The PDA's Response to the DHSC consultation: “Regulating healthcare professionals, protecting the public.”

June 2021

| representing **your** interests | | defending **your** reputation |

About the Pharmacists' Defence Association

The Pharmacists' Defence Association (PDA) is a not-for profit defence association and trade union for pharmacists. It is the only organisation that exclusively looks after the interests of employee and locum pharmacists across all sectors of pharmacy, currently with a membership of more than 32,000, the PDA is the largest representative membership body for pharmacists in the UK and this membership continues to grow.

Delivering more than 5,000 episodes of support provided to members who have found themselves in a critical incident situation in the last year alone, provides the PDA with a rich vein of up to date experiences which have informed policies and future strategy.

This experience has recently been informed by the very considerable number of Covid-19 related issues being faced by members. The practical experience gained in supporting member issues from the coal face is further enhanced by regular member surveys and focus group interactions. The information in this document is largely built upon the experience of our 32,000 members .

The primary aims of the PDA are to:

- Support pharmacists in their legal, practice and employment needs
- Represent the individual or collective concerns of pharmacists in the most appropriate manner
- Proactively seek to influence the professional, practice and employment agenda to support members
- Lead and support initiatives designed to improve the knowledge and skills of pharmacists in managing risk and safe practices, so improving patient care
- Work with like-minded organisations to further improve the membership benefits to individual pharmacists
- Arrange insurance cover for individual pharmacists to safeguard and defend their reputation.

Summary

The UK Government is proposing to make changes to the regulation of healthcare professionals. The proposed changes would initially begin with the General Medical Council but it is the Governments intent to apply the changes to all 10 UK healthcare regulators. The consultation is far reaching, proposes giving regulators extensive powers and focuses on 4 key areas of regulatory activity:

- Governance and Operating Framework
- Education and Training
- Registration
- Fitness to practise

The consultation closed on 16th June 2021.

The Pharmacists' Defence Association's Response the DHSC consultation:

Regulating healthcare professionals, protecting the public

We welcome the recognition that healthcare regulation needs change. Healthcare regulation has evolved in a piecemeal way since the creation of the GMC in 1858 and even though the 1999 Health Act (which introduced S60 orders for the reform of healthcare regulation) brought some cohesion there still persist large variation in the powers for each regulator. We have a major and unique opportunity to reform the legal framework around healthcare regulation to make it fit not just for now but for the foreseeable future.

However, the proposals, as presented, may end up being a wasted opportunity for reform and as such may not prevent a repetition of the failures identified in a number of public inquiries.

Recent Background:

On the 9th June 2010 Andrew Lansley confirmed the appointment of Robert Francis QC to lead the public inquiry into the systemic failings at Mid Staffordshire. Mr Lansley stated that what happened at Mid Staffordshire:

> ***" … was also a national failure of the regulatory and supervisory system…"*** [1]

The Francis Inquiry (and subsequent other public Inquiries) have identified deficiencies and failures in healthcare regulation which has caused patient harm. The Francis report noted in context of the events at Mid Staffordshire:

> ***"It is because of the fact that not all boards are capable of maintaining acceptable standards or improving services at the required pace, or applying effective stewardship to the resources entrusted to them that healthcare systems regulators and performance managers exist. It is because not all professionals do live up to the high standards expected of them that we have professional regulators. All such organisations have the responsibility to detect and redress deficiencies in local management and performance where these occur. It does not need a public inquiry to recognise that this elaborate system failed dramatically in the case of Stafford."*** [2]

Whilst regulators have been making piecemeal changes in light of these public inquiries there has evolved a recognition that wider, consistent and more comprehensive changes are needed to make healthcare regulation fit for purpose.

In September 2010, the Government asked the Law Commission to undertake a comprehensive 3 stage project to review the regulation of healthcare professions in the UK. This culminated in the Law Commission report of 2014, which also included a

draft bill, and which now, in part, forms the basis for many of the proposals in this consultation.

The Government responded to the Law Commission report in 2015 and released a public consultation in 2017 seeking views around reforms for the regulation of healthcare professionals.

Building Checks and Balances into any reforms.

Central to the Law Commissions Report was the sense of proportionality and balance and the Government itself recognised that healthcare regulation had become too cumbersome and adversarial for both patients and healthcare professionals.

> ***" … the system is slow, expensive, complicated, reactive, overly adversarial and confusing for patients, professionals …"*** [3]

However, the current Government proposals create the newer and greater systemic risk of ineffective accountability by the absence of appropriate checks and balances on regulators greater rule making powers. The regulators themselves recognise this.

The General Medical Council (GMC) in its 2017 submission to the initial Government consultation "Promoting professionalism, reforming regulation" specifically noted:

> ***"However, the increased autonomy we seek in policy and operations must be accompanied by other checks and balances to ensure that regulators' powers are exercised appropriately. That should include (but not be limited to) strengthened measures of accountability…..If we were given greater autonomy to make and amend our operating rules and procedures we could also envisage a possible role for PSA in auditing the way this is done to ensure best practice has been followed"*** [4]

The General Pharmaceutical Council in its 2017 response too noted :

> ***"We also agree that flexibility must be balanced with clear arrangements for accountability. This would ensure there are checks and balances over our decisions and actions."*** [5]

We share the concerns of regulators. Our biggest overarching concern around these reforms is the lack of clarity into how regulators , who will now have much more flexibility and opportunity to make their own rules and design their own processes, will be held properly accountable. Presenting annual reports to Parliaments or potential intervention by the Privy Council are far too remote to be effective at a more granular level. The 3 new proposed duties are not in any way sufficient to ensure a meaningful check or balance.

The Law commission recommendations for "The Professional Standards Authority (PSA)"

The Law commission review of 2014 made a number of specific recommendations around how accountability could be secured as a balance to greater regulator autonomy. It made a number of recommendations around the role of the PSA and its role as the oversight and audit body for the 10 healthcare regulators.

