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**Title: Section 29 review update**

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## **Paper for Information**

### **Open paper**

**How does this work contribute to Strategic objective 1 (to protect the public by delivering highly effective oversight of regulation and registration):** Reviewing our section 29 processes enables us to ensure we are continuing to deliver our oversight function in an effective and efficient manner through the identification and implementation of process improvements.

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## **1. Issue**

1.1 In September 2023, the Board approved the scope of the section 29 review. The five areas within scope are:

- Decision-making stages of the process, including case meetings
- How we measure success, focusing on influence and value for money
- Sharing learning with regulators
- Whether there are proportionality improvements to be made at each stage of the process
- Quality assurance

1.2 In September 2023, we stated that we thought it would take approximately six months to complete the review, and a similar amount of time to implement changes. Since September 2023, we have been under resource pressures and have experienced turnover, which has affected the small team. We have therefore not been able to complete the review as intended. This paper provides an update on progress of the review, work achieved to date and plans for future work.

## 2. Recommendations

- 2.1 The Board is asked to note this paper, along with future planned work and associated timeframes.

## 3. Background

- 3.1 The primary focus and purpose of the section 29 function is to appeal individual cases that are insufficient for public protection. However, in addition, the section 29 function produces wider value through our work, including establishing case law that informs practice and approach, and sharing learning through learning points that we feed back to regulators on individual cases.
- 3.2 We initiated the section 29 review as, while we had made continuous improvements to processes each year, we had not taken stock to review these systematically.
- 3.3 The five workstreams within the review have two key focuses: to ensure our processes are robust and efficient; and to consider how we can add greater value from this work. While we have not completed the review as intended, we have made progress on a number of the workstreams, as detailed in section 4 below.

## 4. Analysis

- 4.1 Progress against each area of the scope is outlined within this section. We have provided timeframes for individual workstreams along with a summary of overall timeframes for work remaining at section 8.

### Decision-making

- 4.2 We have made changes to who makes decisions, to reduce the number of decisions one individual makes on any one case, and to provide greater flexibility in convening panels. To date, we have:
- removed the Director from one of the three stages of decision-making that they were previously involved in. The Lead Lawyer now undertakes second checks of initial reviews, making decisions as to whether these cases should be closed or progress to a detailed case review.
  - removed the requirement for Board members to sit on panels. This should provide us with greater flexibility in arranging panels and contribute to reducing the number of statutory deadline decisions.
- 4.3 The departure of a number of decision-makers has meant that we now have a relatively small pool of people trained to sit on section 29 panels. In September and October, we will be training more individuals to sit as section 29 decision-makers, which should also contribute to reducing the number of statutory deadline decisions.
- 4.4 We have begun considering further changes to our decision-making processes, which we are working on alongside further process changes. We expect to be able to provide an update on this at the January Board meeting. Although improvements will continually be made over the next year, we expect work to be completed, with processes in place and operational by September 2025.

### Measuring success

- 4.5 This is a complex area that will take time to review, and we have not yet started this workstream. To date, we have focused our resources on developing and introducing immediate quality improvements to processes.
- 4.6 We expect to be able to begin work on this in April 2025, once the new Head of Legal and Lead Lawyer have had an opportunity to settle into their roles and any further changes to our decision-making and processes are implemented. We consider it important to implement decision-making and process changes ahead of this work, as these changes may impact considerations of how we measure success. We will provide an update to the Board at its meeting in July 2025 and expect that we will complete this work by September 2025.

### Sharing learning

- 4.7 The Lead Lawyer and initial review team have undertaken a large amount of work in relation to sharing learning more effectively. This includes a number of process changes, including:
- Identifying themes and trends for each regulator and more widely, and writing to the regulators to raise these issues if and when identified
  - Improving our data capture and categorisation to improve consistency, clarity and ease of analysis
  - Piloting an increased frequency of sharing learning points with regulators, from quarterly to monthly, to allow more timely dissemination of learning
  - Regularly providing regulators in future with information on wider learning points identified, not just those from their own cases
  - Producing learning points guidance to ensure consistency of approach within the team
- 4.8 In July, we produced the first in our six-monthly learning point bulletins (see Annexe A). The initial edition covered a 12-month period from April 2023 to March 2024, after which they will revert to six-month periods. The bulletin covers key concerns identified in learning points, and the theme of this bulletin was sexual misconduct. As we note in the bulletin, we have seen a rise in final decisions involving sexual misconduct and inappropriate behaviour, with a threefold rise in the number of cases we appealed involving sexual misconduct in 2023/24 compared to 2022/23. The bulletin is published on our website and includes a guest article from external counsel who had recently provided a session to staff on sexual misconduct cases.
- 4.9 We intend to create a learning points webpage for the new website where we can publish the bulletin alongside data and further detail on learning points. We will also be considering further work based on feedback received from the regulators through this work.

