# Public consultation on the Professional Standards Authority's good practice guidance documents:

Guidance on *the use of Accepted Outcomes in Fitness to Practise*
Guidance on *Rulemaking*

22 January 2024

professional standards authority

## About the Professional Standards Authority

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 voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of 10 statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation. We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

Our organisational values are: integrity, transparency, respect, fairness and teamwork. We strive to ensure that our values are at the core of our work. For more information about our work and the approach we take visit www.professionalstandards.org.uk.

# Before you read this document

This consultation document is designed to help you respond to our questions on two complex areas of regulatory reform. We are using **one** survey to gather your views on **two** guidance documents.

This document should help you understand:

- The rationale behind the reforms
- Our role within regulatory reform
- Why we are consulting
- The purpose of our two pieces of guidance and what we hope they will achieve.

It also sets out the consultation questions (these can also be found in full at Annex A). The consultation questions comprise of:

- Some general questions about you
- A short overview of each guide – and related questions for you to respond to.

Finally, it tells you the important things you need to know:

- How to respond to the consultation
- How we approach confidentiality
- More on the process.

Although this consultation applies to both pieces of guidance, you only need to respond to the questions that you choose to. You do not have to respond to the questions about both guidance documents. However, please **do** respond to the first three questions which apply to both documents and all respondees.

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# Background and Context

## Introduction

### Our role in regulation

The Professional Standards Authority (PSA) protects the public through our work with organisations that register and regulate people working in health and social care. We are an independent UK body. Our role and duties are set out in the Health and Social Care Act 2002 (as amended).

There are three main areas to our work:

- We oversee the work of the 10 statutory bodies that regulate health and social care professionals in the UK
- We accredit registers held by non-statutory registering bodies of health and care professionals
- We aim to improve regulation by providing advice to UK government and others, conducting or commissioning research and promoting the principles of right-touch regulation.

### Why we are consulting you

In this consultation we are seeking your views on two draft guidance documents that we have produced to support regulators in using their new powers around rulemaking and fitness to practise. These new powers will come in after the roll-out of the regulator legislation reforms forming part of the Department of Health and Social Care's reform programme.[1]

**Please respond to this consultation paper by completing the online survey available here. When using the online survey don't forget to save your answers as prompted.**

**You can also submit your response by email. When doing so please include the name of the consultation in the subject line. When submitting by email, please reference your responses using the question numbers. Email responses should be sent to: policy@professionalstandards.org.uk**

**Please respond by 5pm on Monday 15th April 2024.**

## About this consultation

The Government is currently reforming the healthcare professional regulators.

[1] Department of Health and Social Care, February 2020, *Regulating healthcare professionals, protecting the public: consultation response analysis:* Regulating healthcare professionals, protecting the public: consultation response - analysis (publishing.service.gov.uk)

It is changing the legislation for nine out of the ten[2] healthcare professional regulators we oversee, giving them a range of new powers and allowing them to operate in a very different way.

We have produced guidance to help the regulators use their new powers effectively – and are seeking your feedback on this guidance.

Social Work England, the remaining regulator under our remit, is not covered by the reform programme as their powers are already similar to the model being introduced, but we hope the guidance and your feedback will also be useful to them.

## Background to the reforms

The Government's regulatory reform will give regulators greater freedom to decide how they operate, including the flexibility to set and amend their own rules. The legislation will include reforms to regulators' powers and governance arrangements. It will also create an entirely new process for handling fitness to practise concerns (the process by which concerns about healthcare professionals are dealt with).

