RCGP response to the Professional Standards Authority's (PSA) good practice guidance documents on the use of **Accepted Outcomes in Fitness to Practise** and **Rulemaking**

15 April 2024

Statement from the PSA about the consultation:

The Government is currently reforming the healthcare professional regulators. It is planning to change the legislation for nine out of the ten healthcare professional regulators we oversee, giving them a range of new powers and allowing them to operate in a very different way. We have produced guidance to help support regulators to use their new powers effectively.
In this consultation we are seeking your views on the draft guidance documents that we have produced:

- *Guidance on the use of Accepted Outcomes in Fitness to Practise*
- *Guidance on Rulemaking*

This consultation should be read alongside the consultation paper and guidance documents.

Two Parts of the Consultation:

1. Accepted Outcomes in Fitness to Practise
    - 1.1. Factors to Consider when using accepted outcomes: guidance for regulators
        - Part I consists of guidance for regulators on using accepted outcomes in fitness to practise. The purpose of the guidance is to aid regulators to develop their own guidance and processes for using accepted outcomes.
    - 1.2. Context, evidence and explanation of factors
        - Part II contains the background and context to the guidance, including details of the changes to fitness to practise resulting from the Government's programme of reform to the healthcare professional regulators. It also contains a fuller explanation of the factors for regulators to consider along with details of the underpinning evidence.
2. Rulemaking

Part 1: Consultation questions on the **draft Accepted Outcomes in Fitness to Practise guidance**

Q4. Do you think that our fitness to practice guidance will help regulators to make best use of accepted outcome and use them in a way that is fair, transparent and protects the public? - free-text approx. 20,000 characters?

a. Clear, proportional, and independent professional regulation is critical to safeguard patients, healthcare practitioners, and public trust in the NHS across the UK. However, excessive and rigid regulations can create bureaucratic obstacles that disincentivise GPs from entering or remaining in the profession, limit clinical flexibility and increase non-clinical workload, ultimately compromising the quality of healthcare services delivered to patients.
b. GPs across the UK are facing unprecedented workload and workforce challenges. Elements such as the rising ratio of patients per full-time-equivalent (FTE) GP, and increasing complexity of care, highlight the pressure our GP workforce is under to respond to growing demand with limited resources.
c. As of February 2024, NHS data reports the average number of patients per fully qualified FTE GP as one GP per 2,298 patients in England. This ratio continues to rise, meaning that on average, each GP is responsible for 158 additional patients than they were five years ago. (Source: NHS England, Appointments in General Practice (February 2024) & General Practice Workforce (February 2024))
d. In addition to growing patient lists, GPs across the UK are delivering more appointments, whilst managing risk and increasingly complex healthcare needs of local communities, related to factors such as ageing populations and rising rates of multiple conditions. (Source: Soley-Bori et al., Impact of multimorbidity on healthcare costs and utilisation: a systematic review of the UK literature (2021)., General Medical Council, The state of medical education and practice in the UK: workplace experiences 2023., Cassell et al., The epidemiology of multimorbidity in primary care: a retrospective cohort study (2018).)
e. GPs and their teams delivered 30.5 million appointments in February 2024 – 5.46 million more than in February 2019, but with 3% fewer fully qualified FTE GPs. (NHS England, Appointments in General Practice (February 2024) & General Practice Workforce (February 2024)).
f. This environment can be significantly compounded by supervision and training pressures, for both GP trainees as well as other members of the multidisciplinary team including currently unregulated professional groups. Subsequently, Fitness to Practice (FtP) referral and investigation processes must finely balance the requirement to protect the public in accordance with the three limbs of public protection, alongside the value and wellbeing of the GP profession when considering the time, resources, and productivity that these proceedings can expense.

