



## **Professional Standards Authority**

### *Public Response to Alternatives to Final Panel Hearings in Fitness to Practise Complaints*

Research Report – May 2013

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## **1. BACKGROUND AND RESEARCH OBJECTIVES**

New methods of dealing with fitness to practise (FtP) cases are becoming increasingly prevalent as a response to marked increases in caseloads. While different regulators are considering slightly different overall approaches, the new methods all have one thing in common: they do not involve the case being presented at a panel hearing.

Alternatives to final panel hearings are a core part of current thinking by regulators in relation to simplifying and speeding up the complaints process – with what is perceived as the additional benefit of reducing stress on both complainants and professionals.

Since case law has established that professional regulation has three aims (to uphold professional standards, to protect the public and to maintain confidence in the profession) PSA wished to undertake research in order to explore whether the public believes that alternatives to final panel hearings can achieve these three critical aims.

The overall aim of the research was to obtain the views of the public on the proposed alternatives to final panel hearings. Specifically, the research aimed to explore:

- Whether, in principle, dealing with cases through an alternative to final panel hearings can achieve the threefold purpose of fitness to practise (protecting the public, upholding professional standards and protecting confidence in the professional)
- How alternatives to final panel hearings would need to work in order to achieve the threefold purpose of fitness to practise
- What alternatives would need to look like in order to ensure the three aims of professional regulation are not compromised

## 2. METHOD AND SAMPLE

In total, 5 mini-groups and 45 depth interviews were conducted. This approach enabled us to understand responses to the research objectives from two distinct perspectives:

- First, from the individual's point of view, via depth interviews. This approach allowed us to examine reactions from an individual viewpoint and probe key issues in greater detail, exploring potential barriers and facilitators, as well as exploring in detail the experiences of complainers.
- Second, from a shared societal perspective, via mini-group discussions. The groups allowed us to explore the social dimension and illuminate the critical elements of the proposed new processes that will shape public opinion, and how they are perceived in terms of social criteria such as fairness, equality and bias.

The sample detail was as follows:

- A mix of complainers and non-complainers:
  - 30 depth interviews and 5 mini-group sessions with people who have not complained to a regulator
  - 15 depth interviews with people who had experienced the FtP complaints process within the past 3 years. The majority of these had attended a hearing; one or two had elected not to or been unable to attend the hearing
- Respondents were a mix of age, gender, social grade and geographic region
- Fieldwork was conducted:
  - w/c 25th March in the South (St Albans) and the Midlands (Sutton Coldfield)
  - w/c 1st April in Scotland (Glasgow) and Northern Ireland (Belfast)
  - w/c 8th April in Wales (Cardiff)

### **3. MANAGEMENT SUMMARY**

#### **Non-Complainers**

- Non-complainers did not have a clear idea of how to initiate a complaint; typically most would approach the place of work of the professional or conduct research on the internet in the first instance. Knowledge of the complaints process was low among non-complainers; there was very little experience of it.
- Non-complainers would only make a complaint in a situation they considered very serious, and some felt they were unlikely to ever make a complaint. Their criterion for determining severity was the extent of emotional or physical damage caused by the incident.
- Hesitancy in making a complaint can be attributed to two broad areas: having the validity of the complaint questioned and anticipating the heavy demands of the process. Non-complainers felt that the complaints process would be long, taxing and possibly fruitless.
- Broadly non-complainers felt a hearing would achieve a fair and balanced outcome. They drew comparisons with a trial and so felt it was the highest forum for investigation and justice. However, some were anxious that the hearing would be weighted towards the professional – that regulators would have a vested interest in ‘protecting their own’.
- Non-complainers particularly liked the opportunity a hearing offers to express their ‘side of the story’ as well as to interject if they felt events were not related as they happened. They also were reassured by the independence of the panel.
- There were some concerns about the hearing-based process: the stress involved in facing the professional, not being able to express your story in

a convincing way, being intimidated by the formal atmosphere and being outnumbered by professionals.

### **Complainers**

- All complainers had found the hearing stressful and unpleasant to varying degrees: in particular being questioned during the hearing, facing the professional, concern about remembering the details of the incident, feeling outnumbered by professionals and being surrounded by medical and legal jargon.
- There were varying levels of satisfaction with how their complaint was dealt with; some respondents believed it was dealt with as well as it could have been, while others felt that the regulator could have supported and prepared them better. For those who didn't attend the hearing, the justification for the sanction could have been better communicated.

### **Alternatives to final panel hearings**

- Alternatives to final panel hearings were well received by both non-complainers and complainers. The change made sense in terms of saving money, time and the stress on the complainer and the professional. It was perceived as bringing benefits to all parties involved.
- However there were concerns, most of which revolved around the assumption that alternatives to panel hearings would not include as thorough an investigation as a hearing-based approach: other concerns related to the professional receiving a more lenient sanction in return for accepting the allegations against them; the professional not telling the truth and the complainer not being there to correct it.
- There were also concerns that the new processes would not be as transparent as the hearing based process. For some, there was a fear that

the complainer would not find out the sanction and the complainer would not have their 'day in court'.

## **4. MAIN FINDINGS – NON-COMPLAINERS**

### **4.1 Making a complaint**

Broadly speaking, respondents claimed they would only initiate a complaint against a health or care professional when physical harm had been sustained to their health or serious emotional trauma had been experienced. There was a strong sense that complaints should only be made with good reason because someone could lose their livelihood.

*"You're bringing a man's ability into question. It's a serious thing. You'd have to be sure what you're doing" (Non-complainer, older, Northern Ireland)*

There was also a belief that less serious complaints would be 'brushed away' and not taken that seriously; therefore it was not worth making them unless you were really prepared to fight your corner.

