

Response to Social Work England consultation on amendments to rules

October 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. General comments

- 2.1 We welcome the opportunity to comment on the proposed changes to Social Work England's Rules.
- 2.2 Many of the changes proposed are simple consequential amendments. The more substantive changes that we would like to comment on are:
- Voluntary removal
 - Regulator review powers

Voluntary removal

- 2.3 When we responded to the Department for Education consultation on changes to the regulations, we said that, to ensure that the public is not subject to additional risk, 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
 - 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.
- 2.4 We also stated that voluntary removal decisions should always be published, and that it should be clear who within Social Work England can make the decision to approve a request for voluntary removal.
- 2.5 With this in mind, and having reviewed the consultation documents, we remain concerned about the lack of clarity on:
- whether there will be any limits on the stage at which an application would be considered (noting that an application for VR post-findings also carries risks, as it is a way of circumventing the FtP process),
 - whether the removal decision will be published, and
 - who would make the decisions.

Regulator review powers

Our role

- 2.6 We are pleased to see that there will be a mechanism for reviewing case examiner decisions. As we understand it, this is similar to the approach being pursued by the Department of Health and Social Care (DHSC) for the health professional regulators.
- 2.7 The Authority would hope to be able to make use of the registrar review power with respect to certain case examiner decisions, as is currently the intention under the similar model being rolled out to the health regulators.¹ We note however that SWE case examiners make several types of decision: realistic prospect decisions (Schedule 2, 6(1) of the current Social Worker Regulations 2018), whether to refer a case to a panel (7(2)), and how to dispose of a case, including closing with no further action and accepted disposals (9(2)). The proposals for the other regulators we oversee may be different in this respect, as the model is likely to offer more flexibility to regulators on how to run the initial stages of the process.
- 2.8 Our ability to request a review of a SWE case examiner decision should mirror our s.29 powers, which enable us to challenge panel decisions that are insufficient to protect the public. As we understand it, this would mean all cases that have passed the realistic prospect test and been disposed of by case examiners – i.e. any decisions listed under Schedule 2, 9(2). While such an approach is not a substitute for the public protection benefits of s.29 oversight,² being able to request a review would enable the Authority to

¹ See question 62, p81: <https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public>

² Our response to the DHSC consultation on regulatory reform sets out our views on the limitations of this approach in more detail: <https://www.professionalstandards.org.uk/publications/detail/professional-standards-authority-response-to-regulating-healthcare-professionals-protecting-the-public>.

identify cases of concern and provide a mechanism for SWE to take corrective action in response.

- 2.9 In order for this to take effect, our own legislation would need to be amended. It would be helpful to discuss how we approach this with officials within DHSC and Department for Education, as well as with SWE.

Consistency with wider regulatory reform

- 2.10 We appreciate that the timing of these changes is complex, and can see that efforts have been made to make this proposal consistent with developing policy and drafting of similar powers for the healthcare professional regulators. However, there is a risk of divergence, for example with the test for review at rule 12G, which now differs from recent drafts we have seen of legislation for other regulators.
- 2.11 When this model was originally put forward in the 2021 consultation on reforming the healthcare professional regulators,³ the decision-maker was to be the Registrar. Framing it as a 'regulator' power would mean that these decisions could be made by junior member of staff, and we would hope that this possibility will be ruled out by SWE, when it develops its processes.

Other

- 2.12 The decisions made under this registrar review power will need to be clearly documented, so that case examiners looking at a case referred back to them can understand the reasons for this referral. We would also expect them to be published for reasons of transparency.
- 2.13 We would like to see a prohibition on cases being referred back to the original case examiner(s). If people are asked to review their own decisions, this can introduce biases that could undermine the quality of decision-making, and ultimately put public protection at risk.
- 2.14 Finally, we suggest that the power should allow a case to be referred onto a panel, rather than always having to go back through the case examiners – we cannot see any risks to this approach, and it would help to streamline the process.

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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