g. The RCGP supports the intention and detail within these guidance documents to establish a regulatory environment that facilitates proportionate, flexible and independent regulation, whilst protecting the public and enabling clinicians to deliver high-quality healthcare.
h. While robust and specific regulation is necessary, it is essential to minimise overly excessive and inflexible regulations that can restrict the ability of healthcare practitioners to provide essential services to patients and their communities. Current and anticipated regulatory reforms will be far-reaching across all ten healthcare professional regulators, and it is important that they are implemented in line with guidance from the PSA to promote public trust and ensure consistency across regulators.
i. The following comments relate specifically to the use of case examiners and accepted outcomes as an alternative to panel hearings:
    i. As has been highlighted in the PSA review of Social Work England's process for 'accepted outcomes' in fitness to practise (FtP) cases, the RCGP is concerned about the risk of more serious outcomes being accepted by a registrant in the absence of a panel, particularly by those who may already face disproportionate outcomes.
    ii. We acknowledge ongoing work by the General Medical Council (GMC) to address fairness in its FtP process. However, the movement away from a panel structure towards a case examiner (or has been suggested, a single decision maker) model raises concerns surrounding the transparency and reliability of decision making, support and representation for registrants, and the mitigation of human factors such as bias and experience in these systems. It will be very important for regulators to clearly demonstrate how case examiners reach their decisions, following a clear algorithm or decision-making process. There will also need to be quality control of this process and consideration of how artificial intelligence and machine generated learning could be implicated and managed in these matters.
    iii. It has been established that Black, Asian and Minority Ethnic (BAME) doctors and internationally trained medical graduates (IMGs) are overrepresented in FtP and performance concern referrals, and face harsher scrutiny in investigations. (Source: NHS, An exploration of the experiences of ethnic minority practitioners and International Medical Graduates of the management of concerns about their medical practice (March 2024)., General Medical Council, Reviewing how we approach fairness and bias: Actions for 2023 (February 2023)., General Medical Council, Fair to Refer? Reducing disproportionality in fitness to practise concerns reported to the GMC (June 2019)). Case examiners will need regular Equality, Diversity, and Inclusion (EDI) training and analysis of the outcomes of their cases to ensure there is no inadvertent bias in their decisions.

iv. The RCGP has heard anecdotally that these groups, and those with other protected characteristics such as disabilities, are at a higher risk of being poorly represented by medical defence organisations, meaning they may feel unsupported, limited in their options, and are at a higher risk of accepting more severe outcomes.

Factors that regulators should consider when deciding if a case best dealt with by an accepted outcome or a panel hearing (see paragraphs 7.2-7.20 of the guidance). The questions below relate to these factors:

Q5. 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? - Y/N/Don't know

Yes.

Q6. Free-text for comments on the above factor and its associated bullet-points in the guidance document.

a. As highlighted above, when incongruence occurs in a proceeding, beyond minor discrepancies, the case should be referred to a panel to enable a comprehensive review to take place. This enables a wider examination of evidence, with input from a wider range of voices and experience, including but not limited to multiple decision makers, an independent/lay person, and the registrant themself.
b. The RCGP supports a Fitness to Practise model of reflection and learning, rather than one of vilification or blame. If a registrant can demonstrate that reflection and learning has taken place, having taken active steps and ownership of their practice, this should be considered positively and reflected in the accepted outcomes.
c. In complex cases where bias or cultural differences may be at play, and/or if a registrant continues to defend their position or cannot come to an agreement with the case examiner through accepted outcomes, the case should be referred for a panel hearing. If this occurs, appropriate support and guidance should be provided to the registrant throughout the process.

Q7. 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? - Y/N/Don't know

Yes

Q8. Free-text for comments on the above factor and its associated bullet-points in the guidance document.

Yes, the guidance here is robust and should be considered as part of the fundamental delivery of fair and equitable decision-making.

Q9. 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? - Y/N/Don't know

Yes

Q10. Free-text for comments on the above factor and it's associated bullet-points in the guidance document.