### Process improvements

- 4.10 We have introduced a range of process improvements throughout the past 12 months, with a view to improving the efficiency and effectiveness of our processes. A brief summary of some key changes is below; this is not a complete list of all changes made. We have:

- Made amendments to the flow of initial review work, including second checks. This has resulted in initial reviews being completed in an average of 3.4 days between 1 May to 31 July 2024, whereas this had been at an average of 5.2 days in the equivalent period the year before. This means that there will be greater time to consider cases at detailed case review stage and to subsequently convene case meetings
  - Made changes to our communication with regulators to improve the efficiency of receiving information and address any issues as they arise. This has resulted in faster provision of information and less resource required to chase information
  - Developed a process for handling concerns raised by regulators about the outcome of the case. This was put in place following an increase in the number of cases raised by regulators and has provided separation between the regulator's communication and those who make decisions at the later stages of a case
  - Brought on board a third external legal firm to assist with our work, providing us with greater options
  - Introduced guidance on EDI issues and updated the database to allow these to be better captured and analysed
  - Introduced a checklist for types of cases to be escalated to the Lead Lawyer by the initial review team to further enhance our quality assurance
- 4.11 We will evaluate the impact of these changes to test whether they are having the desired effect on efficiency and quality, and to assist us to identify further improvements. We intend to do this in Q1 2025/2026.
- 4.12 As we have mentioned above, we have begun considering further process improvements, which we are working on alongside any further changes to our decision-making and process changes. We expect to be able to provide an update on this at the January Board meeting, with some improvements having already been implemented by then.

### **Quality assurance**

- 4.13 We had previously planned to run a quality assurance process in Q4 2023/24, which was postponed to Q1 2024/25 due to resourcing pressures. Additional turnover has contributed to further delays.
- 4.14 We have identified a supplier to provide independent quality assurance of a sample of cases at a cost. As this cost was not budgeted for in the 2024/25 business plan, ELT agreed in July to reconsider in November whether it would be possible to fund the work. If funding is available, we will be ready to begin this work at short notice.

## **5. Finance and Resource**

- 5.1 The work to date has been undertaken using internal resources at no additional cost.
- 5.2 As identified within this paper, there is a cost associated with the quality assurance work. Funding for this will be reconsidered later in the calendar year.

## 6. Impact Assessment

- 6.1 We expect that the outputs of each workstream will lead to quality and/or efficiency improvements. We will evaluate the changes to test whether this has occurred. For example, we expect that through the work to share learning more effectively with regulators, there will be a positive impact on quality in areas identified through learning points. We will identify this through the prevalence of learning points in specific areas, which we intend to do initially at six-monthly periods when developing each learning points bulletin.
- 6.2 The outputs of further work may have an impact on how we carry out our section 29 function. Any major changes to processes may impact the PSA, regulators, registrants and members of the public who raise concerns with us about registrants.

## 7. EDI implications, including Welsh language

- 7.1 There is known overrepresentation of groups of individuals who share protected characteristics in the fitness to practise processes of some regulators. Any work to change the section 29 process may therefore have an impact on this overrepresentation. If any major changes to processes are identified through further work, an equality impact assessment will be undertaken to identify the impact of these changes. We have identified the need to undertake retrospective equality impact assessments on our existing processes and manuals, which have been in place for some time. We will complete these by the end of November 2024. No Welsh language impacts have been identified to date for this work, and these will be considered as part of EIAs.

## 8. Timescale

- 8.1 We have provided an outline of timeframes below for remaining areas of work and when we expect to report to the Scrutiny Committee and Board on this.

Timeframe	Task and reporting
<b>Q3 2024/25</b>	Prioritisation of further quality and efficiency improvements.
	Work to develop further decision-making and process changes.
	Consideration by ELT of budget for quality assurance work, and implementation if budget agreed.
<b>Q4 2024/25</b>	Initiation of pilot of new decision-making and process changes.
	January Board meeting: Further detail and update provided on decision-making and process changes; update on further quality and efficiency improvements.
	February Scrutiny Committee meeting: Report on quality assurance activity (if progressed). Agreement on future quality assurance activity.
<b>Q1 2025/26</b>	Evaluation of the impact of quality improvement and efficiency changes.
	Ongoing work on implementation of decision-making and process changes, including engagement.

	Initiation of work to consider what success looks like, taking account of learning from other workstreams.
	May Scrutiny Committee and Board meetings: Update on implementation of decision-making and process changes;
<b>Q2 2025/26</b>	Finalisation of decision-making and process changes.
	Continuation of work on measuring success.
	July Board meeting: Update on work to measure success.
	August Scrutiny Committee meeting: Draft reports on ongoing workstreams provided ahead of Board reporting in September.
	September Board meeting: Report provided on completion of workstreams to implement decision-making and process changes and on measuring success.
<b>Ongoing</b>	Scrutiny Committee oversight of evaluation and future quality improvement work.

## 9. Communications

9.1 We have communicated and worked with regulators and internal teams on individual workstreams. We will continue to do so and will build on the work to date to improve communications with the regulators.

## 10. Internal Stakeholders

10.1 The performance review and policy teams have particular interest in this work, as any outputs may influence their work. Individual teams have and will be involved in workstreams that are relevant to them.

## 11. External Stakeholders

11.1 The regulators will have an interest in this work. We have engaged with regulators this year through our work, and will seek feedback from them to inform any major changes to processes. Additionally, stakeholders who represent registrants will have an interest, as will the Department for Health and Social Care and the devolved administrations.

## 12. Annexes

12.1 Annexe A: Learning points bulletin, July 2024.