
Academic conference 2020

The PSA view on fitness to practise reforms: balancing power with accountability

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Some background on our views

- Piecemeal reforms, undertakings: GMC, GDC, NMC
- Former Authority position: must be signed off by panel to fall under s.29, question quality of decisions without hearing, especially on registrant insight, credibility assessment
- Increasingly isolated
- *Rethinking regulation* and *Regulation rethought*, FtP needs reforming:
 - Less adversarial
 - Reduced impact on complainants and professionals
 - Reduced costs
- How to achieve this without loss of public protection? (protecting public from harm, public confidence, professional standards)

The Future of Fitness to Practise (2017)

- Part of *Right-touch reform*
- Comprehensive description of the state of FtP in 2017
- Fitness to practise proposals:
 - Reduce friction between regulator and registrant
 - Move away from expensive, legalistic, adversarial approach
 - Encourage full cooperation from registrant
 - Use minimum regulatory force - greater emphasis on remediation (without losing sight of public interest limbs)

Government proposals

- Social Work England model to form basis of reforms of all professional regulators
- Detail still to be developed, consulted on, put to Parliament in secondary legislation (section 60 Order)
- Basic framework confirmed:
 - Case examiners to make more decisions including on most serious cases, consensually with registrant
 - Automatic strike-of for listed serious offences
- Flexibility for regulators to make own FtP rules
- Ongoing uncertainty about PSA's powers to challenge case examiner decisions that fail to protect the public

A model with potential (i)

- Quicker, cheaper, more efficient, proportionate, and consistent
- Less stressful for complainants, witnesses, and professionals
- Clear, reasoned, published case examiner decisions with determinations on facts, impairment, and sanction
- Cases where any doubts on facts or insight always referred to hearings
- No room for negotiation/ plea bargaining
- Understanding of effects on quality of decisions and public confidence of taking decisions consensually, on the papers, in private – with processes adapted and internal mitigations in place (e.g. quality assurance of decisions, training of case examiners etc.)
- External public interest scrutiny and challenge of decisions that do not protect the public (PSA)
 - Picks up on under-prosecution, leniency, plea bargaining
 - Mitigates risks/flaws in new process, adds public confidence

A model with potential (ii)

⇒ Clear how process and outcomes will protect the public from harm, maintain public confidence, and uphold professional standards

A model with risks if not done well (i)

- Complainants, witnesses given fewer opportunities for engagement in the process
- Opaque case examiner decisions with unclear reasoning
- Facts disputed by registrant dropped, room for negotiation on sanction
- Narrow focus on risk of harm, loss of focus on public interest
- No understanding of effects on quality of decisions and public confidence of new decision-making process – no internal mitigations
- No external public interest scrutiny and challenge of decisions that do not protect the public (PSA)
- Significant variation of process and outcomes across regulators

A model with risks if not done well (ii)

- ⇒ Not clear how process as a whole would protect the public from harm, maintain public confidence, and declare professional standards
- ⇒ Return to pre-Shipman power without transparency or accountability

Mitigating the risks

- Understanding effects on quality of decisions and public confidence of taking decisions consensually, on the papers, in private:
 - Consumer research underway to start to understand how the public wants to be engaged in new FtP process
 - Further research needed on quality of decision-making (building on Paul Sanderson) and public confidence in the new process
 - Possibility of looking at existing consensual processes
- Ongoing monitoring - may take years to understand full implications of new model
- Highlighting need for mitigations offered by PSA scrutiny and challenge powers
- Ensuring consistency where essential through legislation

Thank you

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