

Professional Regulation Branch
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

16th June 2021

Dear Colleague,

Regulating healthcare professionals, protecting the public consultation response

The British Medical Association is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We welcome the opportunity to provide our views on the *Regulating healthcare professionals, protecting the public* consultation proposals.

We agree with the general principles underlying many of the proposals in the consultation, such as greater regulator transparency and openness. We are also broadly in support of flexible processes that are fair and efficient for patients and registrants. We particularly welcome the fitness to practise proposals; the GMC's present processes provoke distress and anxiety in many registrants who find the experience unnecessarily adversarial and punitive. We hope that the GMC will use its greater powers in this area to better support registrants and expedite the process for all parties.

We are not convinced that the cumulative effect of the proposed greater powers for regulators have been comprehensively considered, however. For example, the proposals do not include sufficient representation for registrants within regulators' decision-making structures, leaving entire professions vulnerable to ill-considered actions by regulators. We are not content with the promise of consultation with registrants when ideas will have already been well-developed by the regulator. Registrants' voices must be heard at the earliest possible stage of the decision-making process for their input to be meaningful in the development of efficient, proportionate regulation for healthcare professionals.

As such, we argue that the fundamental aspects of medical education and regulation should continue to be set out in legislation: CCT and license to practise. This will protect against the possibility of rapid reform by the GMC with unintended and deleterious consequences for doctors. By maintaining CCT and license to practise in legislation, reform will be necessarily slower in pace and carefully considered by all parties. We believe that this is appropriate for two cornerstones of medical education and regulation, whose development will have far-reaching ramifications for all current and future doctors practising in the UK.

Where we have been able to support the proposals for increased regulator flexibility, we look forward to working with the GMC to develop their rules and processes. The future model of medical regulation must



protect the public from poor care, while protecting professionals from unjust regulatory processes. The provision of excellent care can only be facilitated by proportionate and supportive regulation.

Yours faithfully,

A handwritten signature in black ink that reads "Daniel McAlonan". The signature is written in a cursive, flowing style.

Daniel McAlonan
Head of Regulation, Education and Training

Governance and operating framework

1. Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above? Please give a reason for your answer.

2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and should have these related duties?

3. Do you agree or disagree that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced?

We are supportive in principle of the proposed duties, particularly in terms of increased regulator transparency and assessment of the impact of changes on health and care professionals. We emphasise that registrants themselves must be involved in these assessments and that their perspectives must be central to regulators' decision making. We also think it sensible that patient groups are considered in these impact assessments, as relevant.

Impact assessments must consider a broad range of factors, such as caring responsibilities and health impacts as well as financial implication. This is essential to mitigate against any unintended consequences of regulators having more flexibility, and regulators being able to enact changes more easily as a result. For this reason we also strongly argue that professions must have a strong presence within the decision-making structures of their regulators (see response to 4).

We also note that the duty to co-operate must not extend to the inappropriate sharing of registrants' data. This means that the sharing of data must be governed by parameters that are clearly communicated to and agreed with registrants (see response to 10).

4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators?

In terms of the GMC, we strongly believe that doctors must be part of the organisation's governing structures. If unitary boards are introduced then these should be required to appoint a minimum number of registrant members, who can provide important insight due to their professional experience and knowledge of patient care. We see no reason to reduce the number of registrant members below 50%. Registrant insight is essential in light of the increased flexibilities and decision-making powers proposed in this consultation. Similar professional representation must also be present within Committees (see response to [7]). Lay members must also be appointed within regulator decision-making structures.

5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval?

6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees?

The GMC can already set registrant fees without parliamentary oversight this power should be maintained. As the GMC is funded by registrants, it should be transparent in how these fees are used by the organisation and give registrants a voice in determining how their fees are spent. Alternatively, the UK health departments should fully explore models of public funding as a long-term approach.

7. Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation? Please give a reason for your answer.

We agree that regulators should be able to establish their own committees and we encourage collaboration with the professions that they regulate to ensure a comprehensive and productive Committee portfolio. In terms of the GMC, doctors with protected characteristics must be represented. Doctors should be paid for their time to attend committee meetings.