The main changes will include:

- **More autonomy for regulators** – The reforms will give regulators the flexibility to change the way they regulate without having to go through the slow process of securing Privy Council approval. This will enable them to adapt more quickly to developments in healthcare and its delivery, and improve their processes. We want them to have this agility so they can deal with workforce pressures and risks emerging from new ways of treating patients and funding healthcare.
- **More consistency between regulators** – The Government's commitment to putting the same legislation in place for all the regulators – with some tailoring where needed – is a first step to making them more consistent. Consistency is important because it will make the system simpler and easier for patients and employers to navigate, and for regulators to co-operate. The second step will be for the regulators to work together to be consistent in how they put the legislation into practice.
- **A less adversarial route for dealing with concerns about professionals** – The Government's proposal to use 'accepted outcomes', instead of panel hearings, for some fitness to practise cases will provide a quicker, less adversarial way to deal with concerns about professionals. Under the 'accepted outcomes' process, the regulator will carry out a detailed assessment of the case based on written information and evidence. If they find the registrant's fitness to practise impaired, they will be able to propose a sanction to the registrant. If the registrant accepts the findings (including impairment), and the proposed sanction, the regulator will have the power to conclude the case using an accepted outcome. This would cut out the step of a formal panel hearing – though panels would still be used for some cases.

In short, the main effect of these changes is that the regulators will have much more freedom than they have now, both to decide how to use their powers, and to make individual decisions about professionals.

[2] Regulators within the scope of the reforms include: the General Medical Council, the Nursing and Midwifery Council, the Health and Care professions Council, the General Dental Council, the General Pharmaceutical Council, the General Optical Council, the General Chiropractic Council, the General, Osteopathic Council and the Pharmaceutical Society of Northern Ireland.

Reform timeline so far:

- October 2017 - Government consults on high-level plans to reform professional regulation in Promoting professionalism, reforming regulation.
- April 2021 - Government consults on policy for a new regulatory model in Regulating healthcare professionals, protecting the public.
- February 2023 - Government consults on legislation for regulating Anaesthesia Associates (AAs) and Physician Associates (PAs), and the blueprint for other professions in Regulating anaesthesia associates and physician associates.

The Government consultation in February to bring AAs and PAs into regulation under the General Medical Council had much wider implications. The legislation for AAs and PAs will be used as the model for all other regulated healthcare professions, and rolled out one regulator at a time – with doctors, nurses and allied health professionals likely to be next in line.

## The Professional Standards Authority's position

These reforms are an opportunity to bring much-needed change to the sector. We have called for reform and believe these changes should be rolled out as soon as possible, whilst keeping an appropriate focus on public protection.

As the oversight body for the 10 health and care professional regulators, we want to help them make the most of what these reforms can offer, while being there to spot and address any problems as they come up. In our response to the previous policy consultation, we recommended specific changes to our powers to balance out this greater freedom. We accept the Government's decision not to go ahead with these changes. We support regulators being given more autonomy, but think this must be balanced by effective accountability.


**We previously suggested assessment criteria to measure whether the reforms have been successful and updated these in our response to the consultation on the AA PA Order earlier this year.[3] We have included the full list for reference at Annex B.**

[3] Professional Standards Authority 2023, *Improving regulation for safer care for all - A briefing on the Government consultation on the draft Anaesthesia Associates and Physician Associates Order*. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/psa-briefing-on-government-consultation-on-draft-aas-and-pas-order.pdf?sfvrsn=228a4a20_5

Developing the guidance that we are now consulting on is one of the steps we are taking to help make the reforms a success and mitigate any potential risks.

## The guidance: some questions and answers

### Why is the PSA developing these two pieces of guidance for regulators?

One of our functions under the National Health Service Reform and Health Care Professions Act 2002 is to promote best practice in the performance of regulators' functions, to formulate principles relating to good professional regulation, and to encourage regulators to conform to them. We do this to help protect the public.

As the oversight body for the regulators, the PSA is in a unique position to look across them and provide advice on best practice. We have previously produced policy advice and guidance on areas including maintaining clear sexual boundaries in health and care, embedding the professional duty of candour, assuring continuing fitness to practise, and modern and effective fitness to practise adjudication.

We are producing ***this*** guidance to help regulators make best use of their new powers post-reform. We have developed the guidance alongside the Anaesthesia Associate and Physician Associate Order (the AAPA Order)[4], which will be the model for reforms for all the other regulators. We will review the guidance against future pieces of legislation developed for each regulator within the scope of the reforms and update to reflect further good practice that emerges as the reforms are implemented.