However, many of the provisions that are vested with the PSA under existing legislation have not been brought into force. The Law Commission specifically recommends bringing into force these powers and the creation of certain new powers. This would help in balancing greater rule making powers for regulators.

We already have evidence that without the requisite power the PSA can merely advise but the Regulator is at liberty to carry on regardless. This was perfectly demonstrated when in 2017 the GPhC ignored the PSA advise given to it when the GPhC was undertaking a public consultation on its Threshold Criteria for investigating concerns reported to it.

The PSA noted :

> ***"When we responded to the GPhC's consultation on its new threshold criteria, we had concerns .."*** [6] [7]

But these concerns were not addressed by the GPhC. In fact the Executive of the GPhC stated to its own Council:

> ***"The PSA confirmed that they had no concerns about this approach overall, but made it clear that they will continue to monitor the impact of the revised criteria going forward."*** [8]

The subsequent monitoring of the impact of the GPhC new criteria graphically exposed a whole range of problems and this highlights the chaos and risk that does ensue when a Regulator ignores advise and carries on regardless with no mechanism for effective intervention.

The current proposals need to address this structural risk which is being enhanced by giving regulators sweeping powers without a proper oversight mechanism.

There must be robust and effective oversight.

The Law Commission specifically recognised the role of the PSA and noted:

> ***" … is responsible for supervising and scrutinising the work of the regulators, sharing good practice and knowledge with the regulators …"*** [9]

The Law Commission also noted :

> ***"... We consider that such is the importance of the Authority's role in the new legal framework, that the Government must ensure that sufficient resources are available to fund the Authority's expanded role. "***

It is in this context that we make our overarching recommendation that the PSA be given the necessary powers as recommended by the Law Commission so that it can effectively discharge its supervising and scrutinising activity.

The specific powers that the Law Commission recommended and which we urge to Government to enable are:

Recommendation 102: The Professional Standards Authority's general functions should be extended to include promoting economic efficiency and cost effectiveness by the regulators.

Recommendation 103: The draft Bill should consolidate and implement the Professional Standards Authority's power to direct a regulator to make rules to achieve an effect specified in the direction.

Recommendation 104: The Professional Standards Authority should be required to provide advice or undertake an investigation on any matters relevant to its functions when requested to by the Government and devolved administrations. When undertaking an investigation the Authority should have a power to require information.

Recommendation 106: The Government must ensure that sufficient resources are available to fund the Professional Standards Authority's new role.

Recommendation 108: The Government should have the power to make regulations to enable the Professional Standards Authority to investigate complaints about the ways in which a regulator has exercised its functions.

Recommendation 109: The Professional Standards Authority should have a power to refer to the higher courts certain fitness to practise decisions which fail to achieve sufficient protection of the public. This power should be exercised alongside a regulator's power to refer cases (in cases when the regulator has been granted such a right by virtue of establishing a sufficiently independent adjudication procedure). The Authority would be able to refer the case if the regulator decides not to.

A significant number of the concerns we note in our consultation response would be addressed were Government to give (or activate) these powers for the PSA.

Response to the Questions:

The Government response to the 2017 consultation noted issues around incorrectly phrased questions in its own consultation. For this consultation, in totality, the questions as posed have a propensity to elicit a "agree" and thus will skew the interpretation of the answer. The binary "agree" and "disagree" is not adequate to capture the nuance of potential "partially agree" or "agree with caveats".

We are also somewhat surprised that some questions (such as question 53) asks respondents to agree or disagree to 4 individual bullet points. We hope that any post consultation analysis addresses this complexity.

We are mindful that the Government response to the 2017 consultation used the measure of a percentage "agreed" or "disagreed" as a way of informing and justifying its response and to justify some of the current proposals.

We are also mindful that a number of interested parties could co-ordinate their responses and this was noted in Parliament to a previous consultation concerning reforms to healthcare regulation:

> ***"A significant proportion of respondents—52%—felt that creating an entirely independent body like the former Office of the Health Professions Adjudicator, rather than establishing the MPTS as a statutory committee of the GMC, was a preferable approach. However, this group included an organised group of 39 co-ordinated and near-identical responses, which the department had to consider as individual responses."*** [10]

1. Governance and Operating Framework

Preamble

We agree with the overarching objectives proposed for the healthcare regulators. We also agree with the 3 duties regulators need to meet in discharging their regulatory functions.

We agree that regulators should co-operate with other parties. However, the consultation mentions that this duty falls away if there are "commercial sensitivities" around that sharing of information. This is simply untenable, undermines the very purpose of the regulator and places the public at risk.

We can evidence this with a tangible example. The Government is currently undertaking a pre-consultation on a hub and spoke model of dispensing. Hubs are

being operated in a manner where legitimate questions about safety, errors or process are being dismissed under the umbrella reason of "commercial sensitivities". Were a patient or a group of patients come to harm, what would the public think if a regulator in a subsequent court action attempted to rely on this reason for not placing into the public domain knowledge about error rates and safety?

The proposal of a Unitary Board is welcome in principle. However, the removal of any professional representation within the Board may justify a call for " No representation – no taxation". We believe that were Government minded to adopt the Unitary Board proposal with no minimum professional representation then it should bear the costs of regulation from general taxation and not from professionals' registration fees. We have witnessed over the past 2 decades a number of individuals becoming what could be termed" professional lay members" across a series of regulators. This "safe pair of hands" approach undermines professional and public confidence especially as the appointments process has failed to mirror the diversity seen within the healthcare professions.

The overall approach to Governance seems to be around creating an impression of accountability but which on closer examination shows that this is not the case.

This becomes absolutely clear when by its own admission the consultation document itself states:

> ***"The Privy Council has a power to direct most of the regulators where they have failed to carry out their statutory functions, using what are called 'default powers'. While these powers have never been used, they provide a mechanism to ensure public protection."***

We will discuss in greater depth our concerns in the answers to the questions below.