Regulators must also be compelled to establish high-level committees that represent the regulated profession(s) with substantial input into decision making processes. Professions must have a voice at the beginning of proposal development as well as during subsequent consultations. This, and the significant inclusion of professional members in unitary boards, will ensure that changes made by regulators are subject to an appropriate level of oversight from the professions that they regulate and protect against negative or unforeseen consequences of regulator decisions (see response to 4).

8. Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate?

We agree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate. We expect that financial benefits of this proposal would be conferred to registrants while they still fund their regulators.

9. Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator? Please give a reason for your answer.

We are supportive of regulators working together to reduce duplication and improve consistency. We are wary of the responsibilities of regulators becoming confused, however, which would run counter to this consultation's aim of increased transparency.

Furthermore, the increased flexibilities for regulators that are proposed in this document mean that the possible functions that could be delegated to third parties are myriad. We are not convinced that the possibilities these proposals present have been sufficiently considered. We are therefore unable to support the proposal for regulators to delegate the performance of functions to a third party.

10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above?

We are concerned that giving regulators greater powers to obtain information from registrants will lead to unreasonable expectations and invasions of privacy. The response to question 26 gives more detail on our stance regarding information sharing and requests.

We also strongly believe that registrants must remain anonymous where information is shared with other organisations or individuals as part of fitness to practise proceedings, until the investigations have concluded. This is essential to protect registrants against unjust treatment while their case is being investigated.

11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which they operate?

We agree that regulators should produce an annual report to the Parliament of each UK country that it operates in, to provide extra accountability in light of the proposals for greater flexibility contained within this consultation.

12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC?

No comment.

Education and training

13. Do you agree or disagree that all regulators should have the power to set:

- *standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners;*
- *standards for providers who deliver courses or programmes of training which lead to registration;*
- *standards for specific courses or programmes of training which lead to registration;*
- *additional standards for providers who deliver post-registration courses of programmes of training which lead to annotation of the register; and*
- *additional standards for specific courses or programmes of training which lead to annotation of the register?*

We agree that regulators should have the power to set standards for learner outcomes, providers and courses. If this proposal is brought forward, it is vital that registrants are well represented in regulator decision-making structures (see response to 4). This will ensure that the standards are appropriate. We also emphasise the importance of proposals in paragraphs 1-3: that regulators must carefully consider the impact of changes on registrants and consult on meaningful changes before decisions are taken. Regulators must also be compelled to effectively communicate changes to registrants and prospective registrants.

14. Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register?

15. Do you agree that all regulators should have the power to issue warnings and impose conditions?

We agree that regulators should be able to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses and programmes of training which lead to registration or annotation of the register, and to issue warnings and impose conditions. In particular, we support the sentiment in paragraph 113 and strongly agree that regulators' actions must be guided by the intention to cause minimal disruption to learners. Regulators' powers must be used in ways that are proportionate to the needs of trainees as well as providers.

16. Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decision making process?

We agree that education and training providers should be able to submit observations, providing important context to the findings of regulators and ensuring that any final decision is proportionate and appropriate.

17. Do you agree that:

- *education and training providers should have the right to appeal approval decisions;*
- *that this appeal right should not apply when conditions are attached to an approval;*
- *that regulators should be required to set out the grounds for appeals and appeals processes in rules?*

We agree that education and training providers should be able to appeal approval decisions, and that regulators should be required to set out the grounds for appeal and appeal processes in rules. We believe that more information on the conditions that regulators will be able to impose must be provided before we can comment on whether providers should be able to appeal these.

18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers?

The GMC already has the power to approve specific postgraduate curricula and should maintain this.

19. Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register?

20. Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register?

We agree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register, such as the GMC's Professional and Linguistic Assessments Board (PLAB) test. We agree that this power should not apply to approved courses that lead to registration or annotation of the register.

21. Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways?

We agree that regulators should be able to assess providers in a variety of ways but argue that the quality of assessments must not be compromised to save resources. The rationale behind different forms of assessment must be transparent and open to feedback.

22. Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs?

We do not agree with the proposal that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs. While we can appreciate the merit in being able to more easily streamline and amend procedures related to CCTs, we strongly believe that CCTs provide crucial recognition of those who have gained the expertise to become NHS consultants. As such, it is most appropriate that CCTs remain in primary legislation to ensure that any changes are thoroughly considered and agreed upon.

23. Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements?

The GMC already sets out its CPD and revalidation requirements in rules and guidance. We are content with this approach.

Registration

24. Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate?

