

Paper for the Board

This paper is for discussion and advising

Sponsor

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Reviewed by

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1. Summary

This paper provides a focussed review of operational performance in Social Work England's Fitness to Practise service since December 2019. It includes a summary of the work undertaken to date, the challenges posed by the current working environment, the changes made to address this and planned activity moving forward.

The paper reviews each area of the service in the order in which a concern travels through the process for ease of reference. To assist, a flowchart for the fitness to practise process is included at **Annex 1**.

The figures provided in this report were drawn after the first full week of operation in October 2020.

2. Action required

The fitness to practise directorate is currently implementing several new strategies for case progression in response to changes in the working environment and wider sector this year. The purpose of the report is to update the board on operational performance, underlying trends and the work planned for the remainder of the year.

The board is invited to discuss the content and further work being undertaken.

3. Background/context

Following the transfer of regulatory activity on 2 December 2019, 1545 live fitness to practise cases were transferred from the Health and Care Professions Council (HCPC) to Social Work England.

The transfer of an active caseload of this size presented a unique challenge. The two organisations worked successfully to ensure the safe transition of all evidence and data relating to these cases in December. Social Work England's ability to influence case progression prior to the transfer was limited due to data sharing restrictions and the legal responsibility the existing regulator held to manage its cases.

After the transition, the immediate priority for Social Work England was to review and risk assess the entire caseload and to establish a suitable strategy for progression. This was achieved by mid-March 2020 and the focus of the team immediately turned to the advancement of cases.

One week after the review of the transition caseload was complete, the organisation was forced to transfer to remote-working because of the nationwide lockdown caused by the COVID-19 pandemic. During the peak of the pandemic, when the sector was under significant strain, concessions were made for both social workers and employers where information was being sought in cases that were not categorised as high-risk. This, along with the challenges posed internally by having to adapt to an enforced new way of working, obstructed case progression between April and July 2020.

The pandemic also prevented physical hearings from being held. In response, the adjudications teams and our legal providers designed a new platform for holding hearings remotely to progress interim order applications and statutory reviews of existing orders. After a period of further consultation with the Professional Standards Authority (PSA), fellow regulators and our representative steering group, a process has now been designed for hearing the more complex substantive hearings remotely and a full schedule of final hearings is planned to resume this month.

Since December 2019, Social Work England also assumed responsibility for managing new fitness to practise referrals. Forecasted referral rates this year were drawn from activity seen at the previous regulator over the preceding 18 months. However, by early October 2020 Social Work England had received 1,594 new referrals, at a rate of almost 40 more than predicted each month.

The content of new referrals has been analysed and recorded throughout the first year of operation to gain a better understanding of the factors underpinning current referral rates. There is nothing in our analysis to suggest that activity has increased because of new underlying issues within the profession, such as service trends related to the pandemic. Our assumption, at this stage, is that the increased referral rate is likely due to an elevation in the profile of Social Work England as a new, specialist regulator. However, the rate of referrals has fluctuated significantly across the spring and summer months, likely due to the impact the pandemic had on an employer's ability to progress internal investigations.

Against this background, it has been necessary to adapt some areas of the service to increase capacity, enhance strategies for case progression and create a safer format for adjudication. The following sections of the paper provide more detail about service performance in each area so far, the changes made to address the challenges outlined above and plans for further development moving forward.

4. The Triage Service

Purpose

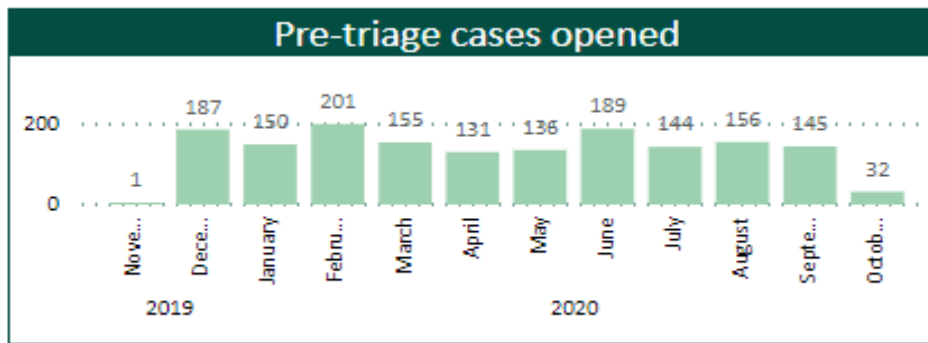
When new concerns about social workers are received, the triage team must decide if there are 'reasonable grounds' for investigating whether the fitness to practise of a registered social worker is impaired¹.

New concerns about social workers are received by our triage team, who undertake the following checks:

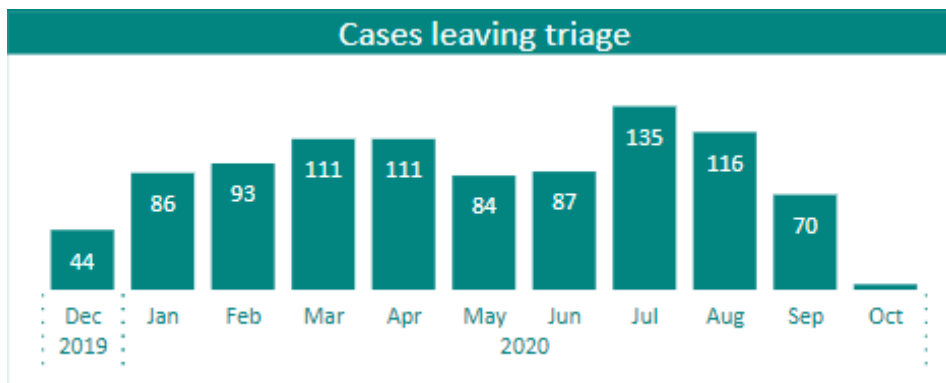
- Identify the social worker(s) concerned
- Determine whether the concern relates to one of the statutory grounds of impairment
- Decide if there are reasonable grounds for investigating the concern(s)
- Assign an initial risk profile to the case