### Why have you chosen these specific areas to focus on for your guidance?

We have chosen these areas because we think that the introduction of 'accepted outcomes' along with more flexible rulemaking powers are the most significant changes brought about by the reforms. These are the areas containing the greatest potential risks, but also the greatest opportunities to promote a robust and consistent approach.

### What status will the guidance have?

The PSA will not have any formal role within the rulemaking or 'accepted outcomes' processes. Our guidance will therefore not 'bind' regulators, or have any official status.

We recognise that individual regulators are likely to develop their own guidance across their different regulatory functions. Our guidance is intended to support and guide them in doing so.

We agree that regulators should have greater agility and flexibility in how they exercise their powers. We are not intending to limit this flexibility or suggest rigid uniformity in how regulators use their new powers post-reform, so long as any inconsistency does not undermine public protection.

### How will the guidance link to the PSA performance review?

[4] The Anaesthesia Associates and Physician Associates Order 2024: https://www.legislation.gov.uk/ukdsi/2024/9780348255195

We expect the relationship between our guidance and our performance reviews to be much the same as with our other guidance or policy advice.

Where relevant, we might ask a regulator for more information about their approach, including whether, and how, they had taken the guidance into account.

### Who is the guidance aimed at?

The guidance is aimed at the regulators to help them develop their own advice, guidance and processes for their staff and decision makers.

However, our guidance should also be easy to read and understand for other audiences including registrants and members of the public who may wish to read and refer to it.

### Are you planning to include a 'public interest' test for whether a case should go to a hearing in your guidance on the fitness to practise disposal route?

No. Unlike the Social Work England legislation, which allows case examiners to refer cases to a panel if it is in the public interest, there is no public interest test for referral to a hearing in the AAPA Order.

However, we do want to ensure that the reform model protects the public at least as well as the current model; and your views on public interest considerations will be extremely helpful in this. Regulators themselves may wish to consider how they take account of the public interest in their own processes.

### Why are you consulting now, and how will it affect those regulators already in the process of drafting new rules and processes?

The reforms are expected to be rolled out sequentially to all healthcare regulators, starting with Physician Associates and the Anaesthesia Associates (GMC). The rest of the GMC (doctors) the NMC, and the HCPC are likely to be next in line for reform.

With the process of reform ongoing, there is no ideal time for the PSA to produce guidance for regulators, with some regulators already in the process of drafting rules and others for whom reform is a long way off and who will not yet have begun thinking about how they put the reforms into practice.

It is not our intention that this guidance should delay the work the GMC or other regulators are already doing to prepare for reform. However, we believe it is important to develop our guidance in enough time to support those regulators next in line for reform and have therefore produced this guidance as early as was possible, after the provisions of the AAPA Order were finalised.

We hope that regulators will take account of the guidance when they are able to within their own timetable for implementing the reforms. Similarly, we intend to incorporate learnings from the roll out of the reforms in practice when finalising the guidance and in future reviews.

# The Consultation

## How this consultation is set out

This section sets out a short overview of each guidance document and the consultation questions relating specifically to each document. A full list of the consultation questions can also be found at Annex A. This consultation document should be read alongside the draft guidance documents.

This section covers:
1. Our draft guidance on fitness to practise (you can find the full draft guidance here.)
2. Our draft guidance on rulemaking (you can find the full draft guidance here.)

This section also includes some questions about you, to give us more information about who is responding to our consultation.

At the end of the questions, you can find more about how to respond to the consultation, the deadline and a little more about the process and how we approach confidentiality.

## The consultation itself

### Consultation questions about you

To help us understand who is responding to our consultation, it would be helpful to find out more about you:

| | |
|---|---|
| 1. | **Please describe your organisation or role [member of the public/health or care statutory regulator/Accredited Register/other health or care body/patient representative body/registrant of a health or care statutory body/Accredited Register practitioner/professional association/other]** |
| 2. | **Please give the name of your organisation, or your name if you are responding as an individual** |
| 3. | **A summary of responses received to this consultation will be published in a consultation outcome report. Any comments you make may be included but will be anonymised unless you give us permission to use your/your organisation's name. Are you happy for your name/your organisation's name to be included in any published reports? [Yes/no]** |

### Draft guidance: Fitness to practise

Ensuring that health and care professionals are 'fit to practise' is fundamental to regulators fulfilling their duty to protect the public. Fitness to practise can be defined as having the ability to practise safely and effectively.[5] It encompasses *'having the appropriate skills, competencies, knowledge, character and health'* to perform the role.