*"I do think that if you made a complaint you wouldn't get anywhere with it anyway...nobody would do anything about it anyway"*  
*(Non-complainer, older, South)*

Spontaneous perceptions of the complaints process were largely negative. Respondents believed that the process would be:

- Arduous and taxing: they would be required to relive the (stressful) incident over a long period of time.
- Potentially fruitless: some did not expect to get the outcome they wanted. This view was fuelled by media stories where professionals were 'let off' and also by the fear that professionals would close ranks to protect each other and their profession's reputation.
- Long: there was a perception that anything related to the NHS would be slow; gathering both sides of the story would take time.



- Linked with financial compensation: respondents often envisaged that there would be a financial pay-out at the end of a serious complaint (they drew parallels with going to court, again probably driven by media coverage of medical negligence cases and the prevalence of 'no win no fee' offers).

*"You probably wouldn't want to put yourself through it; if you needed to complain, you've probably been through enough" (Non-complainer, older, Northern Ireland)*

*"I wouldn't know where to start and I would think it would be a long drawn out process" (Non-complainer, older, Scotland)*

## **4.2 Reaction to current fitness to practise procedures**

Few respondents were familiar with the term 'fit to practise'. Any awareness they did have tended to come from high profile media cases, and as a result most respondents assumed that a FtP complaint would be very serious, and most likely result in the professional being struck off.

Most perceived the meaning of FtP as broad: that a professional would have the relevant training and qualifications; that they would keep up to date with advancements; that they would display appropriate behaviour and adopt the right attitude; and that they were experienced in their field (and not recently qualified).

*"There must be a checklist of things you'd have to have before you could even get a job" (Non-complainer, older, Northern Ireland)*

They believed a professional would be unfit to practise if they: had complaints made against them; made persistent mistakes in diagnosis, treatment and

care of patients; did not have the relevant qualifications; displayed inappropriate behaviours or attitudes.

*"To be unfit they would have to make a major mistake; assault, neglect, anything really that would bring the health authority into disrepute"*  
*(Non-complainer, older, Wales)*

There was no real spontaneous awareness of specifically what the FtP complaints process involved; only two respondents had some awareness of the panel hearing element of the process.

Respondents had the current FtP procedure described to them, as follows:

**Fitness to Practise** procedures allow professional bodies to respond to the most serious concerns, which call into question a health and care professional's right to retain professional registration.

**Stage 1:** An initial decision is taken as to whether a complaint should be investigated. This decision is taken by the regulatory body for that particular healthcare profession (e.g. the General Medical Council for Doctors, or the General Dental Council for Dentists).

**Stage 2:** Where the concerns raise questions about the professional's fitness to practise, an investigation into the allegations begins. This investigation is conducted by the regulatory body and a decision is made as to whether the allegation should be heard by a fitness to practise panel. The length of the investigation depends on the complexity and seriousness of the concerns.

**Stage 3:** A panel hearing is held to consider the evidence, determine, whether a professional's fitness to practise is impaired and, if so, which sanction (if any) should be applied. A range of sanctions may be considered:

- A warning is issued to the professional
- Conditions are placed on the professional's registration (for example the professional must undergo certain training, or cannot conduct certain procedures)
- The professional is suspended from the register for a period of time
- The professional is removed from the register (struck off)

The primary association on hearing the description was with a court case or court hearing – that evidence would be presented from both sides, that the evidence would be debated, and that a verdict would be delivered. Most believed that a hearing was the best way to get a fair and balanced outcome, because the socio-cultural arena in the UK places a court as the place where evidence will be debated, where things are brought 'out in the open' and ultimately where justice can be accessed.

*"I would imagine it would be a bit like being in the dock"*  
*(Non-complainer, younger, Northern Ireland)*

*"It seems similar to the criminal justice system; it seems as good a model as any. I'd be happy with that if I was complaining"*  
*(Non-complainer, younger, South)*

The ability to 'tell your story' was an important benefit of a hearing. Respondents felt it would be important for both themselves and the professional to tell their side of the story face to face. There is a cultural discourse that honesty (or dishonesty) or remorse can be seen on a person's face, and this was important to respondents.

*"I'm sure these people know what they're looking for and if either person is telling fibs, it's going to show"* *(Non-complainer, older, Wales)*

This forum for presenting all the evidence and talking through what had happened was important for other reasons as well. Firstly, bringing the complaint to a hearing signals that it has been taken seriously and is being treated with the appropriate gravity, which is reassuring to respondents. Secondly, having everyone gathered together in one location affords the complainant the opportunity to ensure that their case is presented correctly and accurately, and correct any errors in that presentation. Finally, it was believed that this thorough review of the case and the evidence would uncover any previous offences that the professional had committed.

*"I like the sound of a hearing because then you can hear both sides"*  
(Non-complainer, younger, South)

*"It gives both sets of people a chance to express our sides of the story"*  
(Non-complainer, older, South)

The concept of a panel was well-received; respondents were impressed and reassured that there would be more than one person deciding the outcome, as this was perceived to remove any potential bias and enhance the likelihood of a fair outcome. There was a focus on and curiosity around the make-up of the panel. Some were concerned that those on the panel might know the professional in question. Those who assumed that those on the panel would not know the professional were reassured by this independence. There were mixed opinions on the makeup of the panel. Some thought it would be made up solely of people in the same profession. This was perceived negatively because they would potentially have sympathy with the professional in question. Others, however, thought it would include some members of the public. This was thought to be key to providing a fair and balanced decision.