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.

We agree that there should be a duty to co-operate but disagree with the parties listed and especially if concerned with the "employment" of healthcare professionals. There may be instances when employers have a legitimate need for co-operation by a regulator about a registrant who is also their employee. However, the circumstances under which this duty to "employers" would apply should be strictly defined. The parties listed should also include trade unions or representative organisations for the profession under regulation.

2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and these related duties? Please give a reason for your answer.

We agree. How that transparency is interpreted will be key. There must be consistency and clarity in how this objective is actually applied in practice. There would need to be consistency around this and inevitably it could mean that the race between regulators may be to do the least possible. Transparency is always aided by full disclosure and publication. There should be an express provision that everything the regulator does should be published and in the public domain unless it can demonstrate that, were it to do so, it would be detrimental in carrying out its functions. We do not consider commercial sensitivity, as mentioned in the consultation document, to be a reason for a lack of transparency or withholding of information. Agenda items for confidential matters should be published even if the detail or minutes are not published. This then ensures full transparency whilst recognising that some matters may need to be discussed confidentially.

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? Please give a reason for your answer

Yes we agree. We would contend that full impact assessments by a competent neutral party should be the basis of the impact assessment. An internal assessment by the regulator itself is not appropriate as there would be a clear conflict of interest especially if it involved areas around setting of registrant fees which determines regulator income and things like staff salaries.

We would encourage the Government to reconsider the role of the PSA and to consider giving it the power to approve/ disapprove changes in rules and processes to ensure consistency across regulators and also to ensure the changes were fit for purpose.

4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators? Please give a reason for your answer.

We disagree with the appointment arrangements as proposed. At present the structure of existing Councils secures places for professionals. By removing this, the Government risks undermining professional confidence in the regulator and its processes. We agree with a unified board structure but with the following caveats:

1/ All appointments should continue to be overseen by the PSA according to published criteria

2/ There should be a minimum of 1/3 registrant membership within each Board

3/ The Board MUST reflect the diversity of the registrant group in terms of diversity, such as gender and BAME members.

5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval? Please give a reason for your answer

We disagree. Individual registrants have little choice but to pay whatever registration fee is demanded by their regulator. We have seen some regulators behave responsibly to contain costs, for example by moving some operations to regions away from London. Others have chosen to occupy the best and finest buildings in prime banking districts in Canary Wharf. There needs to be proper and effective mechanisms by which regulators costs are contained. Fitness to practice is a large part of the cost for regulation. Thus, the greater use of consensual disposal should generate significant savings and these should be used to provide greater support to registrants.

To ensure transparency and best practice, all regulators should publish details including job titles and salary range for all staff that are earning greater than 150% of the average salary of that regulated profession.

6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees? Please give a reason for your answer.

We disagree. We do not support a longer term approach to setting fees. We believe that there is a strong risk that regulators will use this a mechanism to impose year on year increases on registrants without proper scrutiny because these increases could be justified “as being within a longer-term approach”.

Healthcare professions have been offered derisory pay increases in the recent past whilst regulatory and other fees (for example membership of professional bodies) have increased at a faster rate than pay increases.

It is clear that some regulators have been seeking such a power with these reforms. The GPhC is already consulting about a multi year fee cycle even when it has no such power to set or implement a multi year fee cycle.

Given the greater autonomy afforded by the proposed reforms the setting of annual fees will be a straightforward process without the need for involving the Privy Council or Parliament. There is no justification for a multi year fee cycle.

We urge the Government to consider giving the PSA the power (Recommendation 102 made by the Law Commission) to "promote economic efficiency and cost effectiveness by the regulators."

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 but that there be clear terms of reference (and standing orders) and that minutes of these committees be in the public domain. There needs to be some consistency across regulators as to how committees are named for specific functions.

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? Please give a reason for your answers.

We agree. The primary purpose for the existence of healthcare regulators is to ensure that healthcare practitioners working in the UK are trained properly, registered properly, practice safely and stay up to date by setting relevant standards. So, for example, it may be legitimate for a UK regulator to cost recover from a UK university which is providing a healthcare course away from the UK but which would allow students, on graduation, entry to a UK register.

We understand that regulators may be asked to provide assistance or support by agencies in other countries and it would be legitimate to cost recover.

However, the regulators should not see themselves or be seen as "a business". Their primary focus should always focus around UK healthcare regulation and any income generated by non UK activities should be peripheral.

We agree with the proposal that regulators should not be permitted to charge for services in respect of fitness to practice functions.

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 do not disagree with regulators delegating a function to another regulator. However, we disagree with regulators "delegating" or outsourcing functions to a third party.

So for example, a regulator could delegate its HR functions to another regulator (which carries out this function in-house) but not to a third party operator. Adding layers of "delegating" or outsourcing and managing extra layers of risks that this would pose would detract from the core role of regulators.

The UK healthcare regulators are small entities in business terms. They cannot be expected to have the requisite skillsets to produce contracts that allow them to effectively "delegate" activities. They may then need to take external advice, perhaps from management consultants, to produce a framework or draft contracts for this delegation. This all adds costs and distracts focus. Delegation of certain activities between regulators reduces this risk and the retains that expertise within the network of regulators with individuals who are committed to working in the public service.

10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above? Please give a reason for your answer.

We disagree with the list of parties in paragraph 89 but agree to the principle of the requirement to share data but can only do so if this sharing was to take place under a published set of criteria and any memorandum of understanding for the sharing of information should be in the public domain (for example when data is shared between a university and the regulator to monitor student performance). There should be a full published list of entities that the regulator has shared with published annually.

We are especially concerned with a requirement to share data with employers as listed in paragraph 89. As a membership organisation we have come across many examples of inappropriate behaviours by employers and specifically around "sharing" of information. This has resulted, on occasion, where "sharing" actually meant a threat to refer that employee to the FtP process of a regulator unless the employee complied with what were unreasonable requests by the employer.

