every case that requires case

management'. This means therefore that a tranche of cases will be subject neither to standard directions, nor to additional directions as agreed at the conference stage. We would have expected some form of standard directions to apply to all cases, even those that are expected to be brief and uncomplicated, to ensure procedural fairness, transparency, and efficiency.

Sanctions guidance

General comments

- 3.28 Overall, we found this document lacked clarity, primarily for the following reasons:
- The definition of impairment linking it to restrictions on practise
 - Conflation of the impairment and sanction stages
 - Lack of definition of the term 'seriousness'.
- 3.29 We were not confident that the guidance as currently drafted would be sufficient to enable a decision-maker to reach a decision that was clear, reasoned, and would stand up to scrutiny and possible legal challenge.
- 3.30 In addition, we note that the decision on impairment is not usually covered in sanctions guidance, as the name would suggest. But given that this document does cover impairment, and is therefore broader than traditional sanctions guidance, it might have been useful for it to cover the full range of decisions expected of case examiners. As we understand it, they will be making the following decisions:
- Is there a real prospect of finding impairment? (if no, close with or without advice or warning)
 - Is there a public interest in referring the case to a hearing? (if yes, refer to hearing)
 - Is the case one that is likely to lead to removal of the social worker? (if yes, refer)
 - What would be the appropriate sanction? (if social worker does not accept, refer)
- 3.31 Although we understand the rationale for developing a single document for case examiners and adjudicators who will both be making 'final decisions',⁵ we felt that the sanctions guidance should at the very least acknowledge the complex sequence of decisions required of case examiners in its entirety.
- 3.32 We understand that SWE is working on guidance to cover the remaining aspects of case examiner decision-making. This would be a significant contribution to the extra layer of transparency that is needed to account for the fact that case examiner decisions will be made in a private forum.
- 3.33 In addition, we felt that the guidance could be strengthened with the addition of criteria that might indicate that a certain sanction was required, along with

⁵ As defined in Regulation 13 of Schedule 2 of *The Social Worker Regulations 2018*.

those indicating which cases should always, or generally, be referred for a hearing under the public interest test.

Definition of impairment

- 3.34 Paragraph 11 states that *'a social worker is fit to practise when they are suitable to be registered without restriction'*. By implication, this means that if a registrant's fitness to practise is found to be impaired, they are not suitable to be registered without restriction, and therefore a restriction must be imposed. As we understand it, this position stems from the 2009 case of *Cheatle vs GMC*⁶, but we question its applicability to SWE. For the GMC, once a finding of impairment is made, aside from the option of taking no further action, the only sanction options available to a panel are restrictive. This is not the case for SWE case examiners and adjudicators however, who have the option of imposing cautions and advice of varying lengths, in addition to taking no further action, following a finding of impairment.
- 3.35 This definition appears to cause some complications for the rest of the guidance, for example in paragraph 15, where it is stated that warnings and advice can be used to resolve *'serious concerns where current impairment is found.'* It follows from the definition of fitness to practise that a registrant is not impaired if the concerns regarding their fitness to practise can be addressed through a non-restrictive sanction such as a warning or advice.⁷
- 3.36 We also note that the definition given here is narrower than that given in the triage guidance, which reads as follows:
- 'A social worker's fitness to practise is impaired if they pose a risk to public safety if they continue to practise without restriction, or if their conduct or performance undermines public confidence of social workers in England. A social worker's fitness to practise might also be impaired where what they have done makes it necessary to send a public signal about the standards expected of social workers.'*⁸
- 3.37 This is likely to cause confusion for decision-makers, social workers, employers, and the public alike. We strongly recommend that SWE revisits the definition of impairment to make it consistent across the guidance documents, and, crucially, to allow for the logical possibility that a non-restrictive sanction might be sufficient to address impairment findings where only the wider public interest is engaged.

Clarity of the decision-making process and the importance of an impairment finding

- 3.38 The document is not structured in a way that reads across to a typical FtP decision-making process, and we found that it lacked clarity as a result. The impairment decision should involve the following:
- Assessment of insight (as demonstrated by apologies, remorse etc)

⁶ *Cheatle v GMC* [2009] EWHC 645 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2009/645.html>

⁷ This tension is further apparent in paragraphs 70, 71.

⁸ Triage guidance, page 3.