So far, the triage team has received more concerns than expected. Case forecasts based on referral rates at the previous regulator suggested that the triage team could expect to receive around 120 referrals per month. Since January 2020, the average monthly rate of new concerns has been 156, with significant monthly fluctuations:

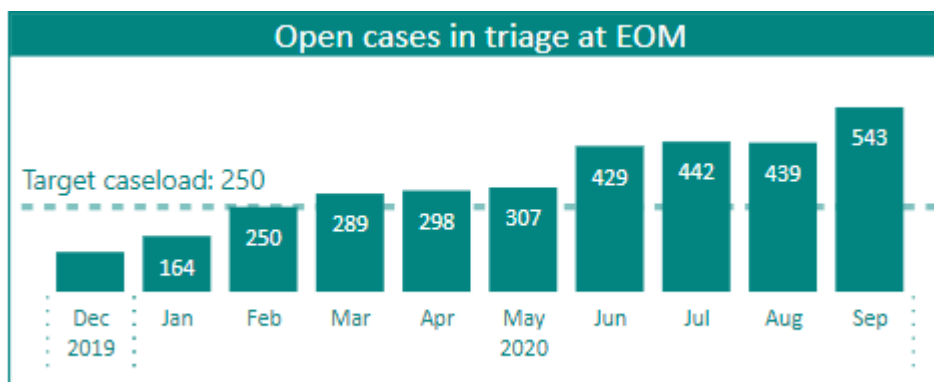
¹ Schedule 2 paragraph 1(1) of the Social Worker Regulations 2018



The structure of the team at the start of the year provided insufficient capacity to manage incoming caseloads at this level.



As a result of this, by June the triage team caseload had reached a point that exceeds the targeted level of 300 cases:



The original target was to conclude the triage process within four weeks of receipt of the concern. As a result of higher than forecast levels of new referrals it was not possible to meet this target with existing resources. Furthermore, the value of using our new powers at triage to make further enquiries before determining whether a full investigation is required has led us to conclude that in many cases this target is not appropriate.

Risk assessments

Caseloads at the triage stage are broken down into 'pre-triage' and 'Triage' in operational reports. Cases at pre-triage have been logged in our system (usually automatically through

completion of an online concerns form) but are still awaiting an initial review to determine the severity of the referral and the appropriate progression strategy.

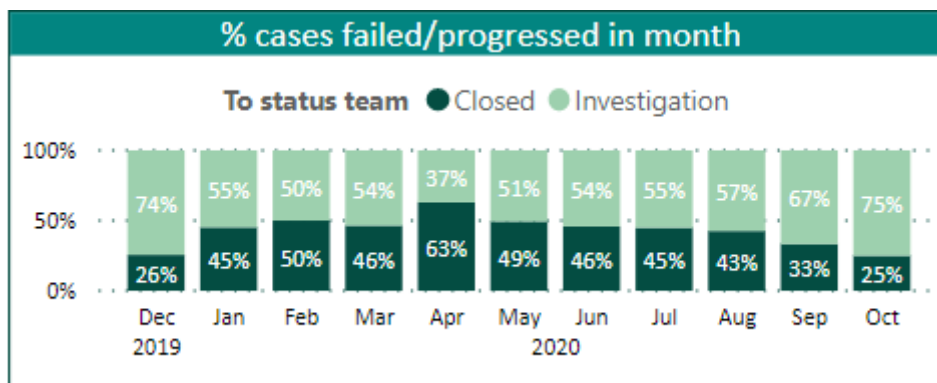
The table below shows that, while the overall caseload in the triage service has exceeded the targeted level in the last six months, the amount of cases awaiting an initial review to determine the severity of the referral has rarely exceeded two days of work.

Open cases by stage						
Stage	30/04/2020	31/05/2020	30/06/2020	31/07/2020	31/08/2020	30/09/2020
Pre-triage	19	51	19	17	34	4
Triage	298	307	429	429	424	527

Outcomes

By the end of September 2020, the triage team had closed or referred 937 concerns.

Case closure rates at triage have generally been in-line with initial forecasts, which is an encouraging sign. However, referral rates to investigation have increased in September and October because the team has temporarily focussed on reviewing high risk cases to ensure there are no unnecessary delays.



The effective use of additional enquires at an early stage combined with a robust assessment of the concerns at the triage stage are significant tools to assist Social Work England with achieving its strategy to operate a modern and efficient fitness to practise process. Against current referral rates a monthly closure rate of 47%, would preclude around 880 unnecessary referrals to investigations each year.

Service restructure

Resourcing and decision-making capacity

By March 2020, it had been identified that the current team structure provided insufficient capacity to progress the number of incoming cases efficiently. A review of capacity and case streaming techniques was conducted at this stage and in August 2020 a new team structure and progression strategy was introduced.

This enables us to:

