

## Response to Social Work England consultation on amendments to rules, electronic service and remote hearings

February 2022

### 1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
  - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
  - Conduct research and advise the four UK governments on improvements in regulation
  - Promote right-touch regulation and publish papers on regulatory policy and practice.

### 2. General comments

- 2.1 We welcome the opportunity to respond to Social Work England's (SWE) consultation on amendments to rules, electronic service and remote hearings.
- 2.2 We recognise that SWE, along with other regulators, had to make process changes at pace during the Covid-19 pandemic with limited opportunities to engage fully with stakeholders on potential impacts. We are pleased that SWE is now conducting a full public consultation on the changes.
- 2.3 We note that the consultation is limited in scope to the specific changes proposed to the rules and does not cover considerations to be taken into account when deciding which form of hearing is most appropriate. There is no reference to existing guidance in this area, however the consultation notes that such guidance is forthcoming. Some of our comments therefore address issues we believe should be considered in the development of that guidance, rather than the specific questions consulted on here.

### 3. Consultation questions

#### 1. Do you think the changes to the rules we have proposed will support continued flexibility with our approach to the format of hearings?

- 3.1 The changes to the rules proposed by SWE allowing for the continuing use of remote hearings and for communications to be sent by email would embed the changes brought about as a result of the Covid-19 pandemic. The proposed new rules would allow the regulator to pursue a flexible approach to the format of hearings.
- 3.2 The Authority supports the use of virtual hearings where this will not affect the integrity or fairness of the process. We note that SWE and other regulators have been successfully holding remote hearings throughout the pandemic and that most regulators are intending to continue to hold hearings remotely following the end of the pandemic restrictions.
- 3.3 However, the consultation doesn't appear to address the fact that there are, and will remain, circumstances in which there are clear benefits to holding an in-person hearing. We note that the consultation document states that in response to the pandemic, SWE "changed how hearings were conducted, with all hearings taking place remotely and online using video conferencing software"<sup>1</sup>.
- 3.4 The Professional Standards Authority believes that the options of hybrid and in-person hearings must remain. Our 'Guidance for regulators on fitness to practise hearings during the Covid-19 pandemic'<sup>2</sup> sets out that "in each case, the regulator should consider whether a case is most suitable to be heard physically, virtually or as a hybrid. The appropriate approach will need to be determined on a case by case basis weighing the advantages and risks in each case". The guidance goes on to outline certain circumstances in which a remote hearing would not be appropriate. These include where participants' support needs preclude them from taking part remotely, or where participants lack suitable equipment or private accommodation.
- 3.5 We note that during the pandemic SWE has required that "social workers...consent to a hearing taking place remotely" and that where they did not consent "hearings were either postponed or referred to the adjudicators to decide the best way to proceed"<sup>3</sup>. It is unclear on what basis adjudicators have made such decisions. The Authority guidance in this area states that:

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<sup>1</sup> Social Work England, December 2021, 'Consultation on amendments to rules, electronic communication and remote hearings': <https://www.socialworkengland.org.uk/about/consultations/consultation-on-amendments-to-rules-electronic-communication-and-remote-hearings/#changes>

<sup>2</sup> Professional Standards Authority, September 2020, 'Guidance for regulators on fitness to practice hearings during the Covid-19 pandemic': [https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-\(september-2020\).pdf?sfvrsn=78d67620\\_4](https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-(september-2020).pdf?sfvrsn=78d67620_4)

<sup>3</sup> Social Work England, December 2021, 'Consultation on amendments to rules, electronic communication and remote hearings': <https://www.socialworkengland.org.uk/about/consultations/consultation-on-amendments-to-rules-electronic-communication-and-remote-hearings/#changes>

*“it is essential that the registrant should be consulted about the mode of hearing and their reasoned views be given careful consideration and appropriate weight...the regulator’s preferences as the prosecutor should not be determinative and, ultimately, a panel will need to rule on the question. It is crucial that regulators provide clear guidance to listing officers and panels about the factors that need to be weighed so that an appropriate decision is taken.”<sup>4</sup>*