Overall, however, it was imagined that a hearing would be extremely painful and unpleasant with a great deal of stress before, during and after the

session. It was perceived that this stress would be driven by a number of factors:

- That the complainant would be the underdog, facing an intelligent, articulate professional who would be capable of talking his way out of the situation
- That the hearing would be full of legal and medical jargon that the complainant would struggle to understand
- That the professional would have weighty legal representation ready to fight his corner and discredit the views of the complainant
- That it could be difficult for the complainant to recall the finest details of their complaint after a significant period of time had passed; and that any lack of confidence or hesitation in describing the specific details of their complaint would be leveraged by the professional's legal team
- That on a practical level, the complainant would have to take time off work, spend time in preparation (typically re-familiarising themselves with the incident and ensuring all the paperwork was in order) and, for some, an expectation that a solicitor would have to be appointed (and paid for).

*"Medical professionals can be quite intimidating, you'd think they'd have all the jargon, they'd know all the answers" (Non-complainer, older, Midlands)*

*"Having to argue about something in front of a lot of people who are specialists in that profession; that would be intimidating"*  
*(Non-complainer, older, South)*

### 4.3 Reaction to alternatives to final panel hearings in FtP complaints

Respondents were presented with the following explanation of the alternatives to final panel hearings:

Generally, cases would go to a hearing if the professional wants to contest any aspect of it. However, some regulators are developing new ways of dealing with cases at Stage 3 without taking them to a hearing, on the basis that the professional may not always want to contest the case.

Non-hearing based approaches would tend to relate to cases where the professional is willing to admit the facts, agrees that they are not fit to practise, and agrees to the sanction.

At the end of the investigation stage, the regulator could choose to approach the professional and ask if they would like to agree the outcomes of the case without going through a hearing. This process could ultimately lead to any of the sanctions that are available under the current system (warnings, conditions of practise, suspension or striking off).

The alternatives to final panel hearings were very well received, and spontaneous reactions from the majority of respondents were positive. The changes are thought to make fundamental sense and indeed some wondered why these changes hadn't already been made, because they seem so logical.

*"I would have thought that would have been the logical way to go in the first place. If he says 'OK, I made a mistake', then the steps to make sure it doesn't happen again should come straight into play"*  
*(Non-complainer, younger, Northern Ireland)*

The perceived advantages of the alternative approaches were as follows:

- All parties involved (the complainant, the professional and the regulator) would benefit from time savings (there is an assumption that the complaint process would naturally be shortened and professionals who are unfit to practice would therefore be reprimanded sooner) and reduced stress (the complainant would not be forced to relive an unpleasant incident in front of the person who had 'harmed' them). It was also thought that the alternative approaches would save on costs. Respondents believed that as taxpayers, this would benefit them, as well as the other parties involved.
- A minority thought that the change would make colleagues more comfortable in making complaints against each other, as they would not have to face each other in a hearing situation. This was seen as a positive, as colleagues and employers are thought to be better placed than members of the public to recognise behaviour which does not come up to standard, therefore any channels for them to raise their concerns should be facilitated.
- Overall, it was viewed as positive that the process was being evaluated and refreshed; this reflected positively on the regulators, and signifies to respondents that regulators do want FtP procedures to run smoothly and efficiently.

*"The outcome would be quicker...if there's a dodgy doctor around it would be dealt with quicker, and that's what you want. Get them off the scene quicker"*  
(Non-complainer, older, Northern Ireland)

*"I much prefer the newer option. It seems much quicker and smoother"* (Non-complainer, younger, South)

However, respondents did have some real concerns about the alternative approaches to final panel hearings:

- As discussed earlier, while respondents perceived that attending a hearing would be unpleasant and stressful, they did ultimately view a hearing as an important forum for evaluating, debating and discussing the evidence relating to the complaint. Therefore, some respondents feared that the absence of a hearing would mean the absence of a thorough investigation of the evidence, which may not result in 'justice' being done. This did not sit well with many respondents.
- Once again, some respondents drew comparisons with trials, and assumed that professionals would be 'rewarded' with a lighter sanction for admitting to their actions and saving all parties involved from going through the stress of a hearing. This was a concern for some respondents, who wanted to be reassured that this would not be the case, and that the same levels of sanctions would be applied.
- Some voiced concerns that the complainant might be at a disadvantage by not being able to attend a hearing; the panel would not be able to see or gauge the emotional (or physical) impact that the incident has had on them; and the complainant would not be able to correct the purported version of events if he or she believed it was not conveyed accurately.
- Concerns also arose that a professional might admit to an offence they believed would carry a light sanction in order to avoid an investigation which might uncover other, as yet undiscovered, misdemeanours which would result in more serious punishment.
- For some, the removal of the final panel hearing from the process has the air of a 'closed shop' about it; that the hearing is the opportunity for the



public to be reassured that justice is being done, and that this would no longer exist.

- The complainant would not have their 'day in court' which would be important to some from an emotional perspective; although stressful, some claim they would derive satisfaction and closure from seeing the professional being held publicly to account, from seeing justice done and from seeing the professional 'suffer' in front of his or her peers and the public.

*"You might think, well I've brought a complaint, I want to see it through, and it might feel like 'thanks very much' but it's not happening"*

*(Non-complainer, older, South)*

*"You might feel like you haven't been given a chance to put your point across when you want to, and that's why you brought the complaint in the first place"*

*(Non-complainer, older, South)*

*"The caveman in me may want to see him sit there and squirm" (Non-complainer, older, Wales)*

On balance, however, the proposed changes were very well received. While respondents did voice these real and specific concerns about alternatives to hearings, on balance they saw the changes as being for the better, as long as they can be confident that the following still hold true:

- ✓ That complaints are recognised and taken seriously
- ✓ That a thorough investigation of all the facts is conducted
- ✓ That the professional is held to account for their actions
- ✓ That an appropriate sanction is applied

As long as the public can be confident that these four boxes are 'ticked', then they are happy with the new approach and would feel protected by the regulators.