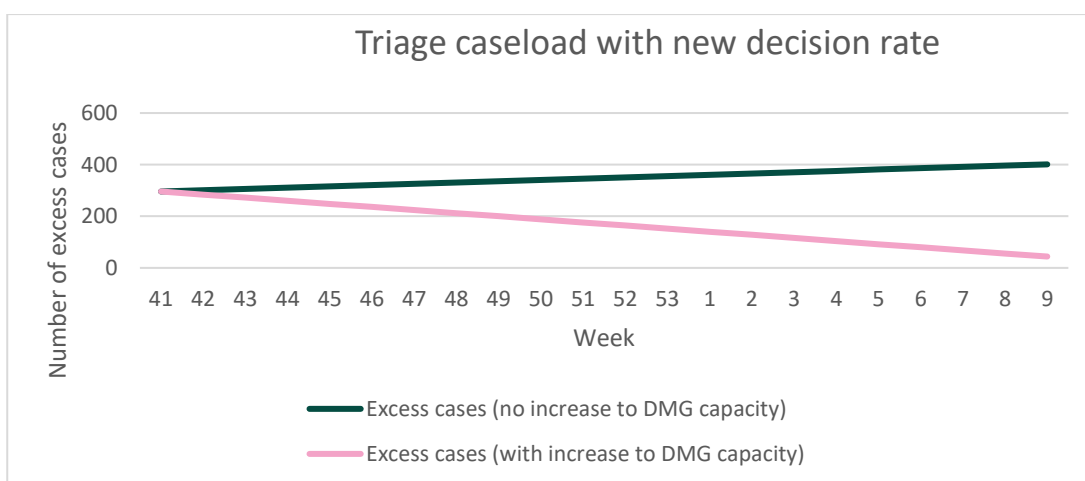
- Robustly risk assess new concerns at the volume now expected
- Quickly identify which cases would benefit from further enquiries before making a triage decision
- Apply an appropriate decision-making process in accordance with the risk and complexity profile of the case
- Target professional/legal advice only where expert opinion is necessary

We have increased the average target time to conclude the triage process from 4 weeks to 8 weeks and cases are now streamed appropriately at the outset to either a desk-based assessment, a more robust analysis by a decision making group or to a process for further enquiry. Target times are assigned in accordance with each stream to ensure that we have sufficient time available to conduct further enquiries prior to making a triage decision in cases where this is beneficial.

We have also recruited additional officers to support case throughput in the triage team.

The above actions are expected to increase our decision-making capacity from the existing average of 93 cases per month (incoming rate of new cases is 148 cases per month) to 173 cases per month.

This will reduce the triage caseload to the target level by end March 2021:



5. The Investigations Service

Purpose

Cases that pass the triage test are referred into the investigations team. The process undertaken at this stage is a more robust and intensive form of enquiry, with a targeted completion time of 6 months. The team gathers all available documentary evidence and is responsible for preparing cases for referral to the case examiners.

Investigators have statutory powers to require disclosure of information from individuals and organisations and they also have powers to refer concerns to the case examiners where they think an interim order may be necessary to restrict a social worker's practice pending the conclusion of the substantive fitness to practise investigation.

Initial progression strategy

The investigations team received 1270 cases from the HCPC in December 2019, which was the majority of the transferred caseload (the rest transferring at the hearings and case review stages). Most cases were over 12 months old on transfer.

Work began immediately to review the transfer caseload to:

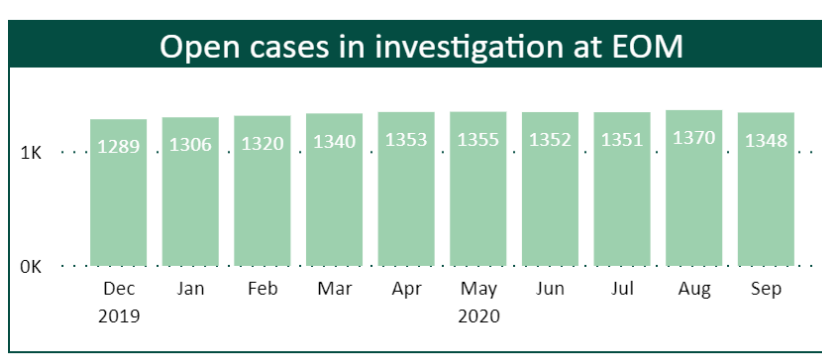
- Review and risk assess the entire caseload
- Identify cases that were suitable for immediate referral to the case examiners
- Identify cases that may be suitable for closure under Social Work England's Just Disposal Policy

This work was completed in March 2020. Since March, the team has focussed on progressing the transfer caseload, using the same procedures that are applied to all new cases received since 2 December 2019.

Initial performance

It was anticipated that case throughput would be relatively low in the first few months of operation. Social Work England's statutory tests do not align with the HCPC's, meaning that further investigation has been required in most cases before they could be concluded.

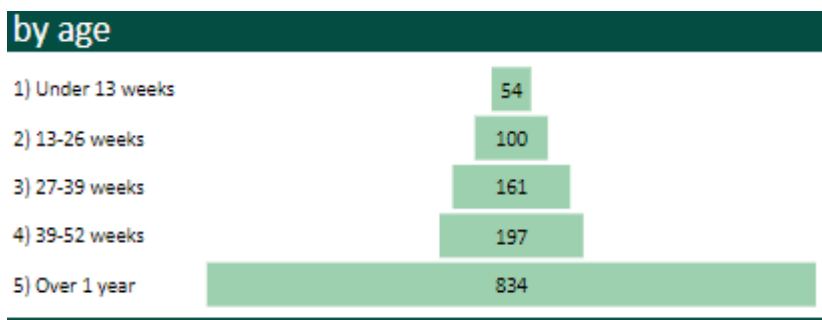
Performance has been sufficient to ensure that caseloads have remained stable since 2 December. However, the caseload remains higher than the target of 1100 cases:



The completion of the transition case review project in March 2020 coincided with the national lockdown being imposed. This impacted the rate of case progression between April and July because it became more difficult to get information quickly from employers and the investigators, who were all still relatively new to their roles, had to adapt to remote working.



Progression rates steadily increased throughout the summer months, except for an expected decrease in August due to annual leave. However, there remain a high number of cases transferred from the HCPC that are more than 12 months old at the investigations stage:



To date, 312 transfer investigations have concluded since 2 December. In addition to this, 122 investigations have concluded in new cases received since 2 December. There are currently 965 transfer cases under investigation and 375 open investigations for new cases received since 2 December.