- 3.6 We understand that SWE will be publishing guidance later in the year about the factors to be considered when deciding the format of a hearing. It would have been helpful for at least interim guidance to have been published at the point at which remote hearings were initially introduced, as other regulators have done. We do however recognise that the changes had to be introduced rapidly and at a time of severe pressure and change for all regulators.
- 3.7 In developing the forthcoming guidance on remote hearings SWE may wish to draw learning from both the Health and Care Professions Tribunal Service ‘Remote Hearing Protocol’<sup>5</sup> and the General Optical Council’s ‘Remote Hearings Protocol’<sup>6</sup> which includes a fairly comprehensive list of suitability factors for remote hearings.
- 3.8 Further, in order to support the development of the remote hearings guidance, we believe that SWE should consult with panellists, registrants and complainants who have been involved in the process in order to gain a clear understanding of their experiences and any challenges faced. The consultation document states that “feedback we’ve received from hearings participants has been mostly positive and in favour of remote hearings continuing”<sup>7</sup>, however no further detail is given of this feedback and whether it has been systematically collected or analysed.

## **2. Do you think there are any other amendments to Social Work England’s rules that could be made to better support the continuation of remote hearings?**

- 3.9 Not that we are aware of.

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<sup>4</sup> Professional Standards Authority, September 2020, ‘Guidance for regulators on fitness to practice hearings during the Covid-19 pandemic’: [https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-\(september-2020\).pdf?sfvrsn=78d67620\\_4](https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/authority-guidance-for-regulators-on-fitness-to-practise-hearings-during-the-covid-19-pandemic-(september-2020).pdf?sfvrsn=78d67620_4)

<sup>5</sup> Health and Care Professions Tribunal Service, November 2020, ‘Remote Hearing Guidance’ <https://www.hcpts-uk.org/globalassets/hcpts-site/publications/rules-and-legislation/hcpts-remote-hearing-protocol.pdf>

<sup>6</sup> General Optical Council, December 2021, ‘Remote Hearings Protocol’ [https://optical.org/media/3qhjcygd/remote-hearings-protocol-dec-21-final\\_.pdf](https://optical.org/media/3qhjcygd/remote-hearings-protocol-dec-21-final_.pdf)

<sup>7</sup> Social Work England, December 2021, ‘Consultation on amendments to rules, electronic communication and remote hearings’: <https://www.socialworkengland.org.uk/about/consultations/consultation-on-amendments-to-rules-electronic-communication-and-remote-hearings/#changes>

### **3. Do you think that the changes to the rules have the potential to impact people based on protected characteristics positively, neutrally or negatively? If so, how?**

**The Equality Act (2010) lists nine protected characteristics: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.**

- 3.10 Some individuals with protected characteristics may find it more difficult to participate effectively in virtual hearings. This may be the case in relation to participants with particular support needs (in some cases support may more appropriately be delivered in person), or participants who find it difficult to use the technology required to participate remotely. SWE should provide information to participants on what reasonable adjustments can be made to ensure they can engage fairly and fully in remote hearings.
- 3.11 There may also be benefits to remote hearings from an inclusion perspective. Decisions about the most appropriate form of hearing will need to be made on a case-by-case basis, taking into account the individual circumstances of the participants.
- 3.12 In considering the potential equality impacts of these rule changes it would be useful to know what steps SWE has taken to fully assess any unintended consequences, and to consider any mitigations required. It may be useful to conduct an Equality Impact Assessment if SWE has not already done so.

### **4. Any other comments you might have**

- 3.13 As outlined above, we believe that in conjunction with these rule changes SWE needs to develop guidance on remote hearings both for panellists and participants. We welcome the commitment in the consultation document to do so. Guidance should cover the factors to be considered in assessing whether a case is suitable to be held remotely. We would like to see the options of hybrid and in-person hearings remain.
- 3.14 We believe it would be useful for SWE to keep these rule changes under review and to systematically collect feedback from participants who have attended a remote hearing.

## **4. Further information**

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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