*"As long as everything's still regulated, then it doesn't make any difference"  
(Non-complainer, younger, South)*

However, some respondents did believe that in some cases a hearing based process would always be necessary. Some believed a hearing was important when there was any doubt at all about what had happened, in which case it would be important to establish the truth and give everyone concerned the opportunity to argue their case. Others believed that when a case reached a certain level of severity (the most severe cases) then even if a professional accepts the complaint, he should still be held to account publicly.

A very small minority (only one or two respondents) rejected the alternative proposals. They believed that the complainant would be disadvantaged because they would be denied their 'day in court' and the opportunity to see justice served; they also believed that the professional was somehow getting 'off the hook' by not being made to face the allegations in public.

*"I appreciate it would reduce stress, but to me the issue of stress would be second to wanting to see it done properly. If the issue was that serious that it had got to a hearing, I'd want to have my day in court and know that justice had been served" (Non-complainer, younger, South)*

*"That lack of transparency is a negative. Although you'd be told that a punishment had been doled out, you wouldn't see the evidence being reviewed, you wouldn't see justice unfolding...I think transparency is more important than saving money. Without transparency, anything could go on...putting it behind closed doors gives room for leniency when perhaps there shouldn't be" (Non-complainer, older, South)*

*"It shouldn't just be, you've been a bad boy, you're no longer a doctor, now off you go. No. Everyone who's been affected should have their time in court, it shouldn't be hush hushed away and swept under the carpet and he just gets on with his life" (Non-complainer, older, South)*

Some would like there to be scope for the complainant to input into the decision of whether there is a hearing or not.

## **5. MAIN FINDINGS – COMPLAINERS**

### **5.1 Experience with the FtP process**

Respondents had made a complaint to the General Medical Council, the General Dental Council, the Health and Care Professions Council and the Nursing and Midwifery Council. All respondents were impressed that their complaint had been taken to a hearing; in their eyes, this was recognition of the gravity of the situation. However, there were mixed levels of satisfaction with the process.

Respondents who displayed a higher degree of satisfaction tended to state that:

- They had been well supported by the regulator in question and that communication channels had been open; that they had had the whole FtP process explained to them and their expectations of what would happen at the various stages managed along the way. One respondent who was exceptionally nervous about attending the hearing had been escorted by the General Dental Council to another hearing in advance of her own to familiarise her with the setting, atmosphere and process she might expect.
- The process had not taken as long as they expected, or had seemed to be completed relatively quickly.

- The professional had received what they deemed to be an appropriate sanction – in most cases, this was a harsh sanction such as strike-off or suspension.

*"It was all very clearly explained to me what would happen at the hearing, and what the potential outcomes were; I'd read up on it on the website as well"*  
(Complainer, older, South)

Conversely, respondents who were less satisfied claimed that:

- They had received little communication, empathy or support from the regulator and as a result felt unsupported through the process

*"What I think would have been nice is if someone had actually called me to go through it"* (Complainer, older, South)

- The process had taken an unfeasibly long time (up to 2 years), making it harder for them to recall the details of their case by the time the hearing arrived; in addition, they had to live for a prolonged period with a negative event 'hanging over them'
- The professional had received what they deemed to be an inappropriately light sanction (a warning, or conditions on their registration). This did not satisfy their emotional need to see the professional be 'punished'; it also sent the complainant a message that their complaint was not actually that serious, which was offensive to them, and left them feeling that they had negotiated a stressful and unpleasant process 'for nothing'

*"He got off; they said to him he couldn't do any more implants for 6 months until he'd got more experience or something; and that was it! It was just like 'smack smack, you're a naughty boy, don't do it again', it was disgusting"*  
(Complainer, older, Midlands)

All respondents, however, had one shared experience – that the reality of attending the hearing was more stressful than they had ever anticipated. None were aware that their complaint would go to a hearing until they were informed by the regulator. While this was generally welcomed, it did appear to add a new level of anxiety to the process, with most claiming they experienced heavy levels of stress in anticipation of the hearing. Returning to the associations with a court case, complainants claimed they began to worry that their integrity would be called into question, that they would have forgotten the details of their incident and would be unable to relay them in a pressurised environment, and ultimately the hearing would boil down to a ‘me versus them’ scenario which they were unlikely to win.

The hearing itself was described as an intimidating and generally unpleasant experience. It is worth noting that several complainers who had experienced FtP hearings and agreed to participate in our research dropped out of the study at short notice as they had decided they had no wish to revisit the experience. Respondents described:

- Feeling challenged: they claimed they were questioned, cross-examined and discredited by the professional’s lawyer, often aggressively.
- Being outnumbered: most described that the professional had a number of people with them; the complainant was often there alone, or with a friend or family member. This left the complainant feeling that the process was heavily weighted in favour of the professional.
- Feeling confused and out of their depth: the hearing was full of legal and medical jargon that they struggled to make sense of, and as a result it was hard to keep up with what was going on.

*"It was as if you as a person were on trial...they'll trip you up"*

*(Complainer, older, South)*

*"I spoke to them for about three quarters of an hour, and it was quite intimidating. I was emotionally exhausted. I could have stayed to listen to the paramedics give their version of events, but it had been so traumatic that I left" (Complainer, older, South)*

*"His solicitor stood up and said his piece. He was very, very aggressive; I felt that he was blaming me" (Complainer, older, South)*

At this stage, one or two spontaneously expressed a desire for the system to be developed so that a hearing was not always necessary, or could be avoided if possible, so that others would not have to endure this level of stress in future.

Complainants were most interested in the sanction, as this is considered the final piece of the process. Those who attended the hearings heard the sanction straightaway; those who didn't attend the hearing were informed in writing of the decision. Often, respondents claimed they did not understand the justification for the sanction, or how the decision was arrived at. If they were unhappy with the sanction (believing it to be too light) then this was a point of annoyance.

However, once they had been told the sanction, all complainants regarded this as the end of the process. None had received (or appeared to desire) further support or information from the regulator. In addition, respondents claimed they were emotionally exhausted by this stage, and wanted to let go of the process.