Strengthening capacity and performance

To support reducing the investigation team caseload to the targeted level, a range of workstreams are underway, including:

- Completing a resourcing review - additional investigators and lead investigators will be in post by early December
- Work is underway to support the progression of lower risk transfer cases. This includes instructing our external legal provider to progress 100 cases and creating a bespoke investigations team that will focus exclusively on progressing lower risk transfer cases
- Securing a fitness to practise expert resource to support the training and development of new and existing staff
- Introducing more effective performance management tools for team managers, including targeted reports and objectives.
- Launching the communications functionality in our case management system early in the new year to reduce the amount of time it takes to send standard correspondence

The nature, volume and sensitivity of the work investigators undertake in fitness to practise is often challenging and it is crucial that appropriate tools for support and communication are in place. The introduction of a range of supportive measures is designed to address the difficulties team members have encountered through enforced homeworking this year.

The measures will also increase overall capacity on the team.

Following the successful implementation of these measures the team will target a reduction in the caseload to 1100 open investigations by the end of March 2021.

6. The Case Examiner Service

Purpose

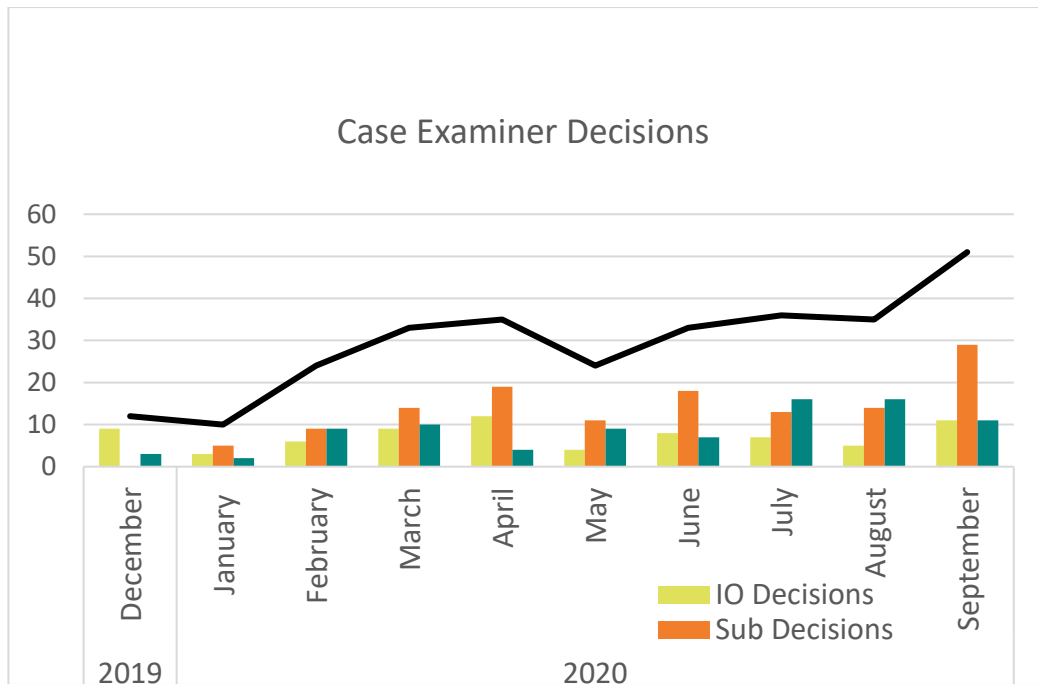
Case examiners adjudicate upon cases based on documentary evidence alone at the conclusion of an investigation. The case examiners may close a case at this stage without any further action and they will refer a case for consideration at a public hearing where they find a real prospect that the social worker's fitness to practise is impaired and that a hearing is in the public interest.

In cases where a real prospect of impairment is found, but the case examiners do not consider a full hearing to be in the public interest, the case examiners will look to make use of 'accepted disposal' powers. These are new powers which allow the case examiners to propose a sanction up to and including a suspension, with the consent of the social worker concerned.

Case examiners work in pairs (one lay case examiner and one professional case examiner) to consider how a case should proceed and are required to provide their decisions in writing, outlining their full reasoning.

Initial performance

The case examiners undertook an 8-week training course in September 2019 prior to the transfer of cases. Only 13 substantive decisions were made in the first two months of operation because very few transferred cases were ready for referral from the investigations stage. Productivity has steadily increased month by month since then. In September 2020, the case examiners made a total of 51 decisions. At full capacity, the service is resourced to produce up to 80 decisions each month.



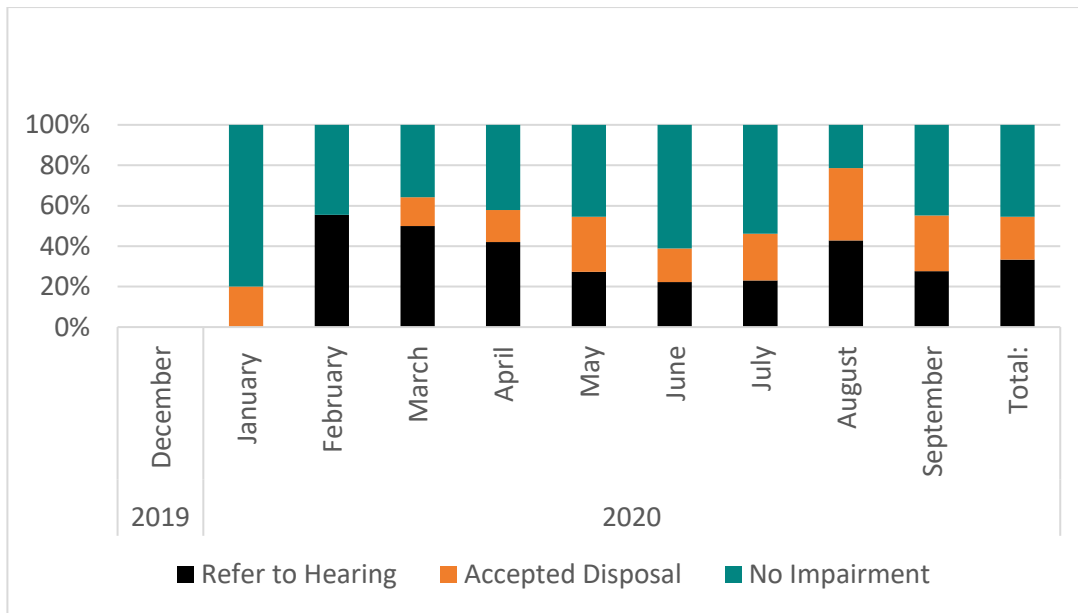
The average number of days to a preliminary decision (an accepted disposal offer, or a referral back to the investigators for further information) is 5 days, which is in line with original projections of preliminary decisions being reached within 7 days. The average number of days for a final decision is currently 17.