[5] General Medical Council 2023, *Fitness to practise explained*: Fitness to practise explained - GMC (gmc-uk.org)

Where concerns are raised about a registrant's[6] fitness to practise, regulators follow a formal process to determine whether a registrant is 'fit to practise' or 'impaired'. In broad terms, the fitness to practise process involves the following:

- Finding whether the facts are proved and if so whether they amount to misconduct, lack of competence (or other grounds of impairment)
- Considering whether the registrant's fitness to practise is currently impaired, based on the three limbs of public protection
- Deciding on what sanction is appropriate to adequately address the failings identified.

Where a regulator has investigated a concern and determined that there is a case to answer, it will usually refer the case to a fitness to practise panel for a hearing. Fitness to practise panels are normally constituted of three independent members, at least one of which is a registrant and one lay person. They normally sit in public.

The Anaesthesia Associate and Physician Associate Order 2024[7] (the AAPA Order) sets out a new process for dealing with fitness to practise concerns. Under the new system, final decisions on cases can either be made by case examiners as part of a paper-based process, or at a hearing of a fitness to practise panel. Case examiners are employees of the regulator who are trained to make fair and impartial decisions in fitness to practise cases. The Government's response to their consultation on bringing AAs and PAs into regulation sets out further detail on these changes and how the new system will operate[8].

As a result of these reforms, it is likely that in future more concerns about professionals will be resolved by case examiners without the need for a panel hearing. Case examiners will be empowered to carry out a detailed assessment of the case from the written information and evidence and 'where possible, make a decision on impairment and whether action is needed to protect the public.'[9]

Where impairment is found, case examiners will be able to impose a sanction on the registrant and will have the power to conclude a case using an accepted outcome where the registrant accepts both the findings (including impairment) and the proposed sanction. Case examiners will also be able to impose a final measure where a registrant does not provide a 'reasoned response' within a reasonable time. Case examiners will have the same range of sanctions available to them as panels, and there will be no limitations on the types of cases they can resolve.

Cases will still be considered by panels where the registrant does not accept the findings and/or the proposed measure, or where 'the case examiner is not able to

[6] A 'registrant' is a health or care professional who is regulated by a healthcare professional regulator (such as the General Medical Council) and appears on their register
[7] The Anaesthesia Associates and Physician Associates Order 2024: https://www.legislation.gov.uk/ukdsi/2024/9780348255195
[8] Department of Health and Social Care, February 2020, *Regulating healthcare professionals, protecting the public: consultation response analysis:* Regulating healthcare professionals, protecting the public: consultation response - analysis (publishing.service.gov.uk)
[9] Department of Health and Social Care, February 2020, *Regulating healthcare professionals, protecting the public: consultation response analysis:* Regulating healthcare professionals, protecting the public: consultation response - analysis (publishing.service.gov.uk)

make a decision on impairment. This could include, for example, where the evidence needs to be tested at a hearing.'[10]

The Government has stated that the proposed changes will: 'deliver a fitness to practise process that is swifter, fairer and less adversarial, which will benefit all parties involved in fitness to practise proceedings and, most importantly, will ensure swift public protection where needed.'

This new system for handling fitness to practise cases will eventually be rolled out across the healthcare professional regulators. The Department of Health and Social Care has set out its intention that in future 'all regulators should have broadly consistent fitness to practise arrangements'.[11]

The new fitness to practise arrangements contained within the AAPA Order are broadly similar to those already operated by Social Work England, which has had the power to resolve cases using case examiners and accepted disposals since its creation in 2019. However, unlike the system operated by Social Work England, the powers under the AAPA Order will enable case examiners to reach a finding on impairment.

We see many benefits in the use of the new accepted outcomes model, including its potential to be a faster process. However, we have also identified certain risks that may result from the use of accepted outcomes in some fitness to practise cases. These risks relate to the robustness, independence and transparency of decision making in certain contexts, as well as possible impacts on public confidence.