## **5.2 Reaction to alternatives to final panel hearings in FtP complaints**

Respondents were presented with the following explanation of the alternatives to final panel hearings:

Generally, cases would go to a hearing if the professional wants to contest any aspect of it. However, some regulators are developing new ways of dealing with cases at Stage 3 without taking them to a hearing, on the basis that the professional may not always want to contest the case.

Non-hearing based approaches would tend to relate to cases where the professional is willing to admit the facts, agrees that they are not fit to practise, and agrees to the sanction.

At the end of the investigation stage, the regulator could choose to approach the professional and ask if they would like to agree the outcomes of the case without going through a hearing. This process could ultimately lead to any of the sanctions that are available under the current system (warnings, conditions of practise, suspension or striking off).

Those who had already experienced a FtP panel hearing were heavily in favour of an alternative approach.

They have direct experience of the stress involved in a hearing and would welcome ways of avoiding it. They also believed that any opportunity to speed up the process would be welcomed. Finally, they did express frustration with the resources and costs they had seen to be involved in the hearing process; this could be reduced under the new proposals.

*"I think it might make people feel more comfortable about actually taking cases forward, if there might not be a hearing" (Complainer, older, South)*

*"I wouldn't have minded [there not being a hearing], it would have been fine, as long as I felt it had been taken seriously and investigated, and there was a proper judgement at the end of it" (Complainer, younger, South)*

*"They take you all the way to London and put you up in a four-star hotel...why has it got to be held in London? These are all things that as a taxpayer I noticed" (Complainer, older, Midlands)*

Complainants with experience of the hearings had no real reservations about moving to an alternative approach which might not involve a hearing. Having experienced the process, they did not share the same concerns as non-complainers:

- They did not have the same strong sense as non-complainers that the hearing is the primary opportunity for investigation of the complaint (having given detailed statements prior to the hearing), and therefore that the investigation element of the process would be compromised if a hearing did not take place. In fact, one complainer elected not to attend the hearing because he believed that he had been given sufficient opportunity to put forward his case at the evidence-gathering phase, and did not need to put himself through the stress of the hearing.

*"I did not attend. We were all very upset about the incident; all I wanted was for this nurse to be officially reprimanded by her governing body. So I didn't feel it was necessary that I attended. The evidence gathered by the investigator was very comprehensive, and I didn't feel that I needed to add anything" (Complainer, older, South)*

- Having experienced the stressful reality of a hearing, their desire to see this part of the process removed if at all possible appears to have overridden anything else.



## **6. HOW COULD THE NEW APPROACH WORK?**

Clear communication is key to acceptance of the new approach. To work well and fulfill the regulators' three aims, there is a need to reassure or educate the public around certain assumptions they make when told about the proposed alternative approaches. These are as follows:

- There is an assumption that the hearing is the place where the complainant is afforded the opportunity to tell their 'side of the story', and that this opportunity might be lost under the new proposals. It is therefore important to reassure the public that they would still be given the opportunity to express their complaint in detail.
- There is an assumption that the hearing is a key forum for debating and discussing the evidence, and as such an assumption that a non-hearing based approach may involve a lesser investigation of the evidence. The public would have to be reassured that this is not the case, or at least that their evidence would still be thoroughly reviewed.
- There is an assumption that sanctions are decided by a person or group of people who are independent of the professional (in other words, not colleagues or others who are known to them professionally); the public would have to be reassured that this would still be the case under any new approach.
- There is an assumption that a professional may receive a lighter sanction for admitting their guilt and avoiding a hearing. The public would seek reassurance that this was not the case. If professionals would in reality receive a lighter sanction due to mitigation, this should be clearly explained to the public, and it should be explained that an 'appropriate' sanction is still being applied.

- There is an assumption that because the visible, public face of the process would be removed that the whole FtP complaints process would become more closed, and that complaints would be more easily 'brushed under the carpet' than they are at the moment. To alleviate these concerns, transparency throughout and after the process, including publication of the sanction and the rationale for the sanction, would be of the utmost importance.

The proposed changes are not perceived to impact negatively on the three regulatory aims of protecting the public, upholding professional standards and protecting confidence in the profession. In fact, if the alternative processes and standards are clearly communicated, and respondents' concerns are satisfactorily addressed, the alternative approaches could in fact enhance regulators' achievement of their critical aims:

- Protecting the Public: for some, the changes would better enable the regulators to protect the public. Complainants would be saved the stress of attending the hearing, which is clearly beneficial to them. 'Unfit' professionals would be removed from the system more quickly, which is the most ultimate objective.
- Upholding Professional Standards and Protecting Confidence in the Profession: respondents saw these two aims as being closely linked. As long as the investigation was conducted by an independent party, and the sanctions remained the same, respondents did not think the proposed changes would compromise these objectives in any way. In fact, dealing with the process more swiftly and efficiently can only be a good thing. This signals to respondents that the regulators are actively interested in maintaining high standards – which ultimately benefits the public.

*"It would still protect the public, because you are still going to get the same outcomes however you do it" (Non-complainer, older, South)*

*"I would assume that the regulator is a perfectly qualified person to make those decisions, and whatever they decide is the sanction for someone, they must have deserved it. Where do you draw the line about having confidence about regulators? You could question everything; you've got to put your trust in them"* (Non-complainer, older, Northern Ireland)

The perceived rationale behind the proposed changes seemed logical and credible to respondents. Time and cost savings were the most commonly cited factors, but this was viewed positively as enhancing efficiency, rather than negatively associated with 'cutting corners'. Ultimately, as tax payers, respondents believed they would benefit from cost savings. Reducing strain on the complainant and the professional can only be a good thing; although one or two complainers were less interested in the welfare of the professional.

