Response to Social Work England consultation on amendments to rules

June 2022

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 ten 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. Comments

2.1 We welcome the opportunity to comment on the proposed changes to the Social Work England rules. In general we are supportive of the proposals. We have some queries on specific elements which are outlined below.

Question 1 - Do you think the changes to the rules we have proposed will streamline our processes and are proportionate?

A. Removal from the register and registration appeals rules

2.2 Rule 14A - We query the rationale for removing the requirement for legal advisers to be barristers or solicitors with 10 years' PQE and instead allowing SWE to publish criteria on this. While we have no particular position on the minimum threshold for experience for people fulfilling this role, it is important that there should be someone present who is sufficiently competent to advise.

2.3 We also note that this change is inconsistent with requirements that a number of the other health professional regulators have in place including the Health and Care Professions Council (HCPC), the General Dental Council (GDC), the Nursing and Midwifery Council (NMC).

2.4 Rule 20(1) – The proposal to extend the period for determining registration appeals from 60 to 80 days seems at odds with other proposed rule changes that are intended to reduce delay. As with our query at 3.9 below, it would have been helpful to have a clearer explanation of the reasons for this change, which we accept may be purely operational.

2.5 Rule 23 – We were unclear on why it is necessary to allow service by personal or courier service in addition to post given that post and email are already available but do not have any concerns about this proposal.

B. Registration rules

2.6 Rule 24(2) – The clarity in providing the 28-day timeframe for provision of evidence for a registration application is useful, however we note that it may not always be possible to comply with this timescale, for example, where information must be obtained from overseas.

2.7 Rule 44 – The consultation proposes to allow social workers to request an annotation to the register to be removed. We do not think that registrants should be able to request removal of any information on the register which is essential for public protection, however, it is our understanding that annotations in this context only indicate additional qualifications or training. We therefore do not have concerns about this proposal.

2.8 New rules on restoration applications 60B – We note the proposed new rules outlining the process to be followed for restoration applications. These look broadly acceptable; however we query whether 20 working days would be long enough to make a decision on a restoration application following fitness to practise proceedings, when the issues to consider may be more complex.

C. Fitness to practise rules

2.9 Rule 8(a) – As at 2.6 above, it would have been helpful to see the rationale for the proposed increase in time to notify the registrant that they are under investigation from 7 to 14 days.

2.10 Rule 22 – We note the proposed change for decisions about whether to deal with a restoration at a hearing or meeting to be made by the regulator instead of the adjudicators. The consultation suggests that this is intended to improve efficiency, however if the adjudicators must consider whether they need to hear evidence/witnesses anyway, it would be helpful to understand whether this will achieve the desired efficiency improvement or whether it will just add another stage to the process. It would also be helpful to confirm that all restoration decisions (where conditions are imposed) are subject to section 29 whether the decision is made at a meeting or a hearing.

2.11 Rule 23 – With respect to the proposal to increase the time period for a decision on restoration to be made by adjudicators from 56 days to 84 due to the planned changes to Rule 20 (this is to allow an applicant to call witnesses for a restoration hearing with 7 days' notice). We are unsure why this should lead to an increase in the time to make a decision by 29 days and would welcome clarity on this point. This also appears contrary to the intention in other areas to speed up the process.

2.12 Rule 25(b) – We note the proposal to remove this rule which requires all case management meetings to be conducted by an adjudicator where the hearing is to take place before adjudicators. The consultation document states that this is unnecessary because adjudicators carry out all hearings. However, it is not clear to us whether adjudicators are in fact required to carry out all of the hearing types listed under rule 25, or whether this is just current practice. If it is the latter, we question the rationale for this change. It is important that adjudicators determine case management hearings for those hearings they are to carry out. It would be helpful to confirm that the regulator would not be making case management decisions for hearings before adjudicators.