11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which it operates? Please give a reason for your answer.

We have no view on this other than that the production of an annual report which contains material and meaningful information should be mandatory irrespective of whether it is laid before Parliament. There is no evidence to suggest that these submitted reports are read, acted upon or considered relevant by Parliament. There is no record in Hansard of any discussion pertaining to the contents of any annual reports laid before Parliament by any of the UK healthcare regulators.

12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC? Please give a reason for your answer.

We disagree that the Privy Councils' default powers should apply to the GDC and GPhC. The consultation itself states that the existing Privy Council Powers for the other regulators have never been used. Conferring such a power is thus an exercise devoid of intrinsic value or merit.

Effective oversight and default powers should be conferred to the PSA which is in meaningful position to exercise these powers in the public interest.

2. – Education and Training

Preamble

We have a number of general concerns concerning the education reform proposals.

Firstly, as with the rest of the consultation, the detail will determine whether a process is fit for purpose. Our overarching recommendation for this section is that there should be an obligation, written into rules, for all regulators to publish full details of all approved educational establishments, their current and past status (past 10 years as a minimum) including warnings or conditions imposed so that prospective students can make an informed choice as to which education establishment they wish to make an application to study.

Secondly, all accredited courses and institutions should be required to publish their pass rates for their exams and pass rates achieved for their students who may undertake any subsequent registration exam set by the regulator. This should be clear in their prospectus for students so that prospective students can make informed choices before applying to study for the course or at an approved institution.

Thirdly, we are concerned with paragraph 129. "European requirements for the education and training of healthcare professionals". We appreciate that the UK has left the EU and the mandatory requirements for the education and training of certain professions does not now apply. However, dis-aligning UK standards from EU standards may have an impact on future reciprocal registration arrangements. Were regulators minded to approve undergraduate courses which were at variance with EU standards than at the very minimum this would need to be explicitly clear to prospective students and should be noted on the UCAS page and the regulators website so as not to mislead prospective students.

Fourthly, we are also concerned that regulators currently seem unable to limit course numbers or course cohort sizes. Looking at the specific issue of pharmacy, we have had a near quadrupling of the annual intake (early 1980's annual cohort circa 1100 compared to 2020-2021 cohort circa 4100 students). The impact of this can be seen by the enormous increase in student numbers sitting the final registration exam (which grants access to the professional register). Recent pass rates for the regulator set registration exam have hovered around the 70-80% mark for graduates who have already passed the University exams and attained a Master of Pharmacy degree. We understand that that there are similar issues around pass rates with other regulated healthcare professions.

Despite the large rise in their number, pharmacists are once again on the occupation shortage list despite a lack of independent evidence of any national shortage. Student cohort size should be set to provide neither too many, nor too few, professionals than the country needs, in accordance with long term workforce planning that considers both public and private employment of the profession.

Finally, the accreditation process for courses and institutions should be fit for purpose and in context of healthcare professions this process needs to be especially robust. There should not be variation or options for institutions and accreditation should follow a thorough site visit, inspection of premises and observation of in-situ training.

Our responses to the following questions should be considered in light of the overarching preamble to this section.

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?

Please give a reason for your answer.

The setting of education standards is a core duty for regulators. We therefore agree that all regulators should have this duty and power to set standards which lead to registration or an annotation to the registration of an individual. However, the standards should only be set following consultation with all stakeholders and following full consultation. This safeguard is especially important were certain regulators minded to approve an any new apprenticeship route to registration.

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? Please give a reason for your answer.

We agree that all regulators should have this power. We are not aware of a single UK pharmacy course to having conditions placed on it despite substantial variation in the pass rates for the registration exam between different schools (cohorts from some schools consistently achieve pass rates in excess of 90% and some barely and repeatedly reach 50%).

We are aware that some regulators have exercised this power. Having the regulatory power is one matter, exercising the power to discharge the obligations placed upon regulators is altogether another matter.

15. Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.

We agree that all regulators should have this power. However, please also see our answer above to question 14.

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? Please provide a reason for your answer.

We agree with the right to submit observations as this is fair and proportionate.

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?

Please provide a reason for your answer.

We agree to the right of appeal as outlined in the question. We also agree that the process of appeal be clearly identified in rules.

18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.

We disagree with the retention of existing powers by certain regulators whilst not enabling regulators without such powers to receive them as part of the reform

process. The whole rationale behind consistency across regulators falls unless there is actual consistency. We believe the public expect equal regulation of all professions and would like the Government to explain why it does not wish to confer these powers equitably to all regulators.

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? Please provide a reason for your answer.

We disagree. Superficially, it would seem sensible that all regulators should be allowed to set exams or assessments for applications to join the register.

However, we can share our experience of how uncontrolled expansion of pharmacy undergraduate courses has led to the post-graduation exam taken at the end of the registration year acting as the gatekeeping quality control mechanism for entry to the register.

The data for the regulator set exam clearly showed a variance from a 50% pass rate for some institutions to a pass rate of over 90% for others. Given that the same regulator had overseen the accreditation of the 4 year university course it becomes clear that there is significant disconnect between course accreditation and the registration exam.

It is also clear that the registration exam has become the mechanism to control quality at point of registration. Does the Government wish to replicate this situation by giving other regulators powers which may lead to such a situation?

There is of course the broader question of whether it is fair to students who may be spending in excess of 4 years tuition fees plus living expenses for a course accredited by the regulator at an institution accredited by the regulator to then be set a further registration exam by the same regulator.

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? Please provide a reason for your answer.

Given our answer to Q19, it is clear that we cannot agree to widen the dysfunctionality of process.

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? Please provide a reason for your answer.

We disagree. Healthcare courses involve clinical patient based work, they involve laboratory based work and the usual seminars, tutorials and lectures.