*"They are making these changes because it's cost and time effective. Better for the people involved"* (Non-complainer, older, Midlands)

*"As long as they're saving money and not cutting corners, I think that's a good thing. If they're saving money to be efficient, that's acceptable"*  
(Non-complainer, older, South)

## 7. WHAT IS PSA'S ROLE?

Respondents' awareness and knowledge of the purpose and role of PSA was extremely limited. However, they envisaged that PSA's role would be:

- To provide a clear step-by-step guide to how to complain about a health or social care professional, as this was a mystery to most respondents. Some non-complainers claimed they might be more likely to complain if there was a clear-cut path for them to follow.
- To provide communication and reassurance around the changes.
- To explore trends around complaints and consider action to pre-empt complaints in the first place.
- To monitor the regulators and ensure:
  - That some complaints still go through the hearing based process
  - That some complaints go through the alternatives to final panel hearings
  - That there is no change in level or number of sanctions

*"I think they should monitor the success of the new procedure. Perhaps track the outcome of the new process versus the old process to check that the process hasn't led to more lenient punishments"*

*(Non-complainer, younger, Scotland)*

## **8. CONCLUSIONS AND RECOMMENDATIONS**

- Respondent expectations of the complaints process were vague and unformed. Respondents did not feel confident and knowledgeable in making a complaint, with most claiming they would begin by approaching the place of work of the professional or doing online research.
- Respondents felt they would make complaints rarely, if at all. This can be attributed to the perception that the complaints process is long and arduous and to the respondent's expectation that the outcome would often be dismissal of the complaint. Their decision to make a complaint was based on the extent of the damage done but also on the professional's level of regret and apology.
- It should be emphasised that the alternatives to final panel hearings can potentially make the complaints process slightly shorter, and less stressful and arduous.
- Non-complainers had very little spontaneous knowledge of what fitness to practise complaints entailed. Whilst the both the language and the exact mechanisms of FtP complaints process were new to them, that fact that there was 'something' there to hold professionals to account was not. Respondents found this reassuring.
- Spontaneously respondents did not expect that the complaints process would involve a hearing. Views towards the hearing were mixed: most felt it would guarantee a fair and balanced outcome whilst others had concerns around the impartiality of those on the panel. Most of all, respondents perceived the hearing as a stressful experience which would not necessarily guarantee the outcome they wanted.
- It should be highlighted that the changes will both reduce stress for the complainant whilst guaranteeing a fair and balanced outcome.

- The general public regulates health professionals by making complaints and taking them through FtP procedures. Arguably, anything that encourages the general public to do so is strengthening regulatory processes.
- Broadly respondents felt the changes were well-intentioned and valuable. They felt the changes would streamline the process, bringing cost-saving benefits and reduction in stress for all parties: the complainant, the professional and the regulator.
- The public should be made aware that the changes are being made for the benefit of all parties, not merely as a cost-saving exercise – although that is one of the perceived benefits.
- To work well and fulfill the regulator's aims, alternatives to final panel hearings need to reassure the public around certain issues. This can be achieved by communication that:
  - Complaints will be fully investigated
  - The regulator will talk to complainants face-to-face
  - Sanctions will be applied in the same way. If mitigation forms part of the sanction process, this must be clearly explained so that complainants do not assume the professional is being 'rewarded' for accepting the complaint against them
  - Sanctions will be decided by an independent and unbiased person / people
  - Complainants will be kept in the loop during the process
  - Complainants will be informed of the sanction and the rationale for it
- Respondents felt that when there was any dispute over the events, this demanded a hearing.

- Some respondents felt that very severe complaints should have a hearing, even if the professional accepts the complaint and agrees they are not fit to practise.
- Some would like there to be scope for the complainant to input into the decision of whether there is a hearing or not.
- Although the respondents found PSA difficult to picture, there was a sense that it could have a positive impact on the process. There is certainly a role for PSA to ensure the public are comfortable with the changes:
  - PSA should ensure that the public is reassured on particular issues.
  - PSA should monitor outcomes and process of the alternatives to final panel hearing and assess their success.
  - PSA should monitor complaints, identify trends in and deal with issues to avoid complaints.

**APPENDICES:**  
**RESPONDENT PRE-TASKS**  
**TOPIC GUIDES**  
**STIMULUS MATERIAL**



## **APPENDIX A – PRE-TASK EXERCISES**

### **Pre-task exercise – Have made a Fitness to Practise complaint**

Dear Respondent,

Thank you for agreeing to take part in our survey about how professional bodies deal with complaints made against health and care professionals. We are specifically interested in how Fitness to Practise complaints are made to the following professional bodies.

We understand that you have made a complaint to one of the professional bodies listed below.

- **General Chiropractic Council** - chiropractor
- **General Dental Council** – dentists and dental hygienists, nurses, technicians, therapists
- **General Medical Council** - doctors
- **General Optical Council** – opticians and optometrists
- **General Osteopathic Council** - osteopaths
- **General Pharmaceutical Council** and **Pharmaceutical Society of Northern Ireland** – pharmacists, pharmacy technician
- **Health and Care Professions Council** (regulate arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, social workers and speech and language therapists)
- **Nursing and Midwifery Council** – nurses and midwives

We will be discussing how regulatory bodies deal with Fitness to Practise complaints. Please note down key points of your experience with the complaints procedure.

- Which professional body did you complain to?
- Briefly describe key points in the complaints process you experienced?

- In the future how would you view if different types of Fitness to Practise complaints procedure were available to potential complainants – the current staged process leading to a Fitness to Practise hearing or a Fitness to Practise process which would not involve a hearing?

Please bring this along to our discussion – many thanks!

We look forward to seeing you.