We want to help regulators to consider which cases are best dealt with by an accepted outcome, and which would be better resolved by a panel hearing. We believe that panels are better placed to resolve some cases because they are able to ask questions of both the registrant and other witnesses. This may be important where, for example, the evidence requires testing, or the level of insight shown by the registrant is in doubt.

Our guidance is intended to support regulators in producing their own guidance for decision-makers. In developing our guidance, we have drawn on evidence on the likely strengths and weaknesses of the different methods of case disposal. We have outlined the factors that case examiners might consider when determining whether they can make a decision that satisfies the three limbs of public protection,[12] or whether a case should be referred to a hearing.

The guidance document is split into two parts:

- Part I: Factors to consider when using accepted outcomes: guidance for regulators
- Part II: Context, evidence and explanation of factors

[10] Department of Health and Social Care, February 2020, *Regulating healthcare professionals, protecting the public: consultation response analysis:* Regulating healthcare professionals, protecting the public: consultation response - analysis (publishing.service.gov.uk)
[11] Department of Health and Social Care, February 2020, *Regulating healthcare professionals, protecting the public: consultation response analysis: Regulating healthcare professionals, protecting the public: consultation response - analysis (publishing.service.gov.uk)*
[12] The three limbs of public protection are: the protection of patients, the maintenance of public confidence in the profession, and upholding proper standards of conduct and behaviour.

Part I consists of guidance for regulators on using accepted outcomes in fitness to practise. The purpose of the guidance is to aid regulators to develop their own guidance and processes for using accepted outcomes. Part II contains the background and context to the guidance, including details of the changes to fitness to practise resulting from the Government's programme of reform to the healthcare professional regulators. It also contains a fuller explanation of the factors for regulators to consider, along with details of the underpinning evidence. You can find the draft guidance here.

## Consultation questions on the draft Fitness to practise guidance

4. **Do you think that our fitness to practise guidance will help regulators to make best use of accepted outcomes, and use them in a way that is fair, transparent and protects the public? [Free text box]**

In our guidance, we set out factors that regulators should consider when deciding if a case best dealt with by an accepted outcome or a panel hearing (see paragraphs 7.2-7.20 of the guidance). The questions below relate to these factors.

5. **Factor 1: *'Has the registrant failed to accept the findings and/or impairment?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]**
6. **Do you have any comments on this factor, or the bullet points listed in our guidance under this factor? [Free text box]**
7. **Factor 2: *'Is there a dispute of fact/conflict of evidence that can only be fairly tested at a hearing?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]**
8. **Do you have any comments on this factor, or the bullet points listed in the guidance under this factor? [Free text box]**
9. **Factor 3: *'Does the complexity of the case suggest that a hearing may be beneficial?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]**
10. **Do you have any comments on this factor, or the bullet points listed in the guidance under this factor? [Free text box]**
11. **Factor 4: *'Would it be beneficial and proportionate to test insight at a hearing?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]**
12. **Do you have any comments on this factor or the bullet points listed in the guidance under this factor? [Free text box]**

In our guidance, we set out some factors that regulators should consider when determining the composition of decision-makers (see paragraphs 7.21-7.29 of the guidance). The questions below relate to this section of our guidance:

13. **Factor 5: Lay representation in decision-making. Do you agree that regulators should continue to ensure lay representation at some point in the fitness to practise decision-making process? [Yes/no/don't know]**
14. **Factor 6: The use of single decision-makers. Do you agree that some fitness to practise cases may benefit from more than one decision-maker? [Yes/no/don't know]**
15. **Do you have any comments on the bullet points listed in the guidance relating to the composition of decision makers? (See paragraph 7.29) [Free text box]**

In our guidance, we set out some factors that regulators should consider when publishing case examiners decisions (see paragraphs 7.30 – 7.34 of the guidance). The questions below relate to this section of the guidance:

16. **Factor 7: publishing case examiner decisions. Do you agree that the bullet points in the guidance under this factor are the right ones? [Yes/no/don't know]**
17. **Do you have any comments on the bullet points listed in the guidance under this factor? [Free text box]**