The assessment of physical premises for any laboratory based work and the assessment of arrangements for clinical patient based work can only realistically be assessed by onsite visits and onsite conversations with students and faculty members. There should be an express requirement for all regulators to assess in-situ all undergraduate education and training providers.

The bedrock of creating a skilled healthcare workforce is high quality education and training. The role of the institution providing that training is key as is the role of the regulators in ensuring that the education and training is fit for purpose. The assessment and accreditation process must be robust and always involve thorough onsite inspection.

The proposal of a "desktop-based or remote assessment conducted rather than visiting a location" proposal detailed in paragraph 128 is not safe when assessing healthcare education providers.

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? Please give a reason for your answer.

We have no particular view on this matter.

23. Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements? Please give a reason for your answer.

We agree that all regulators should set out in rules their CPD and revalidation requirements. We are concerned that the consultation specifically requires regulators to consult with employers. This is not helpful and there should be a general requirement for all regulators to consult with all stakeholders equally and in a meaningful and transparent manner.

CPD and revalidation provide assurance to the public that healthcare professionals are staying up to date with the knowledge and skills required. Clear transparent rules and guidance would help to maintain both public and professional confidence in the process.

3. – Registration

Preamble:

The holding of a practitioner register is a core regulatory activity. Members of the public, employers and others rely on the integrity and robustness of the information for a variety of reasons.

We therefore agree that all regulators should maintain only one register which should be divided into parts for each profession that is regulated. This ensures clarity and makes it easy for members of the public to understand.

To create the register raw data is required. It should be a duty for all regulators to clearly define the type of data that it will hold, how long it will hold this and any processing that it will carry out. Any changes to this data collection, holding or processing must be subject to consultation with stakeholders in a transparent manner.

We are also concerned with protection of title offences. In pharmacy we have many entities using the term “pharmacy” on their website. Levels of kitemarks have been added to ensure that the UK public was not misled into using unregulated “pharmacies” many of which are based overseas. We agree with the list of summary offences.

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? Please give a reason for your answer.

We agree that with the requirement for a single register. However, it is important that the division into parts for each profession that is regulated is clear for a member of the public.

The GPhC regulates pharmacists and pharmacy technicians. All pharmacists must complete a 4 year MPharm (England level 7 qualification) followed by a registration exam before entry onto the register. The requirements for entry to the technician register are less onerous and are based on an England level 3 qualification.

There should be a statutory duty for regulators to divide the single register into parts for each profession that they regulate. In the case of pharmacy the public must be able to distinguish a pharmacist registrant from a technician registrant in a straightforward and clear manner.

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

Please provide a reason for your answer.

We agree. The register must clearly state if entry has been granted on the basis of a "grandparent clause". Within pharmacy, the majority of pharmacy technicians have entered the register on the basis of unknown qualifications. It should be clear to any member of the public and also to professional colleagues that entry to the register was based on a grandparenting rule. The grandparenting rule is where a person has entered a recently created register on the basis of experience and a sign off by an approved person. A register is only meaningful if it is complete with all the requisite information.

Modern practice often involves professionals increasingly work as part of teams with varying levels of qualification, including specialised post registration training. Registers should be clear so that members of the public can identify, perhaps by way of annotations made in the register, any post registration training/qualification.

With an increasing reliance on multidisciplinary working, team members need to trust and understand the qualifications (and annotations) held by a colleague and the basis on which a person they are relying on entered the register.

To maintain public and professional confidence the integrity and completeness of the register is essential.

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? Please give a reason for your answer.

We agree. Regulators will need to collect, hold and process data. However, the type of data collected and held should be clearly defined. There should be a statutory duty for the regulator to publish the type of data it will collect, how long it will hold this and how it may be processed. Regulators must keep a full record of all parties with which they have shared any registrant information.

27. Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer.

We disagree. We are unclear what the intention behind this proposal is and what outcome the Government is seeking. The consultation gives the examples of a regulator that publishes geographical location and one regulator which publishes a registration expiry date. If any discretionary power was to be conferred to all regulators, it should only be done so on the basis that regulators would have a duty to undertake a full consultation which demonstrates the benefits that would accrue from publication of that specific category of information.

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? Please give a reason for your answer.

We agree that all regulators should be able to annotate their register with annotations that are clearly defined and which can be clearly understood. Any annotations that are going to be made should be made within the framework of an annotations policy which should be subject to full consultation with stakeholders.

The consultation also proposes that regulators be able to make a charge for an annotation. However, the charge should be fair and proportionate and only on a cost recovery basis.

29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power as set out above? Please give a reason for your answer.

We disagree. The recent Covid-19 pandemic saw some regulators exercise their emergency registration powers. In the case of pharmacy, this exercise was carried out without sufficient understanding of need or impact. We have numerous examples of existing registrants having their employment being curtailed (for example those on temporary or locum contracts) and being substituted by temporary registrants. This is clearly not in the public interest. The pharmacy regulator did not publish an impact assessment nor did it carry out any rapid time consultation with stakeholders as to the need to grant temporary registration.

As at June 1st 2021 there still exists an emergency temporary pharmacist register and to date no assessment has been published by the pharmacy regulator as to the continuing need or appropriateness of this register.

It is on this basis of what we consider to be a misuse of the existing temporary registration powers that we propose that there be an obligation on regulators to review and publish every quarter the need to continue with any temporary register established under the proposed provisions.

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?

We agree that there should be consistency in relation to protection of title offences.

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)? Please give a reason for your answer.

We disagree to the distinction of intent and non-intent offences. Intent may be especially difficult to prove in some offences. Any misuse of a protected title has the potential to harm the public, does not increase public protection nor does it inspire public confidence. The misuse of any protected title should automatically be seen as an intent to deceive. Why would someone attempt to use a protected title unless they gained some benefit from it? The use in itself confirms intent.

