
# AvMA response to the Consultation on the Professional Standards Authority's good practice guidance documents in support of regulatory reform

**Consultation closes: Monday 15th April 2024**

**Introduction**

The Government is in the process of reforming the way that health and care professionals are regulated. It is planning to change the legislation for nine out of the 10 healthcare professional regulators we oversee, giving them a range of new powers and allowing them to operate in a very different way.

The changes the Government intends to roll out will give regulators greater freedom to decide how they operate, including introducing the flexibility to set and amend their own rules. There will also be changes to regulators' powers and governance arrangements.

The changes will also create an entirely new process for handling fitness to practise (the process by which concerns about healthcare professionals are dealt with). Under the new system, more cases are expected to be dealt with on paper through a process called an 'accepted outcome' rather than going to a formal hearing.

The Professional Standards Authority have produced two sets of guidance to help regulators use their new powers effectively:

1. **Guidance on the use of Accepted Outcomes in Fitness to Practise**
2. **Guidance on Rulemaking**

They have sought answers from stakeholders to various questions on these sets of guidance.

AvMA's response to the consultation questions are below:

**1. Please describe your organisation or role**

A: Patient Representative body

**2. Please give the name of your organisation, or your name if you are responding as an individual.**

A: Action against Medical Accidents ('AvMA')

**3. A summary of responses received to this consultation will be published in a consultation outcome report. Any comments you make may be included but will be anonymised unless you give us permission to use your/your organisation's name. Are you happy for your name/your organisation's name to be included in any published reports?**

A: Yes

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

A: We support the publication of such guidance and if followed by the regulators, then we would hope that it would aid consistency and transparency. PSA rightly recognises that central to the effectiveness of professional regulation is public confidence in the system. Whilst we recognise the potential positive benefits arising from these regulatory reforms, we think caution should be the watchword as the PSA has rightly outlined a range of attendant risks associated with these changes not all of which seem to be effectively mitigated. We recognise the need for pace in resolving fitness to practice matters, but that cannot be at the price of deficient outcomes that undermine public confidence in healthcare professionals.

**5. 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?**

A: Yes

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

**A**: In respect of paragraph 7.7 of the consultation document, the PSA should consider providing some examples of what constitutes a "good reason" why a Case Examiner may not refer a case to a panel where a registrant disputes the facts relating to impairment. It should be further noted that there are freely available webinars and professional training readily available on how medical staff facing a fitness to practice investigation can best "handle" dealing with remediation. Case Examiners will need to be trained in and be aware of these potential issues when considering remediation alongside an assessment of meaningful insight.

**7. Factor 2: 'Is there a dispute of fact/conflict of evidence that can only be fairly tested at a hearing?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome?**

**A**: YES

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

**A**: The PSA provides no comment or guidance about how to handle the differing testimonies of the parties involved, not least the complainant. We would expect appropriate weight to be given to complainant testimony, especially where it comes from a patient, and it should be given lesser value because it is not underpinned by a medical opinion or fact. It should also be borne in mind that the patient is unlikely to be medically trained or have representation. Consideration must be given to the equality of arms in such a situation to ensure that the complainant is not intimidated, and their valuable testimony undermined.

**9. Factor 3: 'Does the complexity of the case suggest that a hearing may beneficial?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome?**

**A**: YES

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

**A**: The guidance is very light on defining what is to be determined as a "complex case". It is not unusual for regulators to have such definitions and having an agreed one would be helpful, reduce confusion and aid consistency of approach between regulators.

**11. 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?**

**A**: YES

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

**A**: We agree that insight is integral to fitness to practice and to retaining confidence in the regulatory system. We share PSA's concerns about how this can be effectively managed through a paper-based process and recognising that things can be written by the appellant, or their advocate, which have no bearing on their actual views. We support the factors to consider in paragraph 7:20 albeit we think the word "significant" should be removed from the first bullet point – if there is any doubt the case should be referred to a panel. We also believe that where this is a case that involves allegations of any form of discrimination it is best tested by a panel.

**13. 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 practice decision-making process?**

**A:** YES

**14. Factor 6: The use of single decision-makers. Do you agree that some fitness to practice cases may benefit from more than one decision-maker?**

**A**: YES

**15. Do you have any comments on the bullet points listed in the guidance relating to the composition of decision makers? (See paragraph 7.29)**

**A**: We support the factors to consider. We would comment that with respect a case that involves cultural considerations, regardless of the competence of the Case Examiner, perceptions of bias can be such that it would surely be better to involve an additional Case Examiner to ensure the widest possible cultural considerations.

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

**A**: YES

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

**A**: We would only add that decisions should be written in a way that makes them accessible to the public – after all, these decisions are designed to provide the public with confidence in the overall effectiveness of regulation.

18. 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?

**A**: YES

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

**A**: With regards the treatment patients and service users, we wholeheartedly agree that they should be treated with dignity and respect, feel heard and kept informed throughout the process. Those are fine words, but they need to be "lived" by each regulator. Just saying it will not make it happen unless regulatory staff are trained and supported to bring those words alive. We would encourage the PSA to go further than just the guidance and address this real concern in a meaningful and supportive way by encouraging regulators to take positive action to make this a reality for patients, many of which will have been through a distressing set of circumstances which they will have to re-live for the purpose of a regulatory fitness to practice

investigation. There are many practical things that regulators could consider to advise and assist the patient as they go through a disciplinary process which they may find challenging for a number of reasons.

**20. Please set out any impacts that the guidance would be likely to have on you and/or your organisation, or considerations that we should when assessing the impact of our proposals.**

**A:** We are an independent charity and leading patient advocacy body in respect of patient safety in the UK. We support people who have been harmed sometimes from negligence by a healthcare professional which calls into question their fitness to practice. Too often, we see patients feel let down by the regulators at various stages of the process because not enough care has been given to the needs of a patient in such a situation – and their dignity has not always been respected. We hope this guidance will help to start to change this, but as per our answer to Q19, words on a page in guidance are only the starting point. In addition, we strongly believe that with such a significant change in approach, and mindful of the need to retain confidence in the regulatory system, all the regulators and the PSA should be looking for follow-up evidence of cases that go through the Accepted Outcomes procedure to determine the level of effectiveness in terms of delivering proportionate outcomes.

**21. 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)

**A**: Don't know

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

**A**: Yes, we are supportive of overarching guidance for regulators about rule making.

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

**A**: YES

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

**A**: We have no further suggestions to offer.

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

**A**: YES

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

**A**: No further comments.

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

**A**: Yes, it is, and we would add that when consulting it would be helpful if regulators provided a reasonable time frame for bodies to respond. We would consider a reasonable time to be at least 10 weeks.

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

**A**: No

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

**A**: Don't know

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

**A**: No further comments.

**31. 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 the proposals.**

**A**: We do not see there being a direct impact on our body.

**32. Are there any aspects of these 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)

**A**: Don't know.

**Date submitted: Wednesday 10th April 2024**