By the end of September 2020, the cases examiners had made 212 final decisions and a further 90 preliminary decisions.

In addition to making decisions on substantive cases, the case examiners also progressed an average of 7 interim order cases per month as part of their requirement to consider whether such an order is necessary for the protection of the public or in the best interests of a social worker.

Decision trends

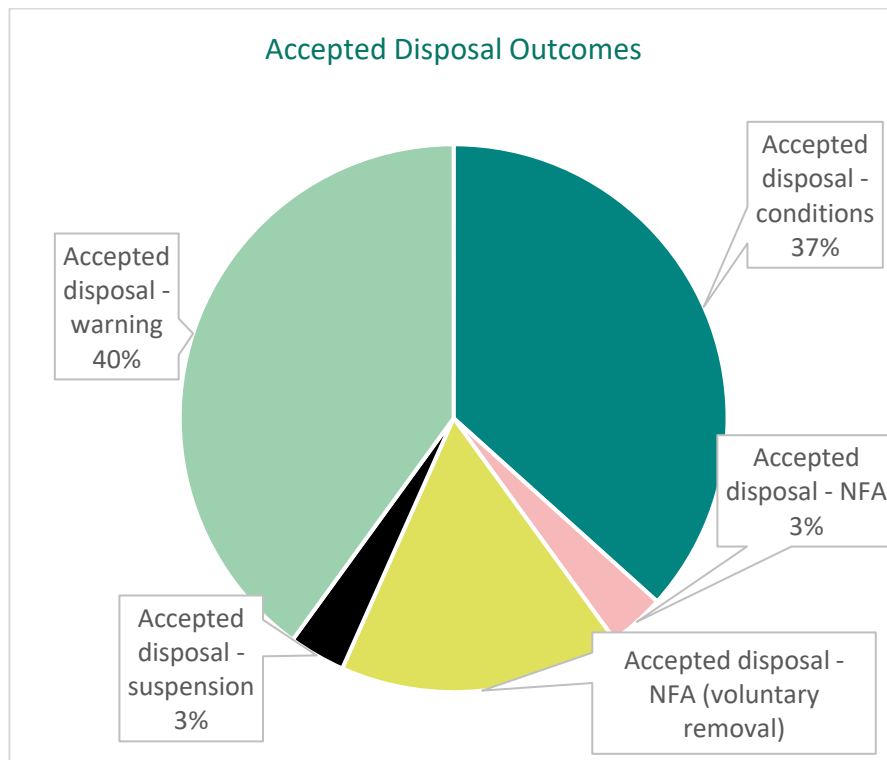
The case examiners are currently referring an average of 4 cases to a final hearing per month, although the number of referrals will likely rise as productivity increases. The overall referral rate to a hearing stands at 32%, although the referral rate was likely inflated in the first two quarters of 2020 as the investigations team prioritised the progression of higher risk cases. The current accepted disposal rate stands at 21% and no impairment (case closure) at 47%.



The rate of referrals to a hearing is encouraging for the future stability and efficiency of the service. In comparison, the HCPC’s Investigating Committee Panel had a 51% referral rate in the final year of operation.

The case examiners are making effective use of the full range of disposal options available to them under new legislation. In total, 30 cases have concluded with an accepted disposal so far. A breakdown of those outcomes is included in the table below. Without the new disposal

powers these cases would have been referred to a hearing to secure the appropriate outcome and would not yet have concluded.



Future work

The case examiners are likely to face an increased number of referrals when capacity in the investigations service is expanded.

In its current format, the service, which includes the administrative support and quality assurance function, would be placed under strain if the active caseload were to exceed 100 cases. Caseloads and timeliness will be monitored closely as part of an operational reforecast in Q3 to ensure the service does not become overwhelmed because of improvement initiatives being undertaken in the early stages of the service.

7. The Hearings Service

Purpose

This service ensures that cases referred to a hearing are progressed fairly and efficiently. This is achieved through a combination of pre-hearing case management with the parties involved and structural and participant support during hearing events.

Adjudication at hearings is provided by independent experts, which include lay panel chairs, lay adjudicators and registrant adjudicators (social workers). At the hearing, a panel of

adjudicators is supported by a legal adviser who provides independent legal support to panels and other participants during the event.

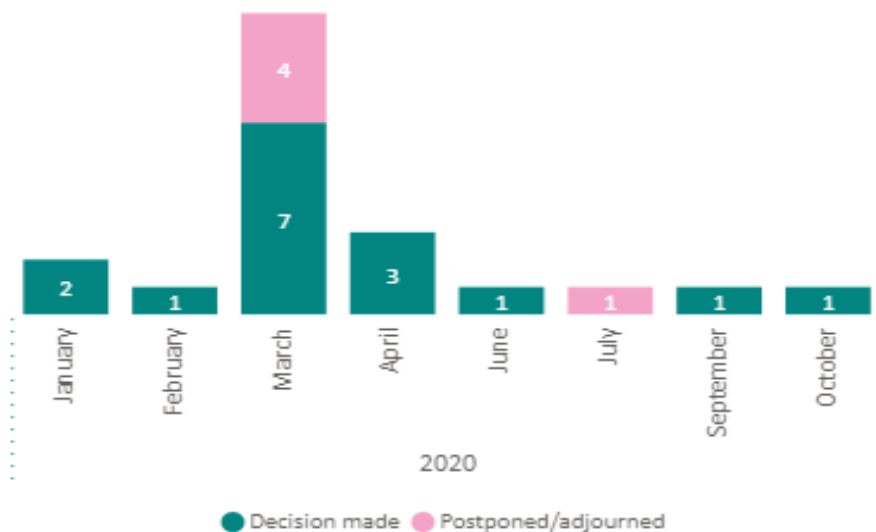
Preparation of evidence and advocacy at hearings is currently provided to Social Work England by Capsticks Solicitors.