25. Do you agree or disagree that all regulators should be required to publish the following information about their registrants:

- **Name**
- **Profession**
- **Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants)**
- **Registration number or personal identification number (PIN)**
- **Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules/policy made by a regulator)**
- **Registration history**

26. Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data?

27. Should they be given a discretionary power allowing them to publish specific data about their registrants?

In response to the proposal that regulators should hold a single register which can be divided into parts for each profession they regulate, we note paragraph 133 in the consultation: ‘to replace the specialist and GP registers with a single register where specialist status including being a GP is reflected through an annotation to the register’. This is the combined effect of the proposals that are the subject of questions 24 and 28. In response to question 24, we agree that regulators should hold a single register which can be divided into parts for each profession they regulate. We argue that this register and system of annotations should be designed to provide recognition to doctors with specialist status, including recognising GPs as specialists, and should also recognise SAS doctors. We also note that ‘qualification’ (used in Q25) is a broad term that must not include more information than is strictly necessary for public protection, and the definition of this information must not expand to include more qualifications without the consent of the profession being regulated. Our response to question 28 gives further important detail on how annotations to a single medical register for all doctors should work.

We do not agree that regulators should be given a power to collect, hold and process data according to their statutory objectives. Parameters must be set on the type of data that can be collected, for what specific purpose and for how long to prevent regulators requesting data that infringes on registrants’ right to a private life. This will also help to prevent regulators stretching the interpretation of their statutory objectives and requiring information to satisfy demand from the public, rather than protecting the public through the provision of useful and reliable information. As regulators’ statutory objectives are phrased in broad terms, we feel that this proposal (and the proposals in paragraphs 86-89, addressed in response to Q10) must be given more detail to define the sort of information that regulators will be able to request.

We suggest that such parameters state that the information requested from regulators must be consistent with respect for a registrant’s right to a private life, must not jeopardise the authority and integrity of the register and must not produce disproportionate adverse consequences for registrants (for example, action being taken against them for having unintentionally failed to supply particular information to a regulator).

If additional information were to be required by regulators, they must be obliged to execute robust processes to prove that the information is necessary to require from registrants. It must also be proved that the providing the information will not place registrants at risk; for example, doctors who involved in controversial activities such as animal testing and abortion could be disadvantaged if compelled to provide their photograph or location of work.

Regulators’ powers regarding data collection, holding and processing must also be consistent with the existing legal framework governing data protection (UK GDPR). Finally, as per the proposals, there must be a clear demarcation in the GMC’s register between doctors (registered medical practitioners), PAs and AAs (see response to Q64, Q65, Q66, Q67). It is essential that the difference between these professions is emphasised and maintained in the design of the register.

28. Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection?

In terms of the GMC and with regards to the proposed single medical register, we are supportive of this (see response to Q24, 25, 26, 27) and agree that the GMC should be able to annotate this register. The annotations should not only reflect specialist status which includes the recognition of GPs as specialists, as noted in paragraph 133 in the consultation, but must also recognise SAS doctors and the grades of doctor included within this term. We support the proposals to create a single medical register with annotations on the premise that this would recognise these different groups of doctors clearly, to the benefit of both patients and doctors who use the register. The medical profession and its representatives must be closely involved in the development of the system of annotations for the medical register, to ensure that these are fit for purpose and do not reflect extraneous categories of information that are not currently

represented on the current registers. Annotations must be developed to only capture information that is necessary for the purpose of public protection. The medical profession and its representatives must be closely involved in its development, to mitigate against the regulator collecting information that is unnecessary, inappropriate and that could have unintended consequences.

As such, we strongly agree that annotations should only be made where they are necessary for public protection. Their introduction must not be used to justify requiring information to satisfy public demand (see response to Q24, 25, 26, 27). This was a view reflected in response to the GMC's consultation on the medical register in 2016. This received the largest response that the regulator had ever experienced to a consultation. The majority of respondents felt that the register should simply provide assurance that a registrant is appropriately qualified and fit to practise medicine, rather than also offering extra information on registrants' practice and career.¹

29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power?

The GMC already has the power to grant permanent emergency registration. We believe that the GMC's permanent emergency registration power has been utilised well during the COVID-19 pandemic and that this power could be usefully extended to other regulators.

30. Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation?

31. Do you agree or disagree that the protection of title offences should be intent offences or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)?

