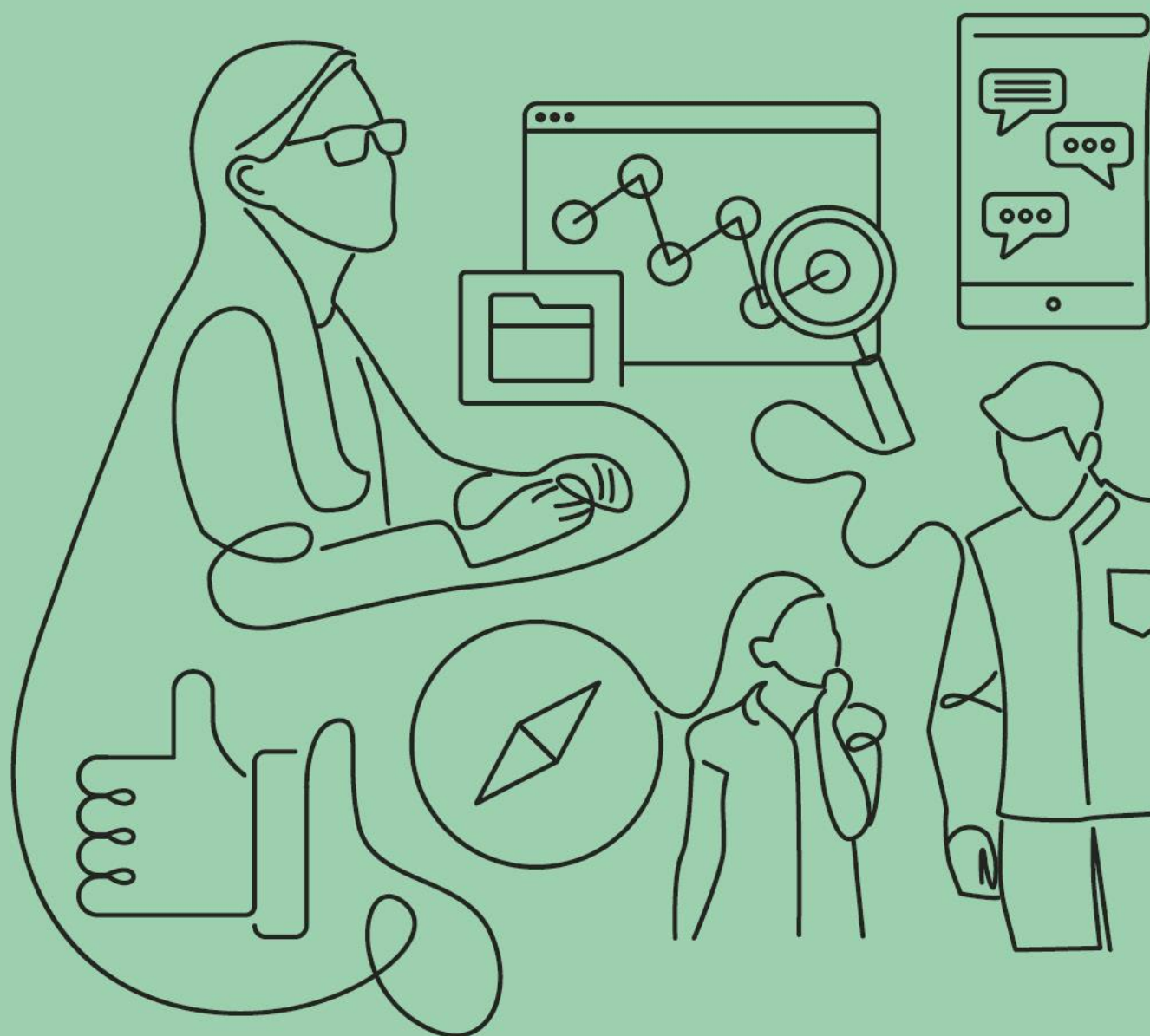


Fitness to Practise Consultation Response

25 November 2019



Introduction

Social Work England is the new, specialist regulator for social workers in England.

Our purpose is to regulate social workers in England so that people receive the best possible support whenever they might need it in life.

On 8 August 2019, we launched a 10-week public consultation on three pieces of guidance that will assist people involved in the fitness to practise process at Social Work England. This includes social workers, their representatives, witnesses, employers and our staff and partners.

This report is an overview of the consultation. It includes a summary of our activity, who responded, and the feedback we received.

How we consulted

We last consulted on the fitness to practise rules as part of our rules and standards consultation in Spring 2019.

People and organisations were able to respond by email, post and social media. We publicised the consultation on social media, our web pages, through our regional engagement leads and at external events and workshops.

Consultation responses

This consultation focussed on documents that provide further detail about the policies and procedure for the fitness to practise process. We've read and considered every response to the consultation. We received seven written responses, six of which were from organisations. The six organisations who responded were:

- The British Association of Social Workers (BASW)
- The Professional Standards Authority (PSA)
- The Joint University Council Social Work Education Committee (JUCSWEC)
- The General Medical Council (GMC)
- The Nursing and Midwifery Council (NMC)
- BLM LLP

We also received feedback on the documents we published during a workshop with BASW, UNISON, Thompsons Solicitors and Capsticks on 29 October 2019.

