

Response to consultation on changes to the regulatory framework for Social Work England

May 2022

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care ('the Authority') 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 social 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 10 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.

2. General comments

- 2.1 Most of the proposed changes being consulted upon appear reasonable, as they are aimed at closing gaps in public protection, addressing errors in the initial drafting of the legislation, and finding efficiencies for Social Work England after two years of operation. In general, we agree with most of the proposals and have not commented on every change individually.
- 2.2 In previous consultations, we have given our view on voluntary removals. We have set out below in brief the limited circumstances in which it should be permitted, and safeguards that should be put in place to avoid any gaps in public protection.
- 2.3 We have also set out our views on the proposed changes to give case examiners the power to impose removal orders via the accepted disposal process. Whilst we do not necessarily disagree with this proposed change, we would expect clear safeguards and guidance to be in place to ensure there is no reduction in public protection.
- 2.4 Changes are being proposed to bring our Section 29 powers for Social Work England in line with those for other regulators, which we fully support. However, the proposed changes do not completely align our powers for Social Work

England with those of other regulators. In particular, we would not have the power to appeal restoration decisions by adjudicators where no conditions are imposed. We would strongly encourage this to be included in the changes that are made.

- 2.5 There are also a number of changes being proposed which are aimed at bringing Social Work England's regulations in line with other regulators. However, the current legislative reform programme for these regulators may lead to changes to the status quo, and Social Work England may end up being out of step. It may be preferable to review these changes, and Social Work England's legislation more broadly, once the changes being brought in by regulatory reform have been finalised.

3. Duty to co-operate

Question 1: Do you agree or disagree with the proposed changes to Regulation 7, the social work regulator's duty to co-operate, set out in Table 1? Please provide details to explain your answer.

Agree.

- 3.1 We fully support regulators being under a duty to co-operate, which includes disclosing information where necessary. We agree that this change is necessary to support Social Work England in doing so.
- 3.2 However, we know that there is ongoing work regarding the duty to co-operate as part of regulatory reform. We think it would be helpful if these two processes could inform each other, to ensure that all regulators have robust and consistent powers.

4. Registration of social workers

Question 2: Do you agree or disagree with the proposed changes to Regulations 9 and 14, the social work regulator's registration of social workers, set out in Table 1? Please provide details to explain your answer.

We neither agree nor disagree with these proposals.

- 4.1 We set out our views on voluntary removal while FtP proceedings are in progress in our response¹ to question 37 of the Government's consultation on reforming regulation – *'Regulating healthcare professionals, protecting the public'*. In short, voluntary removal should only be used in limited circumstances:
- Where the concerns about the registrant's fitness to practise are limited to risks to the public and not so serious as to require a public hearing or engage the public interest limbs of the overarching objective

¹ https://www.professionalstandards.org.uk/docs/default-source/publications/consultation-response/others-consultations/2021/authority-response-to-consultation-on-regulating-healthcare-professionals-protecting-the-public.pdf?sfvrsn=7a1a4920_4

- Where assurances that the registrant does not intend to practise again have been obtained; however, there should also be a clear process for any who do choose to apply to return to the register, and ideally this should be done through a robust restoration process
 - Where the investigation is sufficiently advanced to ensure that no aspects of the case have been overlooked, and there is enough certainty about the concerns to inform a decision in the event of an application for restoration
- 4.2 Such voluntary removal decisions should always be published. It should also be clear who within Social Work England can make the decision to approve a request for voluntary removal.
- 4.3 Legislative reforms to the other regulators are looking to address the inconsistencies around voluntary removal amongst the health and social care regulators. While the timing of these concurrent exercises may be challenging, we strongly recommend that the approach is consistent to avoid exacerbating existing unjustified variations.
- 4.4 The changes to Regulation 9 appear reasonable and in support of public protection and public confidence.

5. Discipline and fitness to practise proceedings

Question 3: Do you agree or disagree with the proposed changes to Regulation 25 and 26, the social work regulator's discipline and fitness to practise, set out in Table 1? Please provide details to explain your answer.

Agree.

- 5.1 As above, we support giving Social Work England the power to disclose information where necessary. The changes to Regulation 26 are clearly sensible for avoiding this gap in public protection.

Question 4: Do you agree or disagree with the proposed changes to Schedule 2, Part 2 Investigation, part of the social work regulator's fitness to practise proceedings, set out in Table 1? Please provide details to explain your answer.

Agree.

