Regulating healthcare professionals, protecting the public - consultation questions

ABOUT US

FODO is the representative professional body for eye care providers across the UK. The NCHA is the representative professional body for community hearing care providers across the UK. Each year our members provide more than 20 million eye and hearing care examinations, helping support patients with timely access to care and reducing the risk and impacts of eye and hearing health problems.

OUR RESPONSE

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.

Agree.

The duty to cooperate should extend the range of the regulator's functions (e.g. public protection) and across national boundaries.

The professional workforce is now increasingly international and moves across national boundaries. Regulators need to cooperate across boundaries to keep the public safe in all counties as a key part of protecting the public in the four UK home nations and crown dependencies.

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? Please give a reason for your answer.

Agree.

Our experience has been that the ethos of transparency and these requirements are essential in reassuring both the public and registrants that the right issues are being considered, that the public is being protected and that fairness is being applied to all parties.

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

Agree.

However, we would suggest adding a further important category - 'current and prospective health and care providers'. Providers can be significantly affected by regulatory changes, irrespective of whether or not they are regulated as businesses, and, without them, healthcare simply cannot be provided. We therefore recommend that they be considered as a category in their own right (rather than being subsumed within the catch-all of "other relevant stakeholders").

To enable stakeholders to provide meaningful responses, there should be a requirement on regulators to compare the costs, benefits and risks not only of the preferer option but also other relevant options. There are existing models across government for how this should be done.

In our experience, regulators are not always skilled in carrying out impact assessments or cost benefit analyses and so would benefit for some central government guidance in this area.

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.

Disagree.

The original question in Promoting professionalism, reforming regulation consultation asked whether respondents agreed "councils of the regulatory bodies should be changed so that they comprise both non-executive and executive members?".

In that consultation the government proposed changing the "make-up of the councils to a board structure, comprising executive and non-executive directors appointed on the basis of their skills, knowledge and expertise" and noted it would be for the Chair to determine "whether and how many current or former registrants sit on the board." (Reference: Paras 7.35-7.37). 63% of respondents agreed with these specific proposals but this should not be seen as a ringing endorsement for change proposed in the current consultation.

Although FODO and the NCHA have always supported having a non-registrant chair and lay majority on regulator, the current proposals would enable Councils to be formed, discuss professional matters and make decisions without any registrant input whatsoever. Intuitively this does not feel right, or fair to the professions being regulated. It is also difficult to see how this would work in the public interest without more expert professional input.

The evidence base for unitary boards in health regulation is not strong and most registrars have important quasi-judicial discretionary functions which need to be exercised independently of any Board functions and free from board interference (other than framework and rule setting). Unitary boards and size limits will inevitably mean less health professional statutory input to the work of Councils. It also seems odd that the principle of input to regulation is applied to geography but not to professions. Although the changes sound modern, they may ultimately weaken the effectiveness of health regulation in the UK.

If however these proposals do ultimately go ahead, the regulators should be required to establish advisory committees, with a fair balance of input, for each of the professions regulated and a duty to have regard to its advice and to set out reasons if they decide not to accept it.

On a minor point, we agree with the proposed definition of registrant.

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

Agree.

However, unfortunately the overarching statutory objectives for healthcare professional regulators (paragraphs 11 and 50) do not include any goals for efficiency. We strongly suggest this should be added as regulators have not always shown themselves prudent in their use of resources especially when increases can be passed on to registrants without challenge.

The DHSC and devolved governments also have a direct interest in registration fee increases as these add pressures which feed through into wages and fees, and hence impact on wider resource availability for patient care. As a safeguard therefore, it might be sensible to require regulators to seek DHSC agreement (via the regulator's senior departmental sponsor) to any fee increase whether for a single year or on longer-term basis. This would protect both registrants and the public.

The senior departmental sponsor would of course need to be mindful of the governments' plans for healthcare regulation, pressures on and the views of the NHS and registrants, and actively seek the views of counterparts in the devolved administrations.

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.

Agree.

To invest/disinvest and be efficient, regulators must be able to make plans which extend beyond a single year and to have reasonable confidence that they will have the resources to fund them. However, powers should specify that regulators should not take the view that any fee increases planned in this way are immutable if circumstances change for example the economic climate or the conditions under which registrants operate and make a living worsen.

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.

Agree.

This has been our longstanding position and we contributed to, and fully support, the Law Commissions' recommendations of 2014. Regulators differ legitimately in how they operate, reflecting genuine differences in the sectors and professions they oversee (size, scale, risk). To maximise efficiency, they need to be able to organise themselves as they judge best to deliver their functions, and to be held to account for doing so.