We exampled the use of the term “pharmacy” and how kitemarks and other mechanisms are needed to protect the public by helping them to distinguish registered pharmacy entities versus unregistered entities. A reasonable member of the public would reasonably expect any pharmacy (especially one which comes high up on an internet search engine) to be a regulated entity.

In nursing for example, the title “registered nurse” [11] is protected but the anyone can describe themselves as a “nurse” and we understand that this has been a recurring issue.

The whole area around protected titles is complex and needs to be addressed in toto and based on current examples of common and recurring issues. [12] A refreshed list of protected titles based on the experience of the 10 healthcare regulators should form the basis of a new overarching protected healthcare titles list.

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? Please give a reason for your answer.

We agree that all regulators should be able to appoint a deputy registrar. However, there should be an express provision that the deputy registrar can only be part of the new proposed board structure in the absence of the registrar and a deputy registrar should only have a voting right in the absence of the registrar.

33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance? Please give a reason for your answer.

We agree that all regulators should set their registration processes in rules and guidance following open consultation.

Paragraph 193 proposes that regulators have a power to require a potential registrant to undertake additional (unspecified) assessments or (unspecified) exams over and above those that are specified to enter the register.

We cannot agree to such an overarching sweeping power especially as the consultation has not evidenced the need for such a sweeping power.

We urge the Government to confer a power to the PSA (as recommended by the Law Commission) to direct regulators to make or amend rules. This would ensure consistency across all regulators.

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? Please give a reason for your answer.

We disagree. There should not be discretion to turn down applications. The example given in paragraph 201 to justify this proposal could easily be met within any registration rules if they were adequately drafted. The absolute discretion which may result from this proposal has far reaching implications and consequences.

We cannot support the granting of such a sweeping discretionary power to all regulators.

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? Please give a reason for your answer.

We agree that the license to practice provisions may not be required and should be removed following other changes in this consultation. The entry requirements for registration and the annotations provide a suitable mechanism to address this.

36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them? Please give a reason for your answer.

We agree that regulators should be able to suspend registrants rather than remove them but that there need to be specific published rules and guidance which must be followed. The rules and guidance must be proportionate and be demonstrably so.

We cannot agree to suspension of a registrant for "failure to maintain an effective means of contact". It is for the regulator to ensure that it facilitates an easy update of contact details. This can easily be done with the annual registration declaration that all registrants make when paying their annual fee.

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? Please give a reason for your answer.

We agree but with the caveat that these rules should be subject to open consultation and subject to suitable oversight arrangements as proposed in the Law Commission Report of 2014.

38. Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.

To ensure consistency across all regulators the appeal process should therefore be set out in primary legislation rather than in rules made by individual regulators. These areas are not subject to frequent change and do not require continual update and thus are better suited to being within a legislative framework.

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? Please give a reason for your answer.

Given the desire for consistency, the appeal process should be uniform across all the regulators and thus should be set in legislation rather than rules. The appeal process is not a process that is subject to frequent change and thus would be better suited in a legislative framework.

40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers? Please give a reason for your answer.

We agree that regulators should not have a discretionary power to establish or hold a student register. Undergraduate students cannot practice unsupervised and it may be confusing to the public if a register had a separate division for students. Registers should only contain details of current registrants and non-practising registrants.

41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers? Please give a reason for your answer.

We disagree. The single register should have a division titled “non-practising”. The consultation proposes a single register which may be divided into specific sections. There is a case for allowing those registrants who wish to maintain contact with the regulator to be assigned to a non-practising division of the single register. One such example could be persons on a career break or sabbatical but who may at some future date wish to re-enter the practising register and who are maintaining the revalidation requirements set by the regulator.

This provision may be especially useful for women registrants who make up the majority of registrants in certain professions, or registrants who have a serious illness.

42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation? Please give a reason for your answer.

We agree that prescriptive detail is not required in legislation. However, any rules and guidance pertaining to international registration (and especially any English language requirements) must be consulted upon and be published.

4. – Fitness to Practise

Preamble:

The proposed reforms have the potential to modernise the culture around fitness to practice and how it is perceived by both the public and professionals.

The starting point is the reporting of a complaint or concern, which, at the very least may indicate somebody believes something has gone wrong (excepting vexatious complaints/concerns). The action prompted by such a trigger should be focussed on learning and prevention rather than blame and punishment; therefore, all process

should begin with an investigation to establish what has actually occurred. The examination and assessment should then consider if there are any systemic drivers or gaps that have caused any negative consequence and how these can be improved to prevent repetition; only then should the fitness to practice of an individual or corporate registrant be considered. This is critical as even though no registrant may be at fault, the systemic issues may need to be addressed to safeguard the public. The opportunity for such improvements is missed if the only focus is on blame / no blame. Our further comments about fitness to practice are based on this principle.

Fitness to Practice forms a large part of the activities of all healthcare regulators.

Over time, the processes have become cumbersome and adversarial and especially stressful for both registrants and those that are reporting concerns.

Many of the concerns can be addressed by means other than panel hearings which are costly both in time and monetary terms. Fitness to practice consumes a large part of the income for all the healthcare regulators but is still problematic in how it is perceived by both the public and professionals alike.

The Kennedy Inquiry, published in 2001, following the events at the Bristol Royal Infirmary 1984-1995 specifically noted:

> ***"The professional bodies must be more flexible in their approach to what constitutes misconduct and practice that warrants disciplinary action; they must deal with cases as far as possible at a local level and they must have available a range of actions to meet the problem before them which both serve the interests of the public and the needs of the professional."*** [13]

The balance between maintaining public confidence and being seen to be doing something was noted by Parliament in the 2015 debate around reforms to the independent Medical Practitioners Tribunal.

> ***"I think that we have to be very careful about regulators which, in a sense, lose confidence in their own ability to make common sense judgments, and then have knee-jerk reactions in the face of media storms."*** [10]

Nevertheless, the acceptance that the separation of investigation and adjudication is needed has been a consistent view since the publication of the Fifth Shipman report.