In our guidance, we set out some factors that regulators should consider to promote a fair and transparent accepted outcomes process (see paragraphs 7.35 – 7.44 of the guidance). The questions below relate to this section of our guidance:

18. **Factor 8: Promoting a fair and effective accepted outcomes process. Do you agree that the bullet points listed under this factor in the guidance are the right ones? [Yes/no/don't know]**
19. **Do you have any comments on the bullet points listed in the guidance under this factor? [Free text box]**

The following questions relate to the impact of our guidance:

20. **Please set out any impacts that the guidance would be likely to have on you and/or your organisation, or considerations that we should take into account when assessing the impact of our proposals. [Free text box]**
21. **Are there any aspects of our proposals that you feel could result in different treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010 [Yes/no/don't know]:**

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex

- Sexual orientation
- Other (please specify)

If you have responded 'yes' about any of the above, please provide further details, explain why and what could be done to change this [Free text box].

## Draft guidance: Rulemaking

As part of the Government's legislative reform programme, the Privy Council will no longer approve regulators' rules or rule changes. Instead, regulators will receive new powers to make and amend their own operational rules. These rules will define how regulators will carry out their regulatory functions, including registration, fitness to practise and quality assurance of education and training.

Regulators will develop their own rules and consult on them as appropriate. They will also need to develop their own governance process for approving their rules.

The consultation earlier this year on regulating AAs and PAs outlined the powers that regulators will have to make rules across their regulatory functions. As well as being required to carry out their functions in line with the overarching objective of public protection, they will also be required to:

- comply with wider provisions relating to transparency, accountability, proportionality and consistency and the duty to co-operate
- take account of the principle that regulatory activity should be targeted
- comply with specific requirements around consultation.

We have produced our good practice guidance to help regulators make effective use of their new rulemaking powers in a way which prioritises public protection. It includes some principles to guide what good rules should aim to do or be, and the rulemaking process. In specific areas where we have access to evidence or information which we think will help the regulators put the principles into practice, we have offered more detailed guidance.

We have developed our guidance in parallel with the development of the draft AAPA Order and work being undertaken by some regulators to develop their rules. We have sought as far as possible to draw on the good practice already in use. This includes work by the GMC and NMC, and information and best practice from other sectors and research, particularly on the topic of regulatory consistency.

Our guidance will not apply retrospectively to rulemaking work already undertaken. However, our intention is that the guidance should not just be used for the first round of rulemaking by those regulators first in line for reform, but by those that come later and for subsequent rule alterations and amendments, so it will be useful beyond this early period of activity. You can find the draft guidance here.

## Consultation questions on the draft Rulemaking guidance

22. **Do you think our guidance will help regulators exercise their rulemaking powers effectively? [Free text box]**

In our guidance we outline principles to help regulators to use their rulemaking powers in a way which prioritises public protection and ensures a good practice approach to making rules (see 4.1-4.3 of the draft rulemaking guidance). The following questions relate to these principles:

23. **Do you think that the principles outlined are the right ones? [Yes/no/don't know]**
24. **Do you have any comments to make on the principles listed or any additional principles to suggest? [Free text box]**

In our guidance we give advice on ensuring consistency between different regulators' processes and avoiding unjustifiable difference (see 6.1 – 6.11 and Annex A of the draft rulemaking guidance). The questions below relate to this section:

25. **Do you think that the guidance on consistency between regulators (avoiding unjustifiable difference) is helpful? [Yes/no/don't know]**
26. **Do you have any comments to make on this section of the guidance? [Free text box]**

In our guidance we give advice on consulting on rules and associated guidance/policies (see 7.1-7.12 of the draft rulemaking guidance). The following questions relate to this section:

27. **Do you think that the guidance on consultation is helpful? [Yes/no/don't know]**
28. **Do you have any comments to make on this section of the guidance? [Free text box]**

In our guidance we give advice on governance for approval of rules and associated guidance/policies (see 8.1-8.4 of the draft rulemaking guidance). The following questions relate to this section:

29. **Do you think that the guidance on governance is helpful? [Yes/no/don't know]**
30. **Do you have any comments to make on this section of the guidance? [Free text box]**

The following questions relate to the impact of our guidance:

31. **Please set out any impacts that our guidance would be likely to have on you and/or your organisation, or considerations that we should take into account when assessing the impact of the proposals. [Free text box]**
32. **Are there any aspects of these proposals that you feel could result in different treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010 [Yes/no/don't know]:**

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership

- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)

If you have responded ‘yes’ about any of the above, please provide further details, explain why and what could be done to change this.