Our support, however, needs to be seen in the context of the wider messages within the consultation, including that the government may wish to consider merging regulators. If that were to happen, it might be necessary to mandate the establishment of certain committees at that time to ensure effective regulation.

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.

Agree, for the reasons set out.

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.

Agree, for the reasons set out and also on account of the guarantee that the functions set out in paragraph 84 will only be able to be delegated to another health care regulator accountable to the PSA (and not a third party). This is particularly important in respect of "administering procedures relating to misconduct and unfitness to practise" as these are quasi-judicial functions which can affect a registrant's professional reputation, ability to practise and livelihood.

It is not clear, however, why these are all presented in the negative when very few registrants - proportionately - face issues of misconduct or unfitness to practise, when the more positive terms 'conduct and fitness to practise' more accurately reflect the norm and would have the same effect.

Although included within the concept of 'unfitness', health is a very important factor and we suggest it would be helpful for this to be specifically mentioned viz 'procedures relating to health, conduct and fitness to practise'.

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.

Disagree.

This power seems far too sweeping and no public body should be the sole arbiter of what information is needed in order "to fulfil [its] statutory duties", without safeguards.

We are concerned that there is some evidence of NHS commissioning bodies seeking to stretch similar powers beyond breaking point, and that there is no reason to believe that regulators would always be more balanced in their approach.

In any case the justification given the consultation for this expanded remit is insufficient to support this proposal. For example, there may well be good reasons why an educational establishment or representative body should choose not to share general information about undergraduates, not least that their performance may fluctuate from year to year for any number of reasons and may be no indication of the kind of clinicians they will eventually become, once qualified. Without detail, it is hard for example to imagine that the regulator cited could not have asked HEIs for data and that these would not have been provided, if only in anonymised format. Taking sweeping powers to access data for such purpose seems disproportionate.

Registrants also look to their representative bodies to protect their interests and entrust them with sensitive information in order to do so. It would be important not to break that bond of trust without overriding good reason such as its being required for a fitness to practise investigation.

It is for these reasons that we cannot see a need to extend the right to require information beyond regulators' existing powers in relation to fitness to practise cases.

If however these proposals were to go ahead, the requirement to comply with data protection legislation set out in paragraph 86 is of paramount importance for the protection of individuals. It will be crucial that the Information Commissioner's Office (ICO) does not consider its hands are tied by the granting of new powers to regulators. The consultation document does not give any indication of how the ICO has been consulted, how the Information Commissioner sees her powers interacting with the proposed new proposals or whether she believes these latter are proportionate. The use of any new powers should be expressly contingent on being compliant with data protection law and subject to the jurisdiction, judgement and intervention of the ICO in both specific cases and in general.

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

Agree.

Health regulation should remain UK-wide to protect all citizens equally. However, health is a devolved matter and so it is also right that the four legislatures should receive annual reports about how a particular profession is being regulated within their jurisdiction. Please see also our suggestion in response to Question 5 above about fee changes being agreed by the four health departments. Annual reports would be a corollary to that. However, for the sake of efficiency, it ought also to be acceptable for regulators to produce a single, combined report covering all four nations.

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 do not have a view on these matters.

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.

Agree.

The powers provide the flexibility for regulators to be able better to match education and training requirements to the needs and risks of the professions they regulate. Guidance about and application of these powers, and accountability to the PSA, should pay particular attention to the good regulation principle of proportionality (highlighted also in Paragraph 60) and only impose bureaucratic requirements (e.g. on education providers) to the minimum extent required to mitigate identified risk.

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.

Agree but we have some concerns about "the regulators [determining] the most appropriate way to exercise these powers" (Paragraph 110). We have some experience of a regulator overly focussing on simplistic (e.g. numerical) issues – even when these are acknowledged not to be appropriate – rather than seeing the bigger educational picture.
It is to be hoped therefore that these reforms will provide the flexibility needed to enable more balanced assessments and responses whilst fully maintaining pedagogical quality and outcomes.

We would also reiterate our proposal in response to Question 13 that guidance about these powers, the application these powers and accountability to the PSA, should all pay particularly attention to the good regulation principle of proportionality and only impose bureaucratic requirements (e.g. on education providers) to the minimum extent required to mitigate identified risk.

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

Agree.

This is a logical and beneficial addition to the powers proposed in Paragraph 110 (Question 14) and should lead to better outcomes for students and trainees and hence for the regulated professions and the public overall. As noted above we agreed with and continue to support the recommendations of the Law Commissions in 2014.

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.

Agree.