Initial performance

The hearings team is able to manage between 15-18 hearings each month, but activity so far this year is lower than planned due to the impact of the pandemic. During the period in which physical hearings could not be held safely, our legal providers redirected resource to progress all cases transitioned to Social Work England at the final hearing stages to the point where they could be heard as soon as hearings could resume.

During this period, the hearings team worked collaboratively with a representative steering group, the PSA and fellow regulators to create guidance and procedures for pre-hearing case management leading to full hearings by teleconference.

Final hearings conducted



Only 10% of the legacy investigations labelled as being ready to schedule for a hearing at the point of transfer were considered to be complete on further examination by our lawyers. In addition, the impact of the pandemic has resulted in the postponement of cases that would have already been heard during the summer months.

The hearings team received 191 substantive cases at the point of transfer, which were a mixture of cases that had been recently referred to a hearing and required further investigation

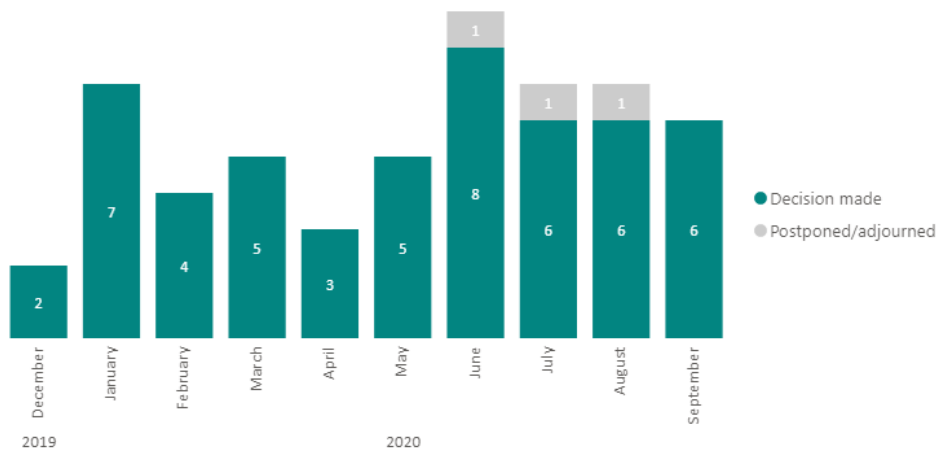
and cases identified as being ready for a hearing listing. That caseload has increased during the year to 219 cases, which amounts to about 12 months of activity with currently available resource.

A new process for hearings by teleconference has now been secured and activity will accelerate sharply towards the end of October 2020. At the beginning of October, a total of 16 cases had concluded at a final hearing during the year. Another 37 cases are currently listed to be heard between October 2020 and February 2021, with another 44 cases currently being prepared for listings between January and March 2021.

Reviews and Interim orders

The hearings team also inherited a total of 66 substantive order review cases and 61 active interim orders at the point of transfer. All of these have been reviewed in accordance with statutory timeframes by making effective use of remote technologies.

Final order reviews conducted



Future work

Out of the 37 cases currently listed, there has only been one request so far to convene physically. This indicates that the new process is resistant to further social restrictions that may be caused by the ongoing pandemic.

The hearings team are currently recruiting three additional hearing officers, to increase capacity. This will support the maintenance of a listing schedule 25% higher than originally planned in the second half of the year.

Senior members of the department have been meeting on a bi-weekly basis with a steering group, consisting of members of BASW, Unison and other representative organisations to discuss updates issues arising because of current working conditions. This working group has planned to review the proposals for remote hearings and the increased use of meetings to conclude cases in more detail at an upcoming workshop in November.

8. The Case Review Service

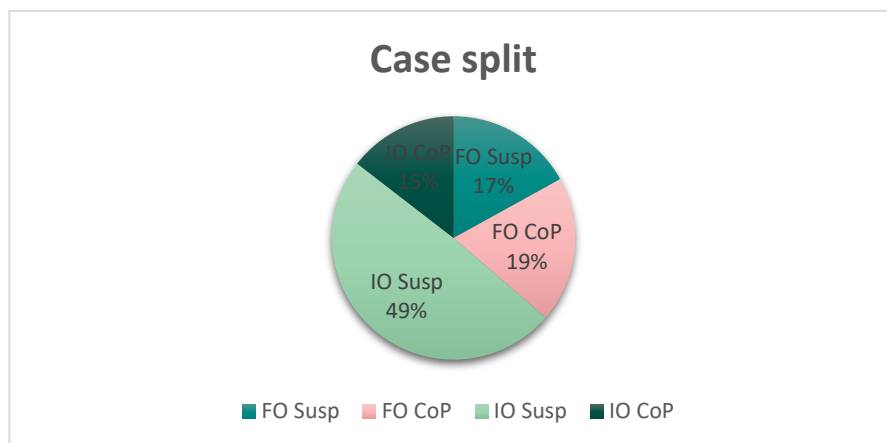
The case review team manages all cases with conditions or suspensions with the aim of ensuring compliance with the orders. The team works with social workers subject to interim orders, case examiner conditions or suspensions via accepted disposal and adjudicator conditions or suspensions.

To support the social workers subject to suspension or conditions of practice orders going through the process, the team builds supportive relationships to encourage ownership of their registration status. The team assists social workers to properly engage in the remediation process with the aim of supporting a return to unrestricted practice in a safe and structured way.