**This is the end of the consultation questions.**

## How to respond to this consultation

We welcome responses to any or all the questions in this consultation.
Please respond by completing our online survey available at this link: https://www.surveymonkey.com/r/JMD2RGM or by sending a written response to our questions in this document to: policy@professionalstandards.org.uk. Please include the question numbers provided.
We prefer responses by the online survey or email. If this is not possible, our postal address is:

Professional Standards Authority for Health and Social Care
16-18 New Bridge Street,
London,
EC4V 6AG

If you have any queries, or need an accessible version of this document, please contact us on 020 7389 8030 or by email at info@professionalstandards.org.uk.

Please return your response to us by 5pm on Monday 15th April 2024**.**

We welcome responses to this consultation in Welsh. A Welsh version of our consultation document can be found here.

## Confidentiality

We will manage information you give us in accordance with our information security policies. You can find them on our website: https://www.professionalstandards.org.uk/docs/default-source/publications/privacy-notice.pdf?sfvrsn=ee1f7220_2

Any information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you think the information is confidential.

If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the PSA.
We will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

# Our Consultation Process

Our consultation process is based on the current Cabinet Office principles on public consultation, 'Consultation principles: guidance'.13

When we conduct public consultations on aspects of the PSA's work we aim to:

- Be clear about both the consultation process and what is being proposed. This gives respondents the opportunity to influence our thinking and consider the advantages and disadvantages of our proposals.
- Consult formally at a stage where there is scope to influence the policy so that consultations have a purpose.
- Give enough information to ensure that the people we consult understand the issues and can provide informed responses. We include assessments of costs and benefits of the options considered.
- Seek collective agreement before publishing a written consultation particularly when consulting on the new proposals.
- Consult for a proportionate amount of time, taking a judgement based on the nature and impact of the proposals. Consulting for too long will unnecessarily delay policy development and consulting too quickly will not give enough time for consideration and will reduce the quality of responses.
- Ensure our consultation targets the fullest range of stakeholders, bodies and individuals affected by the policy and include relevant representative groups. Consider targeting specific groups if necessary.
- Consider consultation as an ongoing process, not just about formal documents and responses.
- Analyse responses carefully and explain the responses we have received and how they have informed the policy. Give clear feedback to participants following the consultation. Publish responses to the consultation within 12 weeks or explain why it has not been possible.

Allow appropriate time between closing the consultation and implementing the policy.

If you have specific concerns or comments about the consultation process itself, please contact:

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Professional Standards Authority for Health and Social Care
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Tel: 020 7389 8030
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[13] Cabinet Office. 2016 *Consultation principles guidance*. Available at: Consultation principles 2016 (publishing.service.gov.uk) accessed on 20 July 2022.

# Annex A

## Consultation questions in full:

1. Please describe your organisation or role [member of the public/health or care statutory regulator/Accredited Register/other health or care body/patient representative body/registrant of a health or care statutory body/Accredited Register practitioner/professional association/other]

2. Please give the name of your organisation, or your name if you are responding as an individual.

3. A summary of responses received to this consultation will be published in a consultation outcome report. Any comments you make may be included but will be anonymised unless you give us permission to use your/your organisation's name. Are you happy for your name/your organisation's name to be included in any published reports? [Yes/no]

4. Do you think that our fitness to practise guidance will help regulators to make best use of accepted outcomes, and use them in a way that is fair, transparent and protects the public? [Free text box]

5. Factor 1: 'Has the registrant failed to accept the findings and/or impairment?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]

6. Do you have any comments on this factor, or the bullet points listed in our guidance under this factor? [Free text box]