Not only is this fair to education and training providers but the exchange of fact-based information, evidence and the taking of these into account in the decision-making process, can only lead to better educational and training outcomes for all.

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.

Agree in the main.

This is logical and fair, provides a counterweight to the imbalance of power between education/training providers and regulators, and will lead to better outcomes for all. However in our view providers should also have the right to appeal conditions as these may not always be fair or feasible making failure to comply inevitable.

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

Agree.

The existing regulator-specific powers were put in place specifically to meet the needs of the various professions regulated and the degree of risk they pose to the public. Withdrawing them and replacing them under the new powers would be a distraction and waste of time. The new powers should provide all the flexibility other regulators need.

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.

Agree.

This is an important power for protecting the public. It does not however follow that all regulators need to use the power.

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.

Agree.

The powers proposed at Paragraph 105 (Question 13) would make this unnecessary.

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.

Agree.

Flexibility in this regard is aligned with the good regulation principle of proportionality which we highlight in our responses to Questions 13 and 14.

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 do not have a 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.

Agree.

This is a key part of a regulators role in protecting the public during not only at first registration but during the whole of a registrant's clinical career. We welcome the requirement for regulators of consult (presumably with registrants although not mentioned?), employers and other key stakeholders about proposed changes to existing CPD and revalidation rules. The GOC and HCPC do this well.

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.

Agree.

A single register will be less confusing for members of the public who may for instance not understand distinctions between types of professional working within the same clinical area (e.g. optometrists and dispensing opticians) and so may easily miss information they have a right to know when making informed choices of practitioner. The HCPC already operates a combined register.

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.

Agree.

This is the minimum of information a lay person would need to be reassured that a healthcare professional is properly registered and permitted to offer them care. It is also important for employers to be able to see and check this information in a publicly accessible register.

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.

Disagree.

We believe that UK data protection law already provides for the lawful processing of personal data where this is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. If a new power is deemed to be needed, it should be much more tightly drawn and limited to particular information that is necessary for the purposes of delivering the regulator's statutory objectives (i.e. the relevant objective could not adequately be met otherwise) in order to give effect to the important safeguards set out in Paragraph 158.

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

Publication should be possible but only where the information would be beneficial to the public in understanding the registration status of a particular professional and in making informed choices between registered professionals and subject to the safeguards that such publication is expressly linked to the regulator's public protection functions (Paragraph 158) and does not undermine the human rights of the registrant. To achieve this, we believe that the information that a regulator may publish should be clearly defined in legislation.

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.

Agree subject to the protections set out at Paragraphs 160-164. Annotations should provide information members of the public may find helpful in making an informed choice of professional e.g. about their scope of practice.

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

Agree.

The benefits of having these powers during the Covid emergency are well attested and the evidence is that the regulators applied them effectively for both the public benefit and the public protection. It is self-evident that such powers need to be in place against future emergencies of all kinds, and public safeguards are provided in that emergencies can only be announced by the Secretary of State for Health and Social Care and the Department of Health Northern Ireland.

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?

Agree.

This is a vital part of protecting the public against non-registered practitioners. Regulators should also have direct statutory powers of prosecution than having to reply on the indirect route of private prosecutions to protect the public.

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.

Disagree.

Although innocent mistakes can be made, ''non intent' offences might be equally dangerous to the public. The regulator should have powers to prosecute 'non intent' misuse of title where they can demonstrate that this is in the interest of public safety in a particular case.

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.

Agree, for the reasons set out in Paragraph 185. As noted in our response to Question 4, registrars have important, quasi-judicial, discretionary functions for the protection of the public and registrants, (beyond any managerial functions of a CEO). It is important these are not dependent on or interrupted by the availability of single individual.

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.

Agree but wonder whether the primary legislation should also be specific about the need to meet health (including mental health) and conduct criteria to emphasise their importance, rather than leaving such matters to each regulator's own legislation (Paragraph 192 fifth bullet)?

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.

As noted in our responses to Questions 4 and 32, the registrar's discretionary functions, where fine judgement needs to be applied, are a key part of public protection, and should be valued. There is no evidence of their having been misused and the statutory right of appeal protects the rights of applicants to the register. On this basis we believe all registrars should be given the same powers as the registrar of the GMC. This is one of the key arguments, in our view, against unitary boards and why the registrar should stand separate from the Council (which sets the framework within which they operate) and any CEO functions they also fulfil. However, for the protection of individuals, legislation should provide for clear reasons to be given for any rejection.

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 have no view on this matter.

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.

Agree.