We agree that all regulators should have the same offences in relation to protection of titles and registration within their governing legislation. We believe that these offences should be intent offences to avoid the risk of individuals being disproportionately punished for mistakes.

We strongly argue that the current list of protected titles needs updating to give greater protection to professionals and to patients. We agree with the consultation document that a review is needed (paragraph 182). The consultation document does not indicate that stakeholder views will be gathered as part of this review. We believe that DHSC should launch a consultation regarding the list of protected titles, so that the review findings and subsequent actions are effective as possible. The current maximum penalty for protected title offences in the Medical Act should also be included in any review.

32. Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist?

We agree that regulators should be able to appoint a deputy/assistant registrar to assist in registrar functions. The deputy/assistant registrar must be fully trained to carry out activities such as registrar review in the event of long-term registrar absence due to sickness or similar, and their decisions must be overseen and agreed upon by a named person in the organisation who has appropriate experience and seniority. This is to ensure that the deputy/assistant registrar's activities align with the registrar's and to minimise different treatment of registrants.

33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance?

¹ GMC (2016) Changes to the medical register – what people have told us. Available from: <https://gmcuk.wordpress.com/2016/12/21/changes-to-the-medical-register-what-people-have-told-us/>

We agree that regulators should be able to set out their registration processes in rules or guidance, to allow these to be amended in the future. These amendments must only be made following robust stakeholder engagement and consultation and changes should be clearly communicated to potential and current registrants.

34. Should all registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration?

The GMC's registrar currently has discretion to turn down an applicant for registration.

35. Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance?

We do not agree that the GMC's provisions relating to licence to practise should be removed from primary legislation. We also do not agree that any requirement to hold a licence to practise or the procedure for granting or refusing a licence to practise should be set out in the GMC's own rules and guidance. The licence to practise is a foundation of medical regulation. Given the increased regulator flexibility and lack of assurance regarding professional representation outlined in other proposals, it is essential that the licence to practise remains in legislation. This will ensure that any changes are properly considered and consulted upon.

36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them?

We agree that regulators should be able to suspend registrants according to specific criteria but argue that suspension due to inaction must be held to extended timelines. Registrants who have lapsed in providing fees or information to the regulator or in meeting requirements must be notified of this and have ample time to rectify this prior to a suspension coming into effect. This will help to ensure that suspension due to inaction is a proportionate response and is considerate of registrants' wellbeing. Registrants must also be able to appeal against a suspension, as in [38].

37. Do you agree or disagree that the regulators should be able to set out their removal and readmittance processes to the register for administrative reasons in rules, rather than having these set out in primary legislation?

We agree that regulators should be able to set out their removal and readmittance processes to the register for administrative reasons in rules. We emphasise the importance of professional representation in regulators' decision-making structures, to ensure that regulator rules are proportionate and uphold the principle of transparency outlined in the consultation document (see responses to 1-3, 7).

We disagree in part with the proposal in paragraph 209, however, which suggests that ill health may be grounds from administrative removal from a register. These cases, where there is disagreement between the regulator and registrant, should be dealt with via fitness to practise proceedings to ensure that a fair outcome is reached.

38. Do you think any additional appealable decisions should be included within legislation?

We are satisfied with the list of appealable decisions set out in paragraph 214.

39. Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation?

We agree that regulators should set out their registration appeals procedures in rules. These must be developed in consultation with the regulated profession(s) and must be clearly communicated to registrants (see responses to 1-3, 7).

40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers?

We agree that regulators should not have discretionary powers to establish student registers, as this function should sit with their educational institutional and relevant overarching bodies.

41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers?

In terms of the GMC, we agree that the regulator should not have discretionary powers to establish non-practising registers. They currently do not have this power as this is outside their remit. We agree with this proposal on the assumption that retired registrants will continue to have the ability to remain on their professions' register and be 'in good standing' with their regulator. This is presently possible for doctors under GMC regulation and should be maintained.

42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation?

We strongly agree that prescriptive detail on international registration requirements should be removed from legislation. In terms of medicine, it is well known that their CESR/CEGPR routes to registration are arduous, confusing and a disincentive for doctors who would otherwise be keen and able to practise in the UK. We emphasise that the GMC must comprehensively consult with the medical profession and its representatives and key stakeholders when drafting and amending its rules (see responses to 1-3, 7).