At the previous regulator there was no case review function for social workers subject to reviewable sanctions. The service has received positive feedback from social workers who have an allocated case review officer.

Review caseloads

The case review team currently holds 105 Interim order cases (81 Suspensions and 24 Conditions) and 60 Final order cases (28 suspensions and 32 conditions).



Early Reviews

So far, Social Work England has called one early review for a final order due to evidence of increased risk. In these circumstances the social worker had been working whilst suspended. This resulted in a removal order for the social worker.

Social Work England has also held one early review for an interim order case where the social worker was not complying with their conditions. This resulted in the Conditions order being replaced with an Interim Suspension Order.

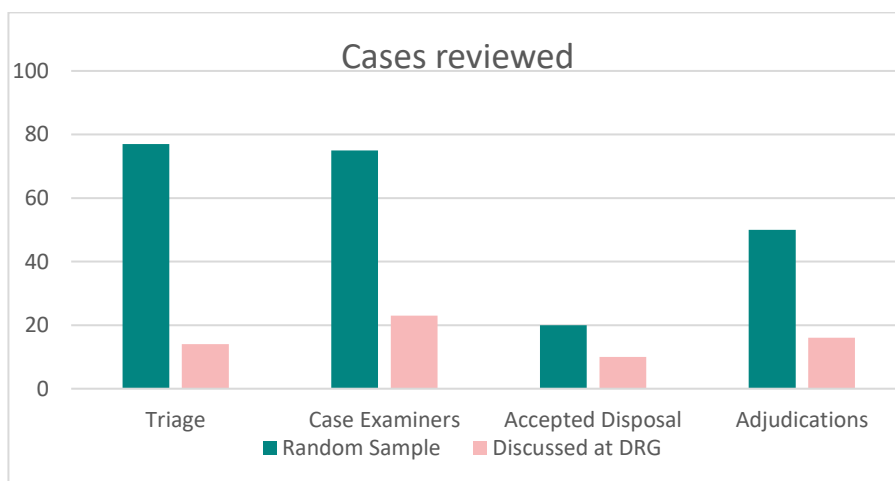
9. Quality assurance of the service

The purpose of the quality assurance framework in fitness to practise is to provide scrutiny of decision-making processes across triage, case examiners and hearings and to identify learning for employees, the service and the wider sector.

A Decision Review Group (DRG), chaired by the Executive Director, Strategy, Policy and Engagement meets monthly to review high-risk decisions, identify any remedial action required and develop an insight into broader trends. The DRG benefits from the attendance of an independent expert from another regulator and an expert by experience to bring the voice of the public to the group.

Each month, a targeted sample of cases from each decision-making stage is reviewed by service leads at an operational level. Of this sample, a selection of 10-15 cases will be considered by the full DRG at each monthly meeting. If any cases are given a 'red' rating at the initial review they will automatically be escalated to the DRG for further consideration.

Since its inception, 222 cases have been subject to initial reviews and 63 of these cases have been heard at DRG. The DRG has also considered 34 Fair and Just Disposal decisions and 3 escalated reviews from other areas of the organisation.

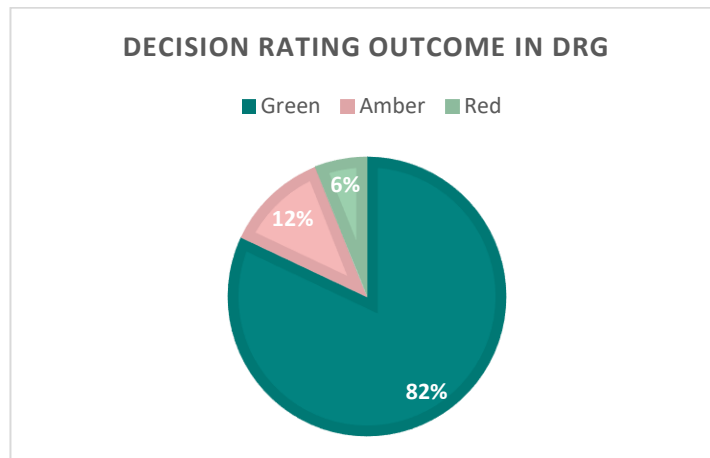


Of the cases reviewed as part of the random sample, 190 were RAG rated as Green. 81 Green rated cases were subsequently discussed at DRG. The initial green rating was upheld 75 times and changed five times to amber and once to red.

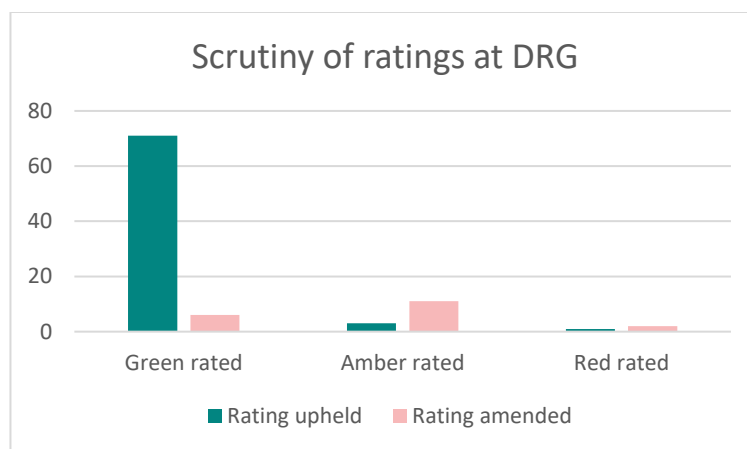
Positive comments made about cases were generally around well drafted and reasoned decisions, thorough investigation and that information was laid out in a way that was easy to understand.

Of the cases reviewed as part of the random sample, three cases were rated as red and 29 were rated as amber. All red rated cases were reviewed at the DRG and 45 percent of amber cases have been discussed at DRG so far (13 in total). In DRG, the red rating was upheld once and changed to amber twice. Amber ratings were upheld 3 times and changed to green 6 times and red 4 times.