Karen Silverthorne  
Project Co-ordinator

**Pre-task exercise – Have not made a Fitness to Practise complaint to a professional health and social care body**

Dear Respondent,

Thank you for agreeing to take part in our survey about how professional bodies deal with complaints made against health and care professionals.

We are specifically interested in how **Fitness to Practise complaint** is made to the following professional bodies.

- **General Chiropractic Council** - chiropractor
- **General Dental Council** – dentists and dental hygienists, nurses, technicians, therapists
- **General Medical Council** - doctors
- **General Optical Council** – opticians and optometrists
- **General Osteopathic Council** - osteopaths
- **General Pharmaceutical Council** and **Pharmaceutical Society of Northern Ireland** – pharmacists, pharmacy technician
- **Health and Care Professions Council** (regulate arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, social workers and speech and language therapists)
- **Nursing and Midwifery Council** – nurses and midwives

**Before you come along to our discussion, we would like you to imagine you are considering making a Fitness to Practise complaint about one of the health and care professionals listed above to their professional regulatory body.**

Please consider the steps you might make if you wanted to make a Fitness to Practise complaint and what you would expect of the complaints procedure:

- What would you do first?
- Where would you go to submit your complaint?

- How would you expect your complaint to be dealt with?
- Would you expect different types of Fitness to Practise complaints procedure to be available e.g. a staged process leading to a fitness to practise hearing or a process which would not involve a hearing?

Please bring this along to our discussion – many thanks!

We look forward to seeing you.

Karen Silverthorne  
Project Co-ordinator

## APPENDIX B – TOPIC GUIDE

### **The Professional Standards Authority for Health and Social Care Non-hearing based responses to complaints about the fitness to practise of health professionals and social workers Outline Topic Guide FINAL**

- **Introduction:** introduce self and RWL, independent market research agency, confirm that survey being completed on behalf of the Professional Standards Authority. Establish permission to record interview in accordance with the requirements of Data Protection Act and MRS Code of Conduct
  - **WARM-UP:** respondent status, specifically work and family
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### **THE INITIAL STAGES**

#### **For those that have *not* made a complaint:**

- **Understanding Fitness to Practise:** What does 'Fitness to Practise' mean to you? What does this term encompass?
- What do you think a health professional or social worker might have to do / be to be considered fit to practise?
- And to be considered unfit to practise?
- **Definition of Fitness to Practise:** once spontaneous views have been fully explored, introduce definition of FtP:

Health professionals and social workers are required to be registered with the relevant regulator to be able to practise. They obtain registration by meeting the regulator's standards of qualification, skill and conduct. They maintain their registration by continuing to meet these standards. If a **patient, member of the public, employer, colleague or anyone else** has a concern about the professional's conduct or competence, they can raise it with the regulator. The regulator then has to consider whether these concerns may call into question the professional's 'fitness to practise'. Being fit to practise means that a health professional or social worker has the skills, knowledge and character to practise their profession safely and effectively.

- Spontaneous thoughts / opinions around this definition. Is it similar / different to what they expected? If so, in what way?
- **Initiating a complaint:** What types of situations do you think might generate a formal complaint about the Fitness to Practise of a health professional or a social worker and what circumstances would definitely generate a complaint, which are more marginal and which might not? Why is that? Probe: any differences in type of complaint depending on who is complaining, that is, general public, patient, employer or colleague?
- Are there any actions by the health or social care provider or professional that might make you less inclined to make a formal complaint? Why is that?
- **Pre-task exercise:** discuss the thoughts noted in their pre-task, what would expect from a complaints procedure? Why is that?
- What do you imagine the **first steps** would be in terms of making a complaint? Why do you say that?
- Who would you **contact initially**? Who else do you think you might have to deal with? Why do you say that?
- **From whom** would you seek advice and support in relation to your complaint? Why is that?

- What **type of advice and support** do you think that you might need?  
Why is that?
- What would be your **specific objectives** in making a complaint? Why?
- What kind of outcome would you expect if you made a complaint? Would this differ depending on the type of complaint? (e.g. apology, strike off, compensation etc.)
- Do you have any idea what might be **expected** of you if you make a complaint?
- **How long** do you think it would take to go through the complaints process
- Do you think you would incur any **costs** from doing so? If so, where would these costs come from?

**For those that *have* made a complaint:**

- Experiences of a hearing based Fitness to Practise. *NB: Moderator needs to strike a balance between paying enough attention to the incident that inspired the complaint, but moving respondent on to experiences of the complaints process reasonably quickly.*

Discuss the approach:

- What are the strengths of a hearing based FtP?
- What are the drawbacks of a hearing based FtP?

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**STIMULUS OVERVIEW OF FTP PROCEDURE (SEE ATTACHED STIMULUS)**

**For those that have *not* made a complaint:**

- Were you **aware of the hearing process**? If so, what have you heard about it and why do you think that is?
- What are the **benefits / disadvantages** of a hearing process? Why?

- What **outcomes** would you expect from a hearing process? Why do you say that?
- What **preparations** would expect to make for a hearing? Why is that?
- What **support and advice** would you seek for a hearing? Why is that?
- What would you expect to **happen on the day?**
- Who would be in **attendance** at a hearing?
- What would you expect to **happen after the hearing?** Why do you say that?
- How much **confidence** would you have in a hearing process? Why do you say that?
- Overall, what would be your **principle concerns** about attending a hearing and the potential outcomes? Why is that?

**For those that *have* made a complaint:**

The hearing stage:

- Did you know what the **process** would be at the hearing stage?
- Were the potential **outcomes** made clear to you at this point?
- Did you know what would be **expected of you** during the hearing?
- Did you feel **adequately prepared** for the hearing?
- Did you have any concerns about the **practical arrangements** for the hearing? *Probe: looking back, what in particular would have helped you to feel more confident about the practical arrangements?*
- Did you feel that you had the **same access to information as registrants** before the hearing?
- What **level of support** was available to you before the hearing?
- How did you feel about being questioned during the hearing?
- Did you feel **comfortable** during the hearing? If not, why not? How could complainants be made more comfortable in future?
- What **level of support** was available to you during the hearing? How was the final decision communicated to you?