This clearly identified the need for adequate separation of investigation and adjudication even when both occurred under the umbrella of one regulator. Indeed, the regulatory role of many professional bodies was removed by the creation of separate regulators to ensure the perception that cases would not be dealt with behind closed professional doors and with little transparency for anyone outside.

So, whilst we welcome the ethos of resolving fitness to practice cases more proportionally, more quickly and more fairly we have concerns about the process.

For example, the quality of the initial assessment has often been found to be deficient. A recent PSA review of the GPhC found a catalogue of problems including inconsistent decision making at this stage. Similarly, an independent NMC investigation found a disproportionate referral rate following assessment for BAME nurses. The GPhC recently has had to revert (which had been trialled initially over 20 years ago) to an anonymisation process for investigations following concerns.

The training, quality and capability of the assessors, case examiners and of panel members are key to a proportional, fair and balanced process for all parties. It may be that case assessment and case examination is conducted by a suite of competent entities (for example legal firms) that are separate and distinct to the regulator.

Many independent reports have identified trends in reporting concerns including a disproportionate number of BAME professionals being referred. The current proposals make no mention of a duty for regulators to ensure equity and proportionality when concerns about BAME professionals are received. Indeed, there is a growing body of literature highlighting the inequity of reporting concerns by both employers and the public for motivations that are to be fully explored but are hinted at within this literature.

Given the disproportionate number of BAME healthcare professionals working in the UK the significance on professional confidence should not be underestimated. There are many possible solutions but to ensure that these are consistently applied across all the professions there needs to be some element of co-ordination.

This is why the Professional Standards Authority should have its S29 remit to refer cases to the courts extended to deal with cases closed by case examiners. It should also be empowered to intervene in processes where there is a clear disproportionality and not just in cases which are currently termed “unduly lenient”. This would then capture any inequity of over and under sanction. [14] Indeed, Parliament in 2015 noted the concerns of the British Dental Association around the prevailing culture at the GDC when considering reforms to its Fitness to Practice processes including the role of case examiners.

We agree that there should be consistency in language and process for all healthcare regulators and this is especially important as multidisciplinary working is increasingly commonplace when providing healthcare. A consistent 3 step process is thus welcome as it would clarify confusing terminology and process which exists at present.

Our overarching view is that fitness to practice poses the greatest challenge to maintaining public and professional confidence in healthcare regulation and in regulators themselves. The reforms are in general welcome but it is the granular detail that will ultimately determine whether they deliver proportionality, fairness and support to both those reporting concerns and also to healthcare professionals themselves.

Having effective oversight would counterbalance the extra powers that regulators would have. The Law Commission specifically recommended giving oversight powers to the PSA and in the regulatory reforms around fitness to practice this may be an area where conferring such power to the PSA would be especially important and appropriate.

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?

Please give a reason for your answer.

We agree with a clear and consistent 3 step process. However, the rules and guidance around the process need to be consistent across all regulators as should the application of the rules and guidance.

The initial assessment process is especially important as this acts as a divider between concerns that do not meet the required thresholds to those that do. In our preamble we discussed the importance of getting this process right and the impact on registrant and public confidence when it is not right.

There may be a case for the initial assessment and case examination process to be pooled across all regulators to maintain consistency, quality and confidence in the process. Thus, the reporting of a concern for all healthcare regulators could be at one central point thus removing any potential confusion for members of the public as to where to lodge a concern.

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?

Please give a reason for your answers.

We agree with a consistency of having 2 specified grounds for action. Only serious concerns should enter the fitness to practice process and we agree with the ethos of fairness and proportionality as set out in paragraphs 264, 265 and 266 of the consultation.

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?

Please give a reason for your answers.

We agree that all measures should be available to both examiners and fitness to practice panels with the safeguards detailed in paragraphs 311 and 312 where it is proposed that case examiners can only close a case with an accepted outcome with the consent of the registrant. Thus, if a registrant does not agree to the sanction proposed by the case examiner then the case would progress onwards to a panel hearing for determination. There should be no cost or other impact on the registrant to exercise his right to a full panel hearing.

We agree that a listed offence should result in automatic removal and that this list be consistent across all regulators.

46. Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.

We agree that a review process for measures agreed or imposed should be in place and this process should be specified in rules. However, the review process should be conducted by a neutral legally qualified third party and not the regulator or associated parties as this would undermine confidence in the process.

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? Please give a reason for your answer.

We agree that there should be a duty to keep all parties informed at key points of the process and within defined timespans. We regularly have to remind the GPhC for updates on case progression and we understand that lax communications by regulators is an issue across all regulators and for all parties that are in regulatory contact. The process around communications should be set in rules that are consistent across all regulators.

We are especially concerned about when a notice would be served to a registrant. The initial notice must be served by both a recorded delivery hardcopy of notice and an electronic copy. The initial service of document alerts the registrant to an impending investigation following receipt of a concern and is thus fair and proportionate. The pharmacy regulator recently changed its rules so that it is only required to send the notice by electronic means.

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? Please give a reason for your answer.

We disagree. Discretion is an inappropriate word in this context. Either a concern meets the threshold for onward investigation or it does not.

A better terminology would be regulators would assess the reported concern and, if the concern failed to match the criteria for further examination they should have the power to close the case with no further action. In this context we welcome the proposals that all regulators can close cases at the assessment stage when a concern has not reached the requisite threshold for further examination.

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? Please give a reason for your answer.

We agree that regulators should be able to investigate ***serious*** concerns that occurred more than 5 years old even if they only recently came to light.

50. Do you think that regulators should be provided with a separate power to address noncompliance, or should non-compliance be managed using existing powers such as “adverse inferences”? Please give a reason for your answer.