7. Factor 2: 'Is there a dispute of fact/conflict of evidence that can only be fairly tested at a hearing?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]

8. Do you have any comments on this factor, or the bullet points listed in the guidance under this factor? [Free text box]

9. Factor 3: 'Does the complexity of the case suggest that a hearing may beneficial?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]

10. Do you have any comments on this factor, or the bullet points listed in the guidance under this factor? [Free text box]

11. Factor 4: 'Would it be beneficial and proportionate to test insight at a hearing?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome? [Yes/no/don't know]

12. Do you have any comments on this factor or the bullet points listed in the guidance under this factor? [Free text box]
13. Factor 5: Lay representation in decision-making. Do you agree that regulators should continue to ensure lay representation at some point in the fitness to practise decision-making process? [Yes/no/don't know]

14. Factor 6: The use of single decision-makers. Do you agree that some fitness to practise cases may benefit from more than one decision-maker? [Yes/no/don't know]

15. Do you have any comments on the bullet points listed in the guidance relating to the composition of decision makers? (See paragraph 7.29) [Free text box]

16. Factor 7: publishing case examiner decisions. Do you agree that the bullet points in the guidance under this factor are the right ones? [Yes/no/don't know]

17. Do you have any comments on the bullet points listed in the guidance under this factor? [Free text box]

18. Factor 8: Promoting a fair and effective accepted outcomes process. Do you agree that the bullet points listed under this factor in the guidance are the right ones? [Yes/no/don't know]

19. Do you have any comments on the bullet points listed in the guidance under this factor? [Free text box]

20. Please set out any impacts that the guidance would be likely to have on you and/or your organisation, or considerations that we should when assessing the impact of our proposals. [Free text box]

21. Are there any aspects of our proposals that you feel could result in different treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010 [Yes/no/don't know]:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)

If you have responded 'yes' about any of the above, please provide further details, explain why and what could be done to change this [Free text box].

22. Do you think our guidance will help regulators exercise their rulemaking powers effectively? [Free text box]

23. Do you think that the principles outlined are the right ones? [Yes/no/don’t know]
24. Do you have any comments to make on the principles listed or any additional principles to suggest? [Free text box]

25. Do you think that the guidance on consistency between regulators (avoiding unjustifiable difference) is helpful? [Yes/no/don’t know]

26. Do you have any comments to make on this section of the guidance? [Free text box]

27. Do you think that the guidance on consultation is helpful? [Yes/no/don't know]

28. Do you have any comments to make on this section of the guidance? [Free text box]

29. Do you think that the guidance on governance is helpful? [Yes/no/don't know]

30. Do you have any comments to make on this section of the guidance? [Free text box]

31. Please set out any impacts that our guidance would be likely to have on you and/or your organisation, or considerations that we should take into account when assessing the impact of the proposals. [Free text box]

32. Are there any aspects of these proposals that you feel could result in different treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010 [Yes/no/don’t know]:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)

If you have responded ‘yes’ about any of the above, please provide further details, explain why and what could be done to change this.

# Annex B

## Professional Standards Authority success measure for reform

**We believe that the proposed reforms will be positive for professional regulation if they create:**

- Greater coherence of the regulatory system to support modern, multi-disciplinary health and social care
- More interprofessional working, and flexibility between professions
- Greater agility for regulators so they can adapt to new risks
- A safe and appropriate balance of accountability and flexibility in the work of the professional regulators
- A proportionate, and less adversarial way of dealing with concerns about professionals with the necessary public protection safeguards
- A fair system of regulation that supports equality, diversity, and inclusion for registrants as well as patients and service users
- Overall, a more effective public protection framework, that listens to patients and responds to their concerns, and has the confidence of the public and professionals.
- These reforms will have failed the public if they lead to:
- Lower levels of public protection, public confidence, or professional standards
- Less transparency or accountability for regulators
- The same or more complexity from the perspective of the public, employers, and professionals
- Continuing difficulties for regulators in working together
- Continuing challenges to closer working between professions
- Significantly increased costs that are not justified through improvements in public protection.