- 5.2 These changes appear sensible and targeted at gaps in public protection. We do not have any concerns about these proposed changes.
- 5.3 Whilst we do not disagree with the proposed changes to Schedule 2 Paragraph 9A, there is again an issue of timing with the current reforms to other regulators. It is likely that this power may look quite different for the General Medical Council (and consequently the other health regulators in due course) once the reforms are complete, and efforts may need to be made to ensure consistency.

Question 5: Do you agree or disagree with the proposed changes to Schedule 2, Part 3 Fitness to practise hearings, part of the social work

regulator's fitness to practise proceedings, set out in Table 1? Please provide details to explain your answer.

Agree.

- 5.4 We broadly agree with these changes, which seem to be mostly minor in nature, seeking efficiencies or tidying up the Regulations.
- 5.5 We do not oppose the change to Schedule 2 Paragraph 13(2) which will give case examiners the power to impose removal orders via accepted disposal. However, we think there are some points worth noting.
- 5.6 Currently, the criteria for whether cases should be referred to a hearing includes whether they are so serious that consideration needs to be given by adjudicators to removal from the register. Clearly, with case examiners having the power to remove social workers from the register via accepted disposals, this will no longer be part of the criteria.
- 5.7 This does not present a risk in and of itself. However, it does mean that case examiners will be dealing with cases that are as serious as those being dealt with by adjudicators at hearings. This presents a risk in that case examiners only have access to paperwork – making assessments of insight, for example, less reliable - and cannot resolve disputes of fact. This all increases the risk that a decision which is insufficient to protect the public will be made.
- 5.8 This risk is heightened by the fact that accepted disposals are outside the scope of our Section 29 powers to lodge appeals where we consider decisions to be insufficient to protect the public. This means that where case examiners make inappropriate decisions, they cannot be challenged and, as a result, the risks to the public, which are likely to be higher in these cases, are increased because cases where removal was in fact required will be outside our remit.
- 5.9 For this reason, we would expect to see very clear guidance on the circumstances in which cases which may be so serious as to require removal from the register, are appropriate for accepted disposal.
- 5.10 Social Work England may wish to refer to the findings of our review of its case examiner decisions in the first year of operation, and our advice on unconscious bias in FtP decision-making. This would help to inform decisions about the sorts of cases that are likely to be more suitable for disposal by case examiners and panels. We plan to produce guidance on this, drawing on the findings of these two reports, however the timescale for this work is still to be decided.

Question 6: Do you agree or disagree with the proposed changes to Schedule 2, Part 4 Review of orders and Schedule 2, Part 5 Appeals, part of the social work regulator's fitness to practise proceedings, set out in Table 1? Please provide details to explain your answer.

Agree.

- 5.11 All of these changes appear reasonable.

6. Powers of intervention

Question 7: Do you agree or disagree with the proposed changes to Regulation 34, powers of intervention, set out in Table 1? Please provide details to explain your answer.

Agree.

- 6.1 We are pleased to see that this change is being made to ensure mandatory reviews are within our remit. However, this change would not bring our powers completely in line with what is in place for the other regulators we oversee. We would strongly encourage this proposed change to also include oversight for the Authority of restoration decisions by the adjudicators, where no conditions are imposed. Those decisions currently fall outside of our remit for Social Work England, unlike the other regulators we oversee, and it is not clear why this should not be addressed alongside the other anomalies here. In our experience, restoration decisions where there are no conditions – so the registrant is allowed back into unrestricted practice – pose the more significant risk to public protection.

7. Other legislation

Question 8: Do you agree or disagree with the proposed changes to amend other legislation set out in Table 1? Please provide details to explain your answer.

Agree.

8. Listed offences

Question 9: Do you agree or disagree with the proposed changes to the listed offences set out in Table 1? Please provide details to explain your answer.

Agree.

9. Equalities Analysis

Question 10: Do you think that any of the proposed changes outlined in Table 1 would help achieve any of the following aims:

- **Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?**
- **Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**
- **Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?**

If you have answered 'yes' to any of the above questions, please explain the effect you think the proposed changes will have?

If you have answered ‘no’ to any of the above questions, please explain what effect you think the proposed changes will have and whether you think the proposals should be changed so that they would help achieve those aims?

- 9.1 We have previously suggested, in our advice on biases in FtP decision making², that cases where there are different cultural considerations may be more suited to disposal by a (suitably diverse) panel, as opposed to through accepted disposal. Social Work England will need to remain vigilant on this point when considering whether cases which may be so serious as to justify removal can be dealt with through the accepted disposal process.

10. Further information

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

Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London SW1W 9SP

Website: www.professionalstandards.org.uk

Telephone: 020 7389 8030

Email: info@professionalstandards.org.uk

² https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/advice-on-biases-in-fitness-to-practise-decision-making.pdf?sfvrsn=b0154920_8