a. This is imperative, as discussed above in previous questions.
b. The case examiner and accepted outcomes model appears fitting and appropriate for cases that are straightforward, with clear facts that are understood and uncontested by all parties, and which may be supported or guided by historical precedent. However, in cases where multiple complex and interrelated factors such as bias, a significant elapse of time, numerous respondents with differing statements, systemic implications, and cultural differences are implicated in the nature of the referral/investigation, the FtP review process must be equitable and robust. Such highly complex cases should be referred for a panel hearing, where it is important to have a range of views heard and give the registrant a platform to defend their position, in the presence of a panel offering diverse backgrounds, experiences and perspectives.
c. Case Examiners should be provided with robust training (including Equality, Diversity, and Inclusion (EDI)) and support to be able to identify and appropriately refer cases to a panel hearing in the event of complex elements and/or disagreement over details.
d. It may be suitable for healthcare professionals engaged in regulatory roles, including undertaking decision-making work, to have access to experienced guidance and structured support. If not already in place, a 'Regulators' Support Group' may promote inter-regulator discussions and collaboration. Inter-regulator discussions should be promoted, in a timely and collaborative manner, to promote consistent application of the three limbs of public and support shared learning from mistakes, reflection on problem cases, and provide a professional network for regulators across the sector.
e. When expert witnesses are called upon for a complex case before a panel hearing, the RCGP support the recommendation of a pre-hearing meeting between experts to produce a report and identify any outstanding disputed points. The undertaking of such steps should be undertaken in a transparent and well documented manner, and still allow for the registrant to hear the evidence provided and defend their position before the panel.

Q11. 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? - Y/N/Don't know

Yes

Q12. Free-text for comments on the above factor and its associated bullet-points in the guidance document.

a. Insight is an important part of the FtP process, and opportunities should be given to each registrant to demonstrate reflection and insight in a fair and equal manner. Highly complex cases, particularly those that may be influenced by cultural differences or communication factors, should be appropriately referred to a panel hearing to enable the registrant to actively demonstrate their level of insight, steps they may have taken to remediate, and to clarify or expand on any nuance or intricacies from their point of view which may be difficult to clearly articulate in written evidence. A formal hearing also allows the panel to cross-examine the evidence and ask probing questions. These steps enable a greater understanding of complex cases to be achieved. However, a formal hearing can draw out and compound the distressing experience of the registrant, which should also be taken into account when deciding whether or not to move to a hearing.
b. As stated above, where a case examiner or panel finds evidence of good practice, active remediation, and sound insight, this should be viewed positively and the 'accepted outcomes' or conditions presented to the registrant should emphasise learning (rather than blame and punishment) in response to error. The RCGP believes this approach is needed, to promote and support those who have been subject to an investigation to return to work appropriately and safely.
c. It is important to promote those who have been found fit to practice to return to work, with support and any appropriate measures in place rather than having valuable healthcare professionals feel marginalised, hesitant, or incapable of returning, leading to poorer outcomes for both the health professional and the public.
d. The RCGP were pleased to see the recent PSA report on the GMC's steps to take a more compassionate approach and reduce the impact of investigations on registrants. (Source: Professional Standards Authority for Health and Social Care, GMC performance review 2022/23, December 2023).

Factors that regulators should consider when determining the composition of decision-makers (see paragraphs 7.21-7.29 of the guidance). The questions below relate to this section of our guidance:

Q13. 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? - Y/N/Don't know

Yes

Q14. 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? - Y/N/Don't know

Yes

Q15. Do you have any comments on the bullet points listed in the guidance relating to the composition of decision makers? (See paragraph 7.29) - Y/N/Don't know

a. Lay-person representation in fitness to practice decisions and hearings for medical professionals in the UK is crucial because it ensures that the concerns and perspectives of patients and the broader public are considered, and adds validity to the process.
b. Lay representatives can provide valuable insights into the impact of conduct or competency on patients, communities, and wider society. This inclusion helps maintain transparency, accountability, and fairness in the regulatory process, ultimately strengthening the quality of care provided by regulated healthcare practitioners in the UK. It would be prudent for lay representatives to receive commensurate training as case examiners, particularly EDI.
c. The RCGP is concerned that the freedom allowing regulators to shift to a single decision-maker model, could negatively impact those who already face disproportionate experiences in FtP investigations. The RCGP supports steps to reduce bureaucracy, improve the timeliness of decisions and facilitate those who are suitable to return to work in a supported manner, when the appropriate safeguards are in place for both practitioners and the public.
d. A single decision-maker model promotes a streamlined process, however, these changes may reduce the transparency of decisions, compound existing power dynamics in an already stressful process, and lead to perceptions of unfairness.
e. To mitigate risks, we recommend that regulators should commit to independent auditing and monitoring of their FtP process, with transparent publishing of results. This should be in addition to regulators' rigorous EDI training and undertaking of equality impact statements, as outlined in guidance point 7.43.
f. Single decision-makers should be supported with timely access to second opinions or experienced guidance on an aspects of cases that do not meet the threshold of being progressed to a full hearing.
g. Case examiners, panellists, expert witnesses, lay-people, registrants, service users, and all others involved with proceedings should be provided open and clear pathways to provide feedback. They should be supported and protected to speak openly, and treated consistently if they decide to do so, and as part of this, a regulator-specific whistleblowing policy may be fitting (if not already in place).
h. The RCGP support the PSA's guidance for regulators to consider obligations to protect and promote equality, diversity and inclusion (EDI) and affirm the importance of cultural competency and safety in these processes.

