

## **Professional Standards Authority: Public consultation on the Professional Standards Authority's good practice guidance documents on the use of Accepted Outcomes in Fitness to Practise and Rulemaking**

The Scottish Social Services Council is the regulator for the social work, social care and children and young people workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland
- publish data and official statistics on the social work, social care and children and young people workforce

### **Questions**

#### **Fitness to practise**

#### **1. Do you think that our fitness to practise guidance will help regulators make the best use of accepted outcomes, and use them in a way that is fair, transparent and protects public interest?**

The SSSC initially adopted a consent-based approach to all orders and sanctions and in 2021 developed this into an opt in approach. Hearings now only take place if the worker actively requests one or if officers decide that a hearing is needed in the public interest, for public protection or for another reason, for example:

- where the evidence is finely balanced
- a decision on impairment is finely balanced
- a novel area of law is involved that should be tested

- there are concerns about the worker's capacity to engage with the hearing

Our experience with this opt in hearing approach has been positive.

**2. 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

Yes

**3. Do you have any comments on this factor, or the bullet points listed in our guidance under this factor?**

We agree that an accepted outcome cannot be imposed where a registrant disputes material findings. However, the phrase 'failure to accept' could include a failure to accept by omission. We would recommend considering changing the language to 'has the registrant disputed material findings and/or impairment?'.

**4. Factor 2: 'Is there a dispute of fact/conflict of evidence that can only be fairly tested using 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

Yes

**5. Do you have any comments on this factor, or the bullet points listed in our guidance under this factor?**

It may be appropriate where the evidence is finely balanced.

**6. 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

No

**7. Do you have any comments on this factor, or the bullet points listed in our guidance under this factor?**

We believe the complexity of the case is less relevant than the satisfaction that legal tests have been met.

**8. 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**

No

**9. Do you have any comments on this factor, or the bullet points listed in our guidance under this factor?**

We expect the level of insight expressed, the lack thereof, and/or any doubts about it, to be reflected in the proposed sanction decision. The decision should include the proposed sanction, and the reasons for that sanction, including the regulator's assessment of the registrant's insight. If the registrant disagrees with the assessment of the level or authenticity of insight, the registrant has the option of (in our case opting into a hearing) under the proposed model - not consenting. In such cases, Factor 1 (the workers fails to agree) would be engaged. In a case falling short of Factor 1, we are not convinced that a hearing is the most appropriate means of exploring insight.

Regulators should, of course, be flexible and sensitive to the individual needs of registrants. This may mean providing different ways of expressing learning and insight – i.e. writing may not be the most useful. A formal hearing with the possible delay and stress involved seems unlikely to be a situation where the registrant can give their best.

**10. 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**

Yes

Regulators should consider the involvement of lay decision-makers on a case-by-case basis and not as a general rule. Before we impose any sanctions, whether by officers or by panel, all evidence has been reviewed

by a solicitor who has been satisfied that the evidential tests have been met. We believe that in cases specific to professional practise, it is important that there is expert evidence from the profession as part of the decision making process.

**11. 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**

Yes

**12. Do you have any comments on this factor, or the bullet points listed in our guidance relating to the composition of decision makers?**

We have no comment to make.

**13. Factor 7: publishing case examiner decisions. Do you agree that the bullet points in the guidance under this factor are the rights ones?**

- **Yes**
- **No**
- **Don't know**

Yes

**14. Do you have any comments on the bullet points listed in the guidance under this factor?**

No, our officer decisions are published in this manner. We would note the care and resource needed to redact personal and other sensitive data.

**15. 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**

No

**16. Do you have any comments on the bullet points listed in the guidance under this factor?**

Ensuring that all those with a stake in a fitness to practise investigation are treated with dignity and respect, feel heard and are kept informed is important. However, these needs should be balanced against the purpose of the fitness to practice process.

**17. 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.**

N/A

**18. 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?**

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)
- Yes
- No
- Don't know

Don't know

**Rulemaking**

**1. Do you think our guidance will help regulators exercise their rulemaking powers effectively?**

We have no view on this.

**2. Do you think that the principles outlined are the right ones?**

- **Yes**
- **No**
- **Don't know**

Don't know.

**3. Do you have any additional comments to make on the principle or any additional principles to suggest?**

We have no comments to make.

**4. Do you think that the guidance on consistency between regulators (avoiding justifiable difference) is helpful?**

- **Yes**
- **No**
- **Don't know**

Don't know

**5. Do you have any comments to make on this section of the guidance?**

No

**6. Do you think the guidance on consultation is helpful?**

- **Yes**
- **No**
- **Don't know**

Don't know

**7. Do you have any comments to make on this section of the guidance?**

We have no comments to make.

**8. Do you think the guidance on governance is helpful?**

- **Yes**
- **No**
- **Don't know**

Yes

**9. Do you have any comments to make on this section of the guidance?**

We have no comments to make.

**10. 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 these proposals.**

None

**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?**

- **Age**
- **Disability**
- **Gender reassignment**
- **Marriage and civil partnership**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Sex**
- **Sexual orientation**
- **Other (please specify)**
- **Yes**
- **No**
- **Don't know**

Don't know

**Scottish Social Services Council**

**April 2024**