What you said and our response

Below is a summary of the key feedback we received in relation to each of the three documents, and the actions we took in response. In general, the three documents were well received. We did, however, receive some feedback that lead to a number of structural changes to the sanctions guidance. This has resulted in the decision making process being easier to follow and clearer guidance on a number of key themes in fitness to practise such as seriousness and impairment.

Sanctions guidance	
You wanted:	We then:
Clearer reference to external supporting documents such as BASW's code of ethics and the professional capabilities framework.	Added clearer signposting to paragraph 7 of the document.
A clearer explanation of the relationship between impairment and the need for restrictive sanctions.	Clarified this point in paragraph 15 of the document.
An acknowledgement that certain problems may arise due to factors outside of a social worker's control, such as staffing shortages.	Added guidance to paragraph 28 to encourage decision makers to take account of wider contextual factors.
Clear guidance around the need to refer a case to a hearing where a removal order is likely to be in the range of suitable outcomes.	Added additional guidance to paragraph 6 to confirm this requirement for decision makers.
Confirmation that the process is not punitive and removal of any reference to blame on the part of the social worker.	Removed references to blame and added further guidance on the purpose of fitness to practise to paragraph 66.
Further clarity about whether a single finding of impairment could lead to two different sanctions.	Added additional guidance to paragraph 16 about impairment and multiple sanctions.
A lower bar to be established in relation to a panel's assessment of seriousness.	Amended the guidance in paragraph 39 to provide further clarity about the importance of maintaining confidence in social workers when assessing severity.

Further guidance for panels when considering which sanction is appropriate.	Provided additional guidance in paragraph 68 about considering the 'next sanction up', and in 78-84 about the length of sanctions and additional contextual factors.
Further guidance about how serious, but isolated instances, of poor performance will be treated.	Added guidance to paragraph 100 about testing a fair sample of a social worker's work.

Triage decision making guidance	
You wanted:	We then:
Additional information about the support available to vulnerable participants at hearings.	Included guidance on page 23 about how our officers will identify vulnerabilities at the start of an investigation and support participants appropriately.
Stronger guidance on the definition of misconduct with reference to examples.	Added a more detailed definition of misconduct with a specific example included on page 7 of the guidance.
Further acknowledgement that certain problems may arise due to factors outside of a social worker's control, such as staffing shortages.	Added guidance at page 19 prompting decision makers to consider whether broader findings were made during any local investigations.
Address inconsistency in the language used to define the limb of the overarching objective relating to professional standards.	Made several amendments made at pages 6, 7, 15 and 20 to clarify the relationship between professional performance, professional standards and the wider public interest.
Clarity about whether additional enquiries with a third party could be made at the triage stage.	Added guidance on page 23 to outline the limited circumstances under which enquiries may be made with a third party at the triage stage.

Pre-hearing case management guidance	
You wanted:	We then:
Further guidance about which aspects of a case can be agreed by social workers at the case examiner stage.	Further guidance added on page 3 about how the scope of what the panel must adjudicate on at a hearing is established.
Additional flexibility for adjudicators at hearings to determine whether they are bound by pre-hearing case management directions.	Provided additional signposting in the guidance to rules 25-31, which set out the process for delivering case management directions.
Clarification about when case management directions might be issued by employees rather than adjudicators.	Expanded the guidance on page 3 to highlight the distinction between directions that are disputed and those which the participants consent to.

In most cases, we've updated the guidance to expand on the identified areas and give further clarification. However, we received one piece of feedback that we did not fully agree with relating to the definition of impairment in the sanctions guidance.

The definition of impairment in paragraph 15 of our guidance indicates that a useful threshold for a finding of impairment is that a restriction of practice is likely to be required. Concerns were raised that this excluded circumstances where a finding of impairment may result in a warning or advice, which do not restrict practice.

We decided that redefining impairment to include matters warranting no more than warning or advice would amount to a change in the threshold for impairment that is commonly applied across the sector and well established in existing case law. Although we did make minor amendments to paragraph 15 to strengthen the definition provided, we did not make the full change suggested in feedback received.

Equality impact

What you said

Following a number of requests, we've provided clarification in the guidance on how we'll support vulnerable people involved in the process. Respondents did not raise any concerns that the guidance and/or processes outlined would unfairly impact on groups with protected characteristics.

What we've learned

- Respondents want clarity about the key principles we'll apply during decision making in fitness to practise, including seriousness, impairment, competence and professionalism.
- Respondents want clarity about how contextual factors, such as workload and resourcing challenges, will be considered when determining whether a social worker is fit to practise.
- Respondents prefer an overview of the decision making process that sets out the process in a chronological order.
- Further guidance is required on particular elements of the fitness to practise process, such as the investigation process, case examiner decision making, interim orders, voluntary removal and conditions of practice.

These lessons have been useful to us and we've been able to use all the comments to improve the guidance. It also helped us to identify further pieces of guidance needed.

What happens next?

The consultation closed on 18 October 2019 but we'll continue to work with key stakeholders, including social workers and people with lived experience of social work, to develop our proposals and embed new processes. We look forward to working with all those who have an interest in social work to become a responsive, fair and effective specialist regulator for social work.