Fitness to practise

43. Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering:

- **1: initial assessment**
- **2: case examiner stage**
- **3: fitness to practise panel stage?**

We are supportive of the proposed three-stage fitness to practise process and of the aim to expedite fitness to practise cases where possible. We strongly believe, however, that the legislation resulting from these proposals must stipulate time limits for each stage. The purpose of these time limits is to provide certainty for registrants on how their case will progress. This is very important to minimise registrant distress when they are engaged in fitness to practise processes. Statutory time limits must only be decided upon after thorough consultation with stakeholders, to ensure that registrants are not disadvantaged due to a lack of time.

For complex cases, we recognise that time limits may not always be appropriate. The rules stipulating time limits (agreed following consultation with the profession) should set out exceptions to these according to case characteristics.

44. Do you agree or disagree that:

- **All regulators should be provided with two grounds for action – lack of competence, and misconduct?**
- **Lack of competence and misconduct are the most appropriate terminology for these grounds for action?**

- ***Any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence?***
- ***This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?***

We do not agree that lack of competence and misconduct should be the only two grounds for action. We believe that health should be grounds for action in its own right. This will allow for the development of specific guidance concerning relevant cases and fitness to practise processes, which can be drafted to provide extra support as necessary.

We acknowledge the argument in the consultation document that having only two grounds for action allows fitness to practise cases regarding health that do not reach the threshold to be better supported by the regulator. We believe, however, that if cases do not meet the fitness to practise threshold then the regulator should not be further involved in the case aside from signposting to appropriate sources of support and tailoring future communications to their needs. This should involve GMC regional advisers working with local employers to develop a coordinated approach that utilises primary care and occupational medicine expertise in practitioner health.

45. Do you agree or disagree that:

- ***all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and***
- ***automatic removal orders should be made available to a regulator following conviction for a listed offence?***

We agree that all measures should be made available to both Fitness and Practise panels and Case Examiners. We have reservations about timelines in terms of case examiners imposing decisions on registrants (see Q53).

We agree that conviction of an offence listed in Annex A of the consultation document should result in automatic removal from professional registers. Any amends to the list in Annex A must only be possible through legislative change and associated processes, to ensure the comprehensive involvement of professions and stakeholders.

We emphasise that the implementation of this proposal in the GMC must also include extensive consultation with the profession and stakeholders. It is essential that any bias on the part of Case Examiners is mitigated and that doctors do not feel pressured into accepting the proposed measure of the accepted outcomes process. This is particularly important if Case Examiners are given the power to remove registrants from the register.

46. Do you agree or disagree with the proposed powers for reviewing measures?

We agree with the proposed powers for reviewing measures. According to regulators' proposed duty regarding transparency, regulators should ensure that these processes are clear to registrants and make the process for requesting a review as accessible as possible.

47. Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process?

As per the proposals in paragraph 286, we agree that regulators should have a duty to keep registrants notified when a 'substantive' decision is made in the fitness to practise process.

We agree with the proposal and note that the definition of 'substantive' is ambiguous. The precise interpretation of this term by regulators must happen in consultation with registrants, to ensure that they are content with regulators' processes. Regulators must also focus on clearly communicating when

registrants can expect to be informed about complaints and what happens to complaints that they are not informed about. This must include information on who is informed about complaints and at what stage of the fitness to practice process.

Clear information around regulators' notification of complaints processes is vital for registrants and will allow them to provide feedback to regulators. Regulators must seek registrants' views on when they wish to be notified of complaints made against them and have sufficient flexibility to act on such feedback and amend their processes as appropriate.

As per existing data protection laws, registrants must continue to be able to request to be sent the complaints held about them even if these did not reach the threshold to be shared with the registrant initially.

In terms of the notification of those who raise complaints, the definition of 'key points' during the fitness to practise process is also ambiguous. The appropriate points of notification must be determined via consultation process prior to being defined in regulators' rules. As part of the notification process, the person(s) who raise complaints must not be given unnecessary detail about the individual that is the subject of the complaint or any investigation associated with the case.

48. Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern?

We agree that regulators should have the discretion to decide whether to investigate a fitness to practise concern but argue that clear criteria must be available to registrants and the public. Regulators must prioritise the wellbeing of registrants in their investigations and use their discretion to this end. Regulator staff and caseworkers involved in the case must also be sensitive to registrants' wellbeing and be trained to provide supportive, compassionate communication throughout the investigation process.

49. Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than five years after they came to light should be removed?

We do not agree with the removal of the five-year rule. This rule is essential to avoid the investigation of cases that place registrants at a disadvantage because of the age of the complaint and associated lack of notes or recollection.

The five year rule already allows for the investigation of cases over five years old in the interest of public protection: the current provision under Rule 5(4) places a 5 year limitation on referral of allegations, "unless the Registrar considers that it is in the public interest for it to proceed". We feel that this provision gives the five year rule sufficient flexibility to be relaxed as necessary, while protecting registrants from historic investigations that they will be less able to effectively challenge.

Paragraph 293 states that, "the time since a concern arose is a relevant consideration", but, absent a limitation period, there is nothing to prevent a regulator effectively ignoring the lapse of time. Limitation periods occur throughout the civil law and there is no obvious reason to remove them in this case, given that there is already a relatively broad discretion to disapply the limitation where there is a public interest reason for doing so.

The five year rule as it currently exists is therefore an essential means of protecting registrants against severe injustice and must be maintained in legislation.

50. Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as "adverse inferences"?

The GMC already has the power to address non-compliance, and this should be maintained.

51. Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage?

52. Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the Register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations?

We agree with the proposed approach for onward referral of a case at the end of the initial assessment stage and emphasise that regulators must extensively consult upon rules regarding their specific fitness to practise processes. Our position on automatic removal regarding listed offences is set out in the response to 45.

53. Do you agree or disagree with our proposals that case examiners should:

- **have the full suite of measures available to them, including removal from the register?**
- **make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?**
- **be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure?**
- **be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days?**

We agree that case examiners should have the full suite of measures available to them, including removal from the register. We agree that case examiners should be able to conclude a case through an accepted outcome and to make final decisions on impairment, on the premise that registrants have had ample opportunity to make representations.

Paragraph 312 states that “It is important to stress that the accepted outcomes process is not a negotiation”. We strongly believe, however, in the case of the GMC that the case examiner stage must give registrants a time-limited opportunity to respond to that proposal. This is not a negotiation, but an opportunity for the case examiner to hear from the registrant and reflect upon what they say. For example, the registrant may be able to demonstrate insight that was not apparent from the papers the case examiner has seen, but which will affect the proposed measure. Giving registrants the opportunity to make submissions to the case examiner regarding a proposed measure is also in line with the overriding aims of this consultation’s proposals in terms of support and flexibility.

We believe that 28 days must be extended to give registrants sufficient time to respond to accepted outcome proposals. Fitness to practise proceedings are often enormously stressful for registrants. They must therefore be given ample time to minimise stress and to allow them to consider and consult on the proposals extensively. As such, after 28 days a reminder should be sent to the registrant. A further 28 days should elapse before a final attempt is made to contact the registrant. If they still do not respond to the case examiners’ accepted outcomes proposals then the case should process to the fitness to practise panel, to ensure that the case examiner’s decision is appropriate before it is imposed on the registrant. A longer timeline should be enacted for the most serious decisions and measures, such as removal from the register.

When communicating with registrants, case examiners must also be prepared to provide alternative means of delivery according to registrants’ need. For example, this may include audio recordings as well as written communication.

54. Do you agree or disagree with our proposed powers for Interim Measures, set out above?

We agree with the proposed powers for interim measures. As above, we strongly argue that regulators’ rules regarding review processes must be as clear as possible to registrants and must allow them to request a review of measures as easily as possible. If requests for review are denied the reasons for this must be

clearly communicated to registrants and next steps conveyed to them, in a way that prioritises their wellbeing and minimises distress.

55. Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates?

We agree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates. Regulators must be obliged to consult stakeholders on the contents of their rules and to make changes to their processes and panels accordingly.

56. Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel?

57. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland?

We agree that registrants should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel and with the proposed Courts set out in paragraph 351.

58. Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases?

59. Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register?

60. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland?

As above, rules set out by regulators must be subject to extensive consultation prior to implementation and must be clearly communicated to registrants. Registrants should have the right to appeal a decision not to permit restoration to the register and this should be to the Courts that are set out in paragraph 353.