We disagree. We have concerns around this especially as during the pandemic many regulators changed their rules so that a notice could be served by email and without a need to send the initial notice also by post. Non-compliance should only be considered if attempts to contact a registrant had been attempted via more than one channel, for example by email to their last registered email address and also by a recorded delivery letter.

Correct wording under "adverse inferences" would be sufficient to deal with deliberate acts of non-compliance.

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

We agree. However, we have concerns about the quality of records at the assessment stage. We have already noted a disproportionality around BAME referrals and as a safeguard, a case should not be allowed to be closed or be referred onwards without key diversity characteristics being captured of both the party reporting the concern and the registrant. This then provides a mechanism for ensuring that regulators discharge their monitoring of their EDI responsibilities more seriously than many do so at present.

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? Please give a reason for your answer.

We agree that conviction of specified listed offences should mean automatic erasure.

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?

Please give a reason for your answers.

We have already agreed that a full suite of measures should be available to case examiners.

We disagree that case examiners should be allowed to make a final decision on the basis of written evidence only. The registrant would not be obliged to accept the decision and this would probably increase the need for a panel hearing. It is better that all initial inquires are thorough and robust at this stage to reduce the need for panel hearings.

We agree that if a registrant does not agree to an "accepted outcome" then the registrant has an automatic right to a panel hearing. We cannot agree to an automatic imposition of an outcome within 28 days because of a non-response unless the regulator had made attempt to contact by a minimum of 2 channels one of which must be a letter by recorded delivery to the last recorded address of the registrant.

54. Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.

We disagree with the proposals. We agree with the principle of interim measures or interim suspension but they may sit better within a framework of legislation that applies to all healthcare regulators.

There need to be safeguards in place for registrants as these measures have the potential of depriving a registrant from earning an income. The impact could be catastrophic for registrants.

We suggest the following safeguards:

- All exercisable powers and processes must be detailed in rules and guidance
- Any interim measures proposed by case examiners can only take effect with the consent of the registrant
- If a registrant does not agree to the measures then a panel should be convened as laid out in legislation
- That the initial interim measure be for 12 months
- Any interim measure must include a review at least every 6 months.
- A request for a review of the measure made by the registrant to the registrar must not be unreasonably withheld and the registrar must give a full explanation if such a request is denied.

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? Please give a reason for your answer.

We agree that all regulators should have a consistent power to make rules that detail how their fitness to practice panels operate. However, the rules across regulators should be consistent. Furthermore, we agree that these rules should only take effect following full public consultation.

We disagree with the draconian power for a regulator to "compel" a witnesses to appear. Whilst we accept that this sort of power is needed in certain criminal cases this is wholly inappropriate in context of professional regulation where a civil standard of proof is used to adjudicate.

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? Please give a reason for your answer.

We agree that a registrant should have a right of appeal against a decision made by a case examiner, Fitness to Practice panel lor an interim measures panel. This would obviously be in cases where the registrant disagrees with the decision or does not agree to onward progression (i.e. case examiner stage to a panel hearing stage). Decisions made by case examiners are not binding on the registrant. Other than that , we are content that registrants have a right of appeal as detailed in paragraphs 349 and 350.

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? Please give a reason for your answer.

Given the nature of impact that a decision of a regulator may have on a registrant we agree that a High Court is where the appeal should be lodged.

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? Please give a reason for your answer.

We agree. Regulators should be able to make their own rules regarding restoration to the register. These rules should be made following full public consultation and should be consistent across all 10 healthcare regulators.

A registrant making an application for restoration should not be denied restoration by the registrar unless he has not complied with the regulator's rules for restoration (which may include evidence of CPD, references etc).

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? Please give a reason for your answer.

We agree that registrants should have an onward right of appeal against a decision not to permit restoration.

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? Please give a reason for your answer

We agree that the High Court would be the most suitable venue for such an appeal.

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? Please provide any reasons for your answer.

We disagree that the proposed Registrar Review power provides sufficient oversight.

The Registrar will not be seen as a neutral party by those reporting concerns or registrants and this has potential to undermine both public and registrant confidence in the system.

At present the PSA has a S29 power of appeal for cases against decisions made by fitness to practice panels. This mechanism of appeal has worked well. The Law Commission proposed that this oversight be extended to cases closed by case examiner. We would support a broader approach to be taken by the PSA which allows them to appeal any decision which may be inappropriate including those that are over-zealous in their prosecution of registrants.

The Bawa-Garba case, where the GMC appealed a decision made by the independent Medical Practitioners Tribunal, illustrates why a registrar review power undermines professional and public confidence.

The regulator or its employees will be involved in fact gathering and presenting information to case examiners and cannot thus be seen as independent parties. There is an inbuilt structural conflict of interest and irrespective of any perception of "Chinese walls" between the registrar and case examiners the perception that investigation and adjudication are "in-house" will remain.

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 as detailed above. Do you agree or disagree with this proposed mechanism? Please provide any reasons for your answer.

We strongly disagree. The value of the PSA having a right to request a review by the registrar is far less than the value, both in perceptive and tangible terms, of the PSA having the power to challenge decisions of case examiners by the High Court.

The Government has failed to make a case as to why it is refusing to accept the recommendation of the Law Commission on this matter.

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

Please see our preamble to this section and especially around an extended oversight role for the PSA as recommended by the Law Commission.

64-69. Questions relating to regulation of Physician Associates and Anaesthesia Associates

We have no comments.

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?

- Yes – positively
- Yes - negatively
- No
- Don't know

Please provide further information to support your answer.

We believe that the proposals, as drafted in the consultation will impact negatively on those with protected characteristics.

We have seen a clear divergence in commitment in how some regulators approach their legal obligations with respect to the Equalities Act 2010 with some taking this responsibility in a superficial and tokenistic manner and others taking a diligent, thoughtful approach and making meaningful change where issues are identified.

The proposals give wide ranging powers to regulators without adequate safeguards and this heightens the risk of further embedding structural inequalities in the treatment of those with protected characteristics.

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