Factors that regulators should consider when publishing case examiners decisions (see paragraphs 7.30 - 7.34 of the guidance). The questions below relate to this section of the guidance:

Q16. Factor 7: publishing case examiner decisions. Do you agree that the bullet points in the guidance under this factor are the right ones? - Y/N/Don't know

Don't know.

Q17. Free-text for comments on the above factor and its associated bullet-points in the guidance document.

There needs to be an annual reporting of outcomes, both for case examiners and hearings, alongside transparent auditing of the processes followed.

Factors that regulators should consider to promote a fair and transparent accepted outcomes process (see paragraphs 7.35 - 7.44 of the guidance). The questions below relate to this section of our guidance:

Q18. 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? - Y/N/Don't know

Yes

Q19. Free-text for comments on the above factor and its associated bullet-points in the guidance document.

a. The RCGP wish to highlight the importance of maintaining accountability and transparency in decision-making, alongside the need to protect the privacy and wellbeing of registrants.
b. Regulators must consider appropriate measures to provide adequate support to those involved in proceedings, recognising the individual experiences of the professionals that make up our valuable healthcare workforce.
c. The RCGP support robust regulatory systems that uphold the three limbs of public protection, balanced by consideration of fairness and compassion for the healthcare workforce.

The following questions relate to the impact of guidance:

Q20. 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.

a. The RCGP support a Fitness to Practise model that promotes reflection and learning to effectively deliver the three limbs of public protection. The correct balance should allow for appropriate accountability without driving anxiety and fear of blame, as this has been shown to be detrimental to retention, workforce performance, and patient outcomes.
b. The inclusion of supportive measures and cultural competency principles can mitigate negative experiences and impacts on practitioner wellbeing, encouraging continued professional development and appropriate return to practice.

Q21. 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? - Y/N/Don't know

a. Yes.
b. As previously described, the RCGP is concerned that the freedom allowing regulators to shift to a case examiner model, particularly a single decision-maker model, could negatively impact those who already face disproportionate experiences in FtP investigations. These changes may reduce the transparency of decisions, compound existing power dynamics in an already stressful process, and lead to perceptions of unfairness.
c. To mitigate such risks, we recommend that regulators should commit to independent auditing and monitoring of their FtP process, with transparent publishing of results. This should be in addition to regulators' undertaking of equality impact statements, as outlined in guidance point 7.43.
d. Case examiners, panellists, expert witnesses, lay-people, registrants, service users, and all others involved with proceedings should be provided open and clear pathways to provide feedback. They should be supported and protected to speak openly, and treated consistently if they decide to do so, and as part of this, a regulator-specific whistleblowing policy may be fitting (if not already in place).