- Assessment of remediation (as demonstrated by activities undertaken to address failings)
 - Risk of repetition (based on the outcomes of the first two assessments)
- 3.39 The risk of repetition, and therefore risk of harm to the public, would then be combined with an assessment of the need to maintain public confidence and declare and uphold professional standards, to determine whether the registrant's fitness to practise was impaired. The section on impairment would be clearer if it were structured around these steps, and relevant factors at each stage.
- 3.40 There were a number of points in the guidance where it seemed that the impairment finding was not given sufficient weight, or was conflated with the determination sanction. For example, in paragraph 109, it is stated that only those decisions where a finding of impairment is made *and a sanction imposed* will be published. SWE should be clear that findings of impairment with no sanction should also be published.⁹ The final bullet of paragraph 111 states that decisions should include '*the reasons for the decision on impairment or sanction*'. There is a suggestion here that if a sanction is imposed, the impairment finding loses some significance – this is not the case, and reasons for both should always be clearly stated.
- 3.41 There is further conflation of the impairment and sanction stages throughout the document. For example:
- Para 39, which is in the section on impairment, refers to sanctions being required, when it should it seems refer to the need for a finding of impairment
 - Para 112 states that for case examiner decisions, the impairment and sanction determinations can be combined – this would be concerning as it would lead to unclear reasoning.
- 3.42 The decision on impairment needs to be distinct from the decision on sanction in order for the reasoning to be clear and capable of being understood and scrutinised.
- 3.43 We also found the use of the concept of seriousness without clearer definition unhelpful and at points confusing. It is indeed a relevant factor at both the impairment and sanction stages, but it would be clearer if the guidance explained what it meant at these different points. For example, it could refer to seriousness of conduct, seriousness of impact, or seriousness of attitudinal failings following initial misconduct; whether a falling short of standards may be serious enough to amount to misconduct means something different from whether an absence of insight is serious enough to require a restrictive sanction. Without these definitions, there is a high risk that it will be interpreted differently by different decision-makers, and not necessarily appropriately. In addition to issues of consistency, this subjectivity could lead to a lack of transparency in how decisions are reached.

⁹ It is our view that this would fall under 'decisions' under regulation 25(c) of *The Social Worker Regulations 2018*.

- 3.44 On page 8, the heading '*Factors that determine case seriousness and if it amounts to impairment*' implies that seriousness is the key determining factor in an impairment decision, even though the guidance itself goes on to list other important factors such as insight and remediation. This is an example of where the decision-making structure lacks clarity.
- 3.45 A further aspect of decision-making that was not clear to us was how, if at all, the case examiner would be expected to make a decision on impairment, as distinct from the realistic prospect test and the sanction. The realistic prospect test, which is a gate-keeping decision (to proceed or not with the case), is conceptually distinct from the case examiner coming to some form of determination about impairment, which must then be agreed by the registrant. And as we explained above, it is important to keep the decision about impairment separate from the decision on sanction.
- 3.46 Finally, the document provides no information on the process by which a case examiner will come to an outcome that is accepted by the registrant. While the finer details may not be relevant here, it is important to be able to understand the sequence of decisions and how they relate to each other.
- 3.47 We stress the importance of all of the above, because without clear structured decisions, there is a risk of returning to the opaque decision-making practices that predate the Shipman Inquiry reforms – and the impact of this would likely be exacerbated by the current move to take more decisions behind closed doors, as opposed to in a public hearing forum.

Insight and remediation

- 3.48 We felt the draft sanctions document could benefit from more guidance on how insight could be assessed on the papers only – for example paragraph 32 implies that remorse can be demonstrated by a simple apology, when this might not be genuine; paragraph 33 states that '*starting relevant remediation early may be good evidence of insight*' when it might simply be an attempt to minimise the sanction. The guidance could perhaps make a general reference to the role of decision-makers in assessing any attitudinal failings.
- 3.49 In the absence of any mechanism to allow for a face-to-face discussion with the registrant before an outcome is reached, the guidance would need to be clear on the limits of any such assessment, and on the types of cases where it might be necessary to refer to a hearing in order to establish whether insight was genuine.¹⁰ This option could be included in the public interest test for referral to a hearing.
- 3.50 The document could also provide greater clarity on the link between insight and remediation. In *Right-touch reform*, we were clear that for remediation to be meaningful, the registrant must demonstrate insight – it is a necessary but insufficient component of meaningful remediation.

¹⁰ We discuss this matter in paragraphs 3.155 to 3.165, and 3.235 of *Right-touch reform*, available at https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-reform-2017.pdf?sfvrsn=2e517320_7.

- 3.51 Also on the question of insight, in our view the guidance needs to address how insight can be shown even where facts are initially denied but subsequently found proved against the registrant, for example in paragraph 32.
- 3.52 Finally, the section on remediation on page 10 should be explicit about the need for remediation to address the misconduct or statutory ground, and make clear that certain behaviours, such as dishonesty and attitudinal issues more generally, may be difficult to remedy.¹¹

Public interest referrals

- 3.53 We felt that the section on page 13 about referring cases to a hearing lacked detail, particularly in relation to whether a referral was needed in the public interest. The guidance refers to the seriousness of the case – as discussed above, seriousness requires definition, and may not be the only relevant factor. Some indication of the sorts of cases that might be likely to warrant a referral would help here – without this, there is a risk that only cases that are in the public eye are referred to a hearing – SWE will want to avoid any accusations that it is swayed by what might cynically be termed ‘*the court of public opinion*’.
- 3.54 As mentioned above, case examiners could be given a licence to refer a case to a hearing if they felt unable to assess insight on the papers in cases involving attitudinal failings.
- 3.55 Paragraph 62 should make reference to the need to promote proper professional standards.