2.13 New rules 27(2) and 52 – These new rules set out new processes for discontinuance of allegations at case management stage, to avoid cases going to a full hearing where there is no longer a realistic prospect of successful determinations. It would be helpful to clarify which regulations these two different processes for discontinuance would apply under, and whether they are intended to fall under our s.29 jurisdiction – our understanding is that decisions made under rule 52 would, but we are less clear on 27(2). It will be important that any decision to discontinue is made with proper consideration of the underlying case law following our appeal in NMC & X.[1]

2.14 We are unclear how and why the process permitted by new rule 27(2) is different from the one set out in the new rule 52, and why there is a separate, apparently less robust discontinuance process for facts and grounds. The process outlined under rule 52 is much more akin to what we would expect, as demonstrated in the NMC & X case – with the exception that the actual evidence, not just details of it, should be placed before the adjudicators. Finally, we would welcome further detail about how the processes would work in practice, e.g. what the thresholds might be, examples of situations where each option might be used, and what would constitute a successful discontinuance decision.

2.15 New rule 35A(1) – We note the proposal under this rule change to count previous criminal convictions as previous history during the FtP process. We are not aware of other regulators tendering previous criminal convictions as previous history at the sanction stage and this usually refers to previous FtP history. As disciplinary and criminal proceedings have different purposes, we would query how relevant convictions are at this stage. Convictions should have already been disclosed as part of registration and then disclosed when imposed as part of FtP declarations and possible FtP cases brought if necessary at the time. It would be helpful to better understand the purpose of this change.

2.16 New rules 35A, 51 and 52 – We note the proposed new rules for non-compliance cases. Our understanding of this change is that it creates a new type of case outside the process for finding impaired fitness to practise that can only result in suspension or removal (conditions or warning not available).

[1] *Professional Standards Authority for health and Social Care v Nursing and Midwifery Council & Anor* [2018] EWHC 70 (Admin)

We recognise that the legislation for this change is already in place. However, we would welcome further clarity from Social Work England about how they intend to use this process. In particular, it would have been interesting to see the projected number of cases they would expect to use it for, and consideration of whether it would be proportionate to create a separate process.

2.17 It would also be useful to understand whether Social Work England feel that the sanctions available are proportionate given that only erasure and suspension are available. The General Medical Council, as a comparator, have similar powers however cannot erase under this process, and can impose conditions.

2.18 We suggest that these powers should be reserved for situations where it has not been possible to gather evidence of the original FtP concern, as otherwise it would be preferable to take the case through the normal FtP process for a proper examination of the underlying concerns.

Question 2 - Do you think there are any other amendments to Social Work England's rules (which do not also require amendments to our regulations) that could be made to better support our regulatory processes?

2.19 No comments.

Question 3 - To what extent do you agree that using legally qualified chairs will streamline and better support our fitness to practise meetings and hearings?

2.20 We do not feel strongly about this, what is important is that there should be someone present at fitness to practise hearings and meetings who is sufficiently legally competent. We suggest that this change is monitored to ensure that giving the chair this dual role does not lead to their having a disproportionate influence over decisions compared to other panellists.

2.21 A further consideration is that it might reduce the size of the pool of potential chairs, which may in turn have a negative impact on diversity of panel chairs.

Question 4 - Do you think we should appoint legally qualified chairs for all meeting or hearings, or should this be reserved for certain types of meeting/hearings?

2.22 No view.

Question 5 - Do you think there is anything else we should consider when using our power under rule 33?

2.23 No view.

Question 5 - Do you think that the changes to the rules could impact any persons with a protected characteristic? If so, is it positively, or negatively, and how? The Equality Act (2010) lists nine protected characteristics: age, disability, gender reassignment, race, religion or

belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

2.24 We have identified a potential impact under question 3 above.

2.25 Generally though, we do not have the information or data to make a judgement on potential impacts, and would be interested to see Social Work England's own evaluation in due course.

Question 6 - Any other comments you might have.

2.26 No further comments.

3. Further information

3.1 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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