The DRG has also discussed three escalated review cases. These cases had not been picked by the random sample but were referred because a reviewer felt a decision had been made that required the objective oversight and input of the DRG. One case was regarding a Learning Point from the PSA and the other two were regarding borderline decision making when considering risk. The escalated decisions were considered to be the correct outcome in two of the cases and an amber rating was given to the third.



The DRG data indicates that most decisions produced by officers across the service so far have been sufficient to protect the public and are well-reasoned.



The figures also show a promising trend that operational reviews conducted by service leads are accurate.

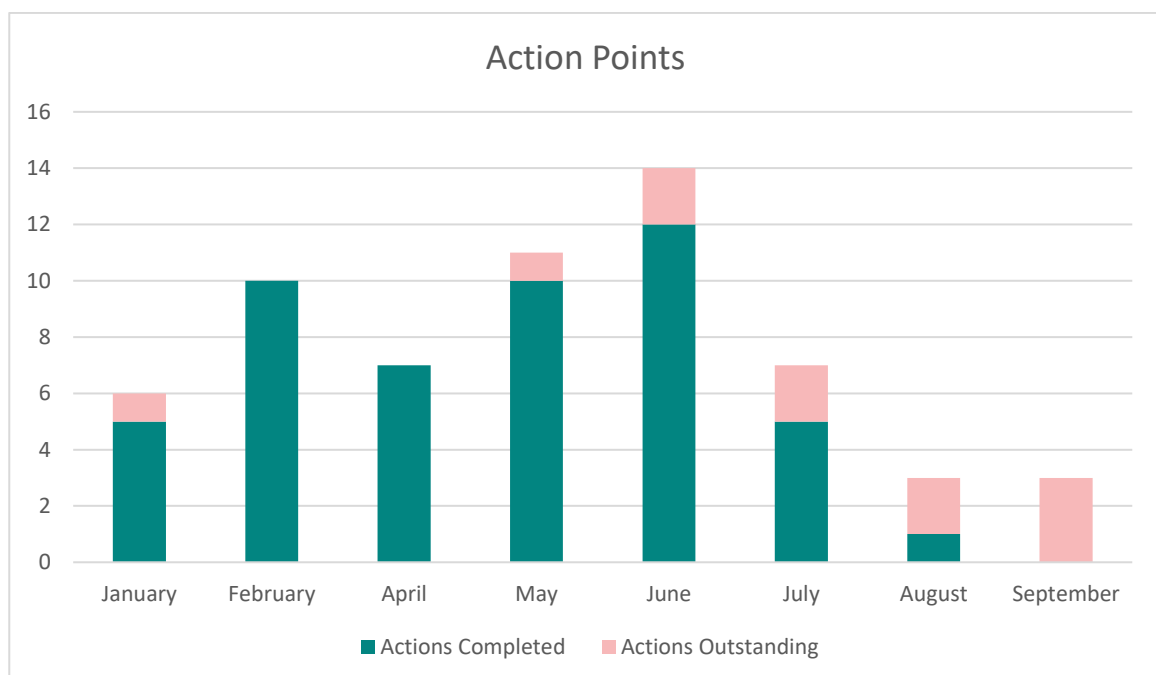
The overarching themes in the few cases that needed escalating from a Green rating tended to be around the evidencing decision making and appropriate messages and work has been undertaken with teams around this. The DRG will continue to identify and address any themes where an initial Green RAG rating required amending.

The reasoning for the Amber and Red RAG rating of cases at DRG each month are summarised below:

DRG date	Reasoning
January 2020	More thorough enquiry needed and limited information.
February 2020	Lack of evidence to support decision making, mitigating factors missing from the report, assumptions made and reasoning unclear
April 2020	Lack of evidence to support decision making, not all elements captured in the decision
June 2020	Grounds not explicitly clear
July 2020	Lack of evidence to support decision making, issues re unconscious bias and clearer timescales
August 2020	Lack of evidence to support decision making
September 2020	The rating was not around the CE decisions (to refer to a Hearing and apply for an IOA hearing) but around the decision of the PIOC not to impose an IO when clear reasoning had been given by the CE's as to why an IOA hearing was appropriate. As a result, the DRG has agreed to include decisions made at PIOC's as part of ongoing reviews

Where Red and Amber ratings have been given the group agrees any action points that need taking forward either for individual cases or on a wider level within the organisation. Some of the themes are about changes to policies and procedures, discussions with individual members of staff or decision makers, training needs, consistency in decision making and communication.

To date, 61 actions have been agreed by the group. 50 of these actions have been completed with 11 remaining as ongoing pieces of work due to the level of complexity involved.



Feedback provided by the PSA's scrutiny team is also considered at DRG meetings to provide an opportunity to reflect on the points, direct appropriate remedial action where necessary and agree a suitable response.

10. Customer service feedback

Collection and analysis of feedback from participants in the fitness to practise process supports continuous improvement of the service. In addition to recording the feedback we receive as part of the life of the case, we also ask social workers, witnesses and complainants to complete a feedback survey once a case is closed. Participants receive a link to the online feedback form in their closure letter.

At this stage, there has been insufficient feedback to identify clear trends or themes to support improvement initiatives. In many cases, due to the sensitivity of a matter, we understand that giving reflective feedback is difficult immediately after a case closure. Accordingly, we are developing a new process to communicate with participants in suitable cases several months after a case has concluded to invite further feedback after a suitable period of reflection.

11. Conclusions and Recommendations

The fitness to practise team has responded decisively to a range of unforeseen challenges in the first year of operation and the work undertaken will ensure the service continues to satisfy statutory objectives and improve the efficiency of case progression.

The detail provided in this report is designed to give the Board a stronger understanding of the process and strategic direction of the service. The impact of ongoing improvement initiatives will be communicated to the Board on a quarterly basis over the next six months.

Annexe 1 – Fitness to practise flowchart