This is an important part of patient protection as failure in any one or more of the duties listed in Paragraph 106 could be an indicator that all may not be well with the registrant. The right of appeal protects the registrant.

However administrative slip-ups do occur in all systems and are likely to increase if, as under the government's proposals, regulators share 'back office' functions or merge into larger organisations. We would expect guidance (from the Department or PSA) to make clear that suspension should not be a default response and should be considered carefully taking account of the particular circumstances in each case. We would also like to see a power for the regulator to reimburse registrants for any costs they may have incurred (loss of earnings, reregistration fees and costs owing to suspension) as the result of a regulator error.

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.

Agree.

There is no evidence that having these processes in primary legislation provides any additional protection to the registrant, other than that they are more difficult to amend but this too can also have downsides for registrants. We would however wish to see rules for voluntary applications for removal on health grounds being permitted at any time as well as during a fitness to practise procedure (Paragraph 209 second bullet).

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

Yes. This is a wide list, includes some duplications and may have omissions. We would suggest therefore that a better, fairer and more sustainable solution would be to enshrine in legislation (for all regulators) the right of appeal against any decisions affecting an individual's or body corporate's registration or application for registration (other than those listed in Paragraph 216)?

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.

Disagree.

If the aims are fairness and a common approach across regulators, the rights to and principles of appeal should be set out in primary legislation common to all regulators and subject to direction from the Secretary of State for Health and Social Care and the Department of Health NI. Rules can then put these into effect for individual regulators.

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.

Agnostic.

We understand the point about consistency but believe there might a case for retaining the option for regulators to be able to regulate students and to open a section of the new single register for those in training, if they wish. This could be, for example, for graduates who had reached degree level qualification but not yet gained sufficient experience of applying skills in practice to enter the register as autonomous clinicians.

As far as we are aware there has been no research into public views about whether or not clinicians in training should be registered. We recognise of course that standards of regulation can be made to apply to students via their training contracts with the HEIs. However, on the other side of the argument, there is a move in optometrist education towards greater use of practice placements and interaction with patients from very early in the undergraduate career; and, at the same time, trainee dispensing opticians already spend virtually their entire training period in practice (except for block release for study).

Patients who encounter trainees in an optical practice (not a laboratory or university training facility) are not volunteers even though they will have consented to being seen or observed by a trainee. In our view therefore they have the right to know that individuals who are interacting with them and have access to personal clinical data (albeit under supervision and with consent) are subject to the same standards of practice, behaviour and ethics as the registrants supervising their care.

In the case of all clinicians, the closer they get to registration, the more earned clinical autonomy they have (albeit still under supervision). Towards the end of their training, they can expect to be seeing patients with their supervisor available and able to intervene but not directly overseeing every aspect of their interactions. Placement protocols might be one way of addressing this but, however good protocols are, the fact remains that the training institution is still at one removed from the practice-based setting in many cases.

We are aware that it is argued that having a student section of the register may lead a regulator into dealing with minor misdemeanours under fitness to train procedures, which might otherwise have been better dealt with under education provider disciplinary processes. However, with the new powers allowing regulators more flexibility over whether and how they pursue such cases, this should not now be a major argument against student/trainee registration if a regulator decides that that is in the public's best interest.

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.

Agree.

Separate registers could confuse the public and an annotation to the effect that a registrant is not currently practising will be more effective in making their status clear.

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.

Agree for the reasons set out. Greater flexibility will enable regulators better to balance (and mitigate) any risks to patients which might be posed by international registrants against the risk of discouraging international registrants from coming to the UK to meet the public' healthcare needs.

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.

Agree.

The new framework provides a logical process which should ensure that concerns are considered, and if necessary addressed, at an appropriate level. The safeguard that a conclusion at case examiner stage has to be agreed by the registrant is an important protection. However, there is still a risk of a registrant feeling coerced into agreeing an outcome which is untrue and unfair. This is why we believe, as per our response to Question 38, that even consensual conclusions affecting a registrant's registration (or imposed conclusions as at Paragraph 251) should be subject to a statutory right of appeal. This would afford registrant some subsequent protection against being coerced into accepting a conclusion which they believe to be incorrect or unjust for fear of a worse outcome at fitness to practise panel level.

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.

Disagree.

We feel that the term 'lack of competence' is too wide and would prefer the more generally used term 'performance issues'.

We also disagree that health or lack of English should be removed from legislation and bundled together under 'lack of competence.' In health matters this would undermine the supportive approach regulators have always adopted in order to encourage openness. Lack of English cannot be termed a performance issue.

We would also query whether a finding of impairment by another regulatory body would always fall under misconduct (Paragraph 