- Do you feel that the decision-making process was transparent? Why/why not? How could transparency be improved in future?
- What **level of support** was available to you after the hearing?

### **Summing-up: thoughts on the FtP overall**

- **Overall, how satisfied were you with a hearing based Fitness to Practise FtP process?** *Probe: identify points on the timeline when you were more and less satisfied by drawing and rising and falling satisfaction curve*
  - Overall, how satisfied were you with the **time taken to deal with a complaint through a hearing based Fitness to Practise approach?** *Probe: what is an appropriate timescale?*
  - **Overall, how satisfied were you with the outcome?**
  - In hindsight, are there any aspects of the process that would put you off raising or following through a complaint with a regulator in the future?
  - **In future, what could regulators do to improve the process?**
- 

### **NEW WAYS TO DEAL WITH COMPLAINTS**

*Respondents to consider the new fitness to practice procedures being introduced/considered by bodies such as the NMC and GMC:*

- **Currently, a different approach to fitness to Practise complaints is being considered by a number of professional bodies. This approach would not involve a hearing and would broadly be as follows:**

Generally, cases would go to a hearing if the professional wants to contest any aspect of it. However, some regulators are developing new ways of dealing with cases at Stage 3 without taking them to a hearing, on the basis that the professional may not always want to contest the case.

Non-hearing based approaches would tend to relate to cases where the professional is willing to admit the facts, agrees that they are not fit to practise, and agrees to the sanction.

At the end of the investigation stage, the regulator could choose to approach the professional and ask if they would like to agree the outcomes of the case without going through a hearing. This process could ultimately lead to any of the sanctions that are available under the current system (warnings, conditions of practise, suspension or striking off).

- **Initial reactions** – positive/negatives? Why do you say that?
- Overall, what aspects of these new approaches seem to be an **improvement** on current processes? Why do you say that?
- What aspects do you **specifically like** and why is that?
- What aspects of these new approaches seem **potentially less effective** than current processes? Why do you say that?
- What aspects do you **specifically dislike** and why is that?
- How do you **feel** about the idea of non-hearing based methods for resolving complaints? Why do you say that?
- What are the **specific strengths** of this approach? What might be gained? Why is that?
- What are the **specific weaknesses** of this approach? What might be lost and why is that?
- This new non-hearing based approach could be adopted for complaints regardless of where they originated from - the general public, patient, employer or colleague. What impact, if any does this have on your views? Why do you say that?

- To what extent do you believe that the proposed new approaches **will or will not enable** regulators to:
  - ***Protect the public.***
    - Initially: why do you say that?
    - In what ways might the new arrangements be more effective than the existing hearing-based approach in terms of protecting the public? Why is that?
    - In what ways might the new arrangements be less effective than the existing hearing-based approach in terms of protecting the public? Why is that?
    - How could the new processes be safeguarded or improved in terms of maintaining/increasing protection for the public?
  - ***Uphold professional standards***
    - Initially: why do you say that?
    - In what ways might the new arrangements be more effective than the existing hearing-based approach in terms of upholding professional standards? Why is that?
    - In what ways might the new arrangements be less effective than the existing hearing-based approach in terms of upholding professional standards? Why is that?
    - How could the new processes be safeguarded or improved in terms of upholding professional standards?
  - ***Protect confidence in the profession***
    - Initially: why do you say that?
    - In what ways might the new arrangements be more effective than the existing hearing-based approach in terms of protecting confidence in the profession? Why is that?

- In what ways might the new arrangements be less effective than the existing hearing-based approach in terms of protecting confidence in the profession? Why is that?
  - How could the new processes be safeguarded or improved in terms of protecting confidence in the profession?
- In what ways do you feel that the **PSA can contribute to this change process** – in terms of:
- Introducing **safeguards and monitoring** the regulators’ management of largely non-hearing-based systems
  - **Balancing** voluntary action on the part of regulators with best regulatory practice, a need to reduce case-loads and the requirements of complainants
- **Why** do you think these changes **might be being implemented**? Who would benefit from these changes? Who might be disadvantaged by these changes?
- Explain: *these alternatives are proposed as a way of simplifying and speeding up the complaints process, as well as reducing stress on both complainants and professionals.*
- Discuss: thoughts on this rationale, benefits and disadvantages

**Summing-up:** any other thoughts/observations or suggestions regarding the idea of a non-hearing-based fitness to practice complaints system?

### **THANK AND CLOSE**

## APPENDIX C – STIMULUS

### Stimulus - Overview of FtP Process

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**Fitness to Practise** procedures allow professional bodies to respond to the most serious concerns, which call into question a health and care professional's right to retain professional registration.

#### **Stage 1**

An initial decision is taken as to whether a complaint should be investigated. This decision is taken by the regulatory body for that particular healthcare profession (e.g. the General Medical Council for Doctors, or the General Dental Council for Dentists).

#### **Stage 2**

Where the concerns raise questions about the professional's fitness to practise, an investigation into the allegations begins. This investigation is conducted by the regulatory body and a decision is made as to whether the allegation should be heard by a fitness to practise panel. The length of the investigation depends on the complexity and seriousness of the concerns.

#### **Stage 3**

A panel hearing is held to consider the evidence, determine, whether a professional's fitness to practise is impaired and, if so, which sanction (if any) should be applied. A range of sanctions may be considered:

- A warning is issued to the professional
- Conditions are placed on the professional's registration (for example the professional must undergo certain training, or cannot conduct certain procedures)
- The professional is suspended from the register for a period of time
- The professional is removed from the register (struck off)