Additional detailed comments

- 3.56 We set out below our more detailed comments on the sanctions guidance, in the order in which they appear in the document.
- Para 6: the second sentence of this paragraph should refer to the need for case examiners to refer a case to adjudicators if a removal order is likely to be within the range of reasonable outcomes.
 - Para 8: we would have welcomed a reference to the statute that requires SWE to deal with concerns fairly and proportionately.
 - Para 12: we suggest that the reference to blame is removed, as findings of fact are made in fitness to practise. In addition, it might be worth specifying elsewhere in the guidance that because FtP is not about punishment, the registrant’s personal circumstances are of lesser importance in deciding the sanction than they might be in a criminal case.
 - Para 13: instead of ‘severe’, ‘restrictive’ might be more accurate.
 - Para 16: it was not clear to us whether a single finding of impairment can lead to a decision-maker agreeing or imposing more than one sanction simultaneously, such as a suspension with conditions.

¹¹ See the case of *Yeong v The General Medical Council* [2009] EWHC 1923 (Admin) (28 July 2009). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2009/1923.html>.

- Para 18: in the top line of this paragraph, instead of 'removal', 'restriction' might be more accurate.
- Para 21: instead of unrestricted 'registration', the Fleischmann Judgment uses the term 'practice'.
- Para 30: the risk of repetition should be minimised to the extent that restriction on registration is not needed, rather than it needing to be 'eliminated'. However, even if the risk of repetition is nil, decision-makers will still need to consider the need to maintain and promote public confidence and professional standards.
- Para 39: '*except for the most serious cases*' – we felt this set the bar too high for matters of public interest.
- Para 41: we question the inclusion of the modifier 'normally' here – as we understand it, accepted disposal outcomes would *only* be available where the social worker accepts the core facts that can amount to impairment. We would be concerned if this was not the case.
- Para 64: it was not clear to us how lack of competence or capability could be relevant here given that this usually involves a series of events forming a pattern.
- Para 68: It would be helpful to specify here that the decision-makers should explain why the 'next sanction up' from that on which they have alighted would not be required in order to fulfil the three limbs of public protection.
- Para 72: instead of '*to mark the gravity of the offence*', we suggest '*to protect the public or address the public interest*' or words to that effect.
- Paras 74 to 81: we are unclear about the comparative severity of, say, advice that is published for five years, and a warning that is only published for one. This is exacerbated by the assertion that '*the social worker's fitness to practise remains impaired while the advice or warning continues to be in effect.*' It is our view that impairment is a finding, rather than a status.
- Para 83: this paragraph should also make reference to attitudinal or behavioural failings.
- Paras 84 and 88: we suggest that the guidance explain that insight and attitudinal failings are relevant to whether or not conditions would be appropriate, in addition to the registrant's willingness to abide by conditions.
- Para 91: suspension may also be required for public interest reasons which cannot be addressed by conditions.
- Paras 92 and 95: public protection is paramount, while the risk of deskilling can be considered at a review hearing, and addressed by conditions following suspension, or the SWE CPD requirements; it is also the registrant's responsibility to ensure that they are fit to practise.

- Paras 98 to 100: we believe there is some confusion between ‘poor performance’ and ‘lack of competence and capability’. This links to our comments in 3.12 above.
- Para 100: as we understand it, fair sample is the test for competence, rather than impairment.
- Para 104: we suggest this paragraph make reference to concerns about relationships with colleagues¹², as well as harassment.
- Para 113: we recommend that any assessments that are relevant at the point of sanction are set out explicitly in the determination document, regardless of whether they have been taken into account at an earlier stage.
- Para 114: any confidential annexes are also needed for those with oversight of the decision such as the Authority or the courts.
- Para 116: proportionality is relevant at the sanction stage, but not at impairment.
- Para 116: it would be helpful to understand whether at the point of review, a different sanction can be imposed (e.g. conditions following a suspension), and how breaches of conditions or suspension would be dealt with.
- Interim Orders (pages 23 and 24): we question whether this is the right place for guidance on interim orders, which involve a very different test to that used for final decisions.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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¹² See our research on sexual boundaries between colleagues, available at: <https://www.professionalstandards.org.uk/publications/detail/sexual-behaviours-between-health-and-care-practitioners-where-does-the-boundary-lie>