Part 2: Consultation questions on the **draft Rulemaking guidance**

Q22. Do you think our guidance will help regulators exercise their rulemaking powers effectively?

a. Yes.
b. It is vital that registrants and the public can have clarity on the processes of regulators, to ensure safe, fair and equitable treatment. As an organisation dedicated to the advancement of general practice and the promotion of excellence in patient care, the RCGP is committed to ensuring that regulatory frameworks are robust, transparent, and conducive to the three limbs of public protection.
c. The RCGP supports the intention and detail within these guidance documents to establish a regulatory environment that facilitates proportionate, flexible and independent regulation, whilst protecting the public and enabling clinicians to deliver high-quality healthcare.
d. While robust and specific regulation is necessary, it is essential to minimise overly excessive and inflexible regulations that can restrict the ability of healthcare practitioners to provide essential services to patients and their communities. Current and anticipated regulatory reforms will be far reaching across all ten healthcare professional regulators, and it is important that they are implemented in line with guidance from the PSA to promote public trust and ensure consistency across regulators.

e. We acknowledge that the PSA has limited powers and is unable to mandate this guidance or enforce consistent standards of rulemaking across the regulatory bodies. For this reason, the RCGP supports the suggested steps outlined in Annex 1 – Inter-regulator consistency tool, and the rulemaking guidance 2.5, whereby regulators could be asked to explain any divergence, and assessed on their rulemaking approach within their performance review.
f. We believe that the PSA should engage in regular review processes with regulators to ensure that regulatory requirements remain relevant, effective, and responsive to the needs of patients and healthcare professionals. These checks and balances should be framed in a way to support regulators to demonstrate their standards transparently and provide an additional layer of public protection. If these steps are to comprise a new element of regulator performance reviews, the benefits outlined above should not be outweighed by undue administrative and bureaucratic burden.

The following questions relate to the principles to help regulators to use their rulemaking powers in a way which prioritises public protection and ensures a good practice approach to making rules (see 4.1-4.3 of the draft rulemaking guidance).

Q23. Do you think that the right principles outlined are the right ones? - Y/N/Don't know

Yes

Q24. Do you have any comments to make on the principles listed or any additional principles to suggest? - Free-text

N/A

The following questions relate to the guidance document advice on ensuring consistency between different regulators' processes and avoiding unjustifiable difference (see 6.1 - 6.11 and Annex A of the draft rulemaking guidance).

Q25. Do you think that the guidance on consistency between regulators (avoiding unjustifiable difference) is helpful? - Y/N/Don't know

Yes

Q26. Do you have any comments to make on this section of the guidance? - Free-text

N/A

The following questions relate to the guidance document advice on consulting on rules and associated guidance/policies (see 7.1 - 7.12 and Annex A of the draft rulemaking guidance).

Q27. Do you think that the guidance on consultation is helpful? - Y/N/Don't know

Yes

Q28. Do you have any comments to make on this section of the guidance? - Free-text

N/A

The following questions relate to the guidance document advice on governance for approval of rules and associated guidance/policies (see 8.1-8.4 of the draft rulemaking guidance)

Q29. Do you think that the guidance on governance is helpful? Y/N/Don't know

Yes

Q30. Do you have any comments to make on this section of the guidance? - Free-text

N/A

The following questions relate to the impact of our guidance:

Q31. 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. - Free-text

a. Clear, proportional, and independent professional regulation is critical to safeguard patients, clinicians, and public trust in the healthcare system. However, excessive and rigid regulations can create bureaucratic obstacles that discourage GPs from entering or remaining in the profession, limit clinical flexibility, increase non-clinical workload, and compromise the quality of healthcare services. While targeted regulation is necessary, it is essential to minimise excessive and inflexible regulations that can restrict GPs' ability to provide essential services to the public.

Q32. 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? - Y/N/Don't know

a. Yes
b. As previously described, the RCGP is concerned that unreasonable divergence across regulators and a shift towards single decision-maker models in FtP, could negatively impact those who already face disproportionate experiences. These changes may reduce the transparency of decisions, compound existing power dynamics in an already stressful process, and lead to perceptions of unfairness.
c. To mitigate such risks, we recommend that regulators should commit to independent auditing and monitoring of their rules, FtP processes and governance structures, with transparent publishing of results.
d. Case examiners, panellists, expert witnesses, lay-people, registrants, service users, and all others involved with proceedings should be provided open and clear pathways to provide feedback. They should be supported and protected to speak openly, and treated consistently if they decide to do so, and as part of this, a regulator-specific whistleblowing policy may be fitting (if not already in place).

ENDS.