61. Do you agree or disagree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public?

We agree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners to protect the public. We do strongly believe, however, that the registrar review power must be subject to a defined timeline. This will minimise distress to registrants whose case may otherwise be opened again unexpectedly months or years later.

62. Under our proposals, the PSA will not have a right to refer decisions made by case examiners (including accepted outcome decisions) to court, but they will have the right to request a registrar review. Do you agree or disagree with this proposed mechanism?

We fully agree with this proposed mechanism.

63. Do you have any further comments on our proposed model for fitness to practise?

Regulators must be obliged to consider the unintended impact of conditions placed on registrants prior to these being imposed. Conditions must not be so difficult to satisfy that they unfairly prevent registrants securing work, and therefore serve to effectively suspend registrants from employment.

The GMC has a statutory duty to promote and maintain public confidence in the medical profession. However, we have previously expressed concern that the public confidence criterion could lead to 'trial by media' and called for guidance that properly relates 'public confidence' to the GMC's overarching objective of public protection. One particular problem with the criterion is the subjectivity of public confidence considerations, which can lead to the same act being treated differently in different cases depending on

the extent to which the patient is harmed. We would like to see research into the question of what members of the public would really expect in cases involving clinical error. (The PSA report 'Dishonest behaviour by health and care professionals: Exploring the view of the general public and professionals' (2016) illustrates the ability of members of the public to take a nuanced view in relation to cases involving dishonesty.) We would also suggest that any use of the public confidence criterion should be with reference to the perceptions of a citizen who is well-informed about the issues raised by the case.

We note that reliance upon the public confidence criterion may, if it results in outcomes that are too severe, have consequences which are contrary to the public interest, such as encouraging defensive practice, discouraging remediation, candour and openness as the best means of promoting patient safety, and deterring new entrants to the profession. We also note, however, that the public confidence criterion permits tribunals and courts to take into account the public interest in an otherwise good and competent doctor being permitted to continue to practise. We would recommend that the use of the public confidence criterion in cases involving clinical error should be reviewed and that further research into what members of the public would really expect if fully informed in such cases should be conducted.

Regulation of Physician Associates and Anaesthesia Associates

64. Do you agree or disagree with the proposed approach to the regulation of PAs and AAs?

65. In relation to PAs and AAs, do you agree or disagree that the GMC should be given a power to approve high level curricula and set and administer exams?

66. Do you agree or disagree with the transitional arrangements for PAs and AAs set out above?

67. Do you agree or disagree that PAs and AAs should be required to demonstrate that they remain fit to practise to maintain their registration?

We believe that the approach set out in the proposals is appropriate for the future regulator of PAs and AAs. Given the diversity of training structures, career paths and healthcare responsibilities among the different professions, however, we strongly believe that the public interest is best served by the continued regulation of doctors through its own, separate medical regulator, the GMC. As such we urge the Department to regulate PAs and AAs through the Health and Care Professions Council (HCPC).

Impact assessment and equalities impact assessment

68. Do you agree or disagree with the benefits identified in the table above? Please set out why you've selected your answer and any alternative benefits you consider to be relevant and any evidence to support your views.

69. Do you agree or disagree with the costs identified in the table above? Please set out why you've chosen your answer and any alternative impacts you consider to be relevant and any evidence to support your views.

The costs table only sets out the financial costs of PA and AA regulation. It does not reflect other costs, such as a potential loss of GMC organisational focus on doctors or public confusion over healthcare professional roles. The potential loss of training opportunities for doctors must also be addressed in the assessment of costs. This is important to complement the benefits table, which considers a wide range of possible positive effects from PA and AA regulation. As it stands, the table presents an incomplete and inaccurate depiction of the costs of PA and AA regulation.

70. Do you think any of the proposals in this consultation could impact (positively or negatively) on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by Section 75 of the Northern Ireland Act 1998?

The proposals in this consultation would give more flexibility to regulators, which they should use to provide better support and services to their registrants. This may have a positive impact on groups with protected characteristics who have previously been disproportionately represented in fitness to practise processes.

With regards to the GMC, an equalities impact assessment should consider doctors that are not represented by a medical defence organisation (MDO), particularly in terms of the fitness to practise proposals. The GMC must ensure that unrepresented doctors are supported to navigate the system outlined in the proposals.

Regulators must also consider their communication to of neuro-diverse registrants and be able to meet registrants' need. This may involve providing communications in audio as well as written format, for example.