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

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

Professional Standards Authority roundtable – 11th March 2024

professional standards authority

Agenda

- Welcome and introductions
- Background and overview of reforms
  - What do the reforms mean in practice – FtP
  - What do the reforms mean in practice - rulemaking
- Why is the PSA consulting on guidance?
- Overview of FtP guidance
  - Discussion
- Overview of rulemaking guidance
  - Discussion
- Next steps

Background and overview of reforms

- Government plans to change the legislation for nine out of the 10 professional regulators we oversee
- This will give them a range of new powers and allow them to operate in a very different way
- Changes will include:
  - how regulators handle fitness to practise concerns (the process by which concerns about healthcare professionals are dealt with)
  - more flexibility around rulemaking (how regulators develop their operational processes).

Background and overview of reforms

- The Physician Associate and Anaesthesia Associates Order going through Parliament now – this will bring PAs and AAs under regulation by the GMC
- The new model of regulation outlined in the AAPAO will then be rolled out to all the other regulators under the PSA's oversight (except for Social Work England)

What do the changes mean in practice? (Fitness to practise)

- Accepted outcomes are a new way of dealing with concerns raised about healthcare professionals.
- Instead of a case being sent to a public hearing in front of a fitness to practise panel, case examiners, employed by the regulator, will carry out a detailed assessment of the case from the written evidence.

What do the changes mean in practice? (Fitness to practise)

- The case examiner will decide:
  - If the registrant is impaired?
  - What, if any, action is needed to ensure that the registrant continues to be fit to practise in the future?
- If the registrant agrees with the case examiner's findings, and the sanction they propose, they can agree to resolve the case using an accepted outcome. This means there would be no need for a fitness to practise panel hearing.

What do the changes mean in practice? (Fitness to practise)

- The new process is likely to reduce stress on both the registrant and complainant and be less adversarial, quicker and more cost-effective.
- But it also means that neither the complainant nor registrant will have the opportunity to give their side of the story in person.
- It also means that the decision-maker(s) in the case won’t be able to ask questions of the registrant or witnesses to get a better understanding of what happened.

What do the changes mean in practice? (Fitness to practise)

- There is nothing in place to require certain kinds of cases to go to a panel (unless the registrant disagrees with the proposed sanction).
- There is also nothing in place to require regulators to use more than one case examiner so cases could be decided by just one person (professional or lay).

What do the changes mean in practice? (Rulemaking)

- Rules set out the process regulators have to follow to carry out their regulatory functions.
- This is the detailed information that sits below what is outlined in law.
- For example, it could include:
  - the process for adding or removing healthcare professionals from the register;
  - the approach taken to investigate complaints about professionals; or
  - how regulators go about quality assuring education and training courses.

What do the changes mean in practice? (Rulemaking)

- At the moment, regulators have to get all rule changes approved through the Privy Council
- Under the new model, reformed regulators will be able to change their operational rules setting out how they regulate without going through any external approval process.
- This should make it quicker and easier for regulators to update their regulatory processes when they need to.

What do the changes mean in practice? (Rulemaking)

- However, there will be fewer checks and balances in place as regulators will be responsible for their own rule changes.
- There is also the chance that regulators will develop very different approaches as they will have more flexibility.

What does this mean for the role of the PSA?

- We will continue to challenge unsafe panel decisions through s.29 (in the Courts)
- For accepted outcomes, regulators should set up an internal ‘revision’ process, which the PSA, or member of the public could request
- We will continue to check the process for appointing regulator Council members
- For all other aspects of the new model, the PSA will use its ability to publish guidance, and its performance review powers to promote good practice

Why is the PSA developing guidance for regulators?

- Explaining accepted outcomes and why we need you to respond to our consultation

- Explaining reformed rulemaking for regulators and why we need you to respond to our consultation

Why is the PSA developing guidance for regulators?

- As the oversight body the PSA is in a unique position to look across the regulators and provide advice on best practice
- We are producing this guidance to help regulators make best use of their new powers post-reform in a way which protects the public.
- We've chosen to focus on 'accepted outcomes' and rulemaking because we think these are the biggest changes introduced by the reforms.

Why is the PSA developing guidance for regulators?

- The PSA will not have any formal role within the rulemaking or ‘accepted outcomes’ processes
- Our guidance won’t ‘bind’ regulators or have any official status – it is intended to support and guide regulators in developing their own guidance/rules.
- For our Performance Review - where relevant, we might ask a regulator for more information about their approach, including whether, and how, they had taken the guidance into account.

Accepted outcomes guidance

- Our draft guidance sets out factors we think regulators should take into account when deciding whether a fitness to practise case is decided by a case examiner or whether it would be better for it to be heard by a panel.
- These include:
  - When a dispute on the evidence might need ‘testing’ at a hearing
  - When the case is particularly complex
  - When the registrant’s insight into their misconduct might need exploring.

Accepted outcomes guidance

- The guidance also contains factors for regulators to consider to ensure the accepted outcomes process is fair and transparent, and to promote effective decision-making.
- This includes:
  - when it might be appropriate to use more than one case examiner to decide on a case
  - Ensuring ‘lay’ (non professional) involvement in decision making
  - What information they should publish about a decision.

Discussion

1. Do you agree that some fitness to practise cases should still be heard by a panel in future?
2. How can we ensure that complainants feel heard in the accepted outcomes process?
3. Do you think regulators should continue to ensure lay involvement in fitness to practise decision-making?
4. Do you think that more than one case examiner (the people who make decisions about cases) might be required for some cases?

Rulemaking guidance

- Our draft guidance lays out principles to encourage regulators to use their new rulemaking powers in a way that protects the public and leads to fair and effective processes.
- The principles cover ensuring that rules:
  - Are consistent with right-touch regulation
  - Promote EDI
  - Support consistency of approach
  - Allow regulators to be agile
  - Support multi-disciplinary team working
  - Are based on good evidence and meaningful consultation.

Rulemaking guidance

- The guidance also provides advice to regulators on how to regulate in ways that are as similar to each other (consistent) as possible, avoiding differences in approach unless they are necessary.
- It helps regulators decide when and how they need to consult with stakeholders (including the public and professionals) on changes to their rules and processes.

Discussion

1. What do you think might be the positives and negatives of regulators being able to create/change their own operational rules?
2. Do you think it is important for regulators to follow a similar set of principles when making rules?
3. Do you think regulators should try to keep their regulatory approach as similar to each other as possible?
4. Do you think it is important that regulators consult properly with stakeholders including patients and the public?

How can you get involved?

- The consultation is open until 5.00 pm on Monday, 15 April 2024.
- Further information, including the full consultation document as well as the two draft guidance documents and links through to the survey to respond are on our website here - www.professionalstandards.org.uk/psa-consultation

Links to further information

- Explaining our draft reform guidance consultation (including FAQs) - here
- Accepted outcomes explainer animation – here
- Rulemaking explainer animation - here
- PSA consultation (English) – here
- PSA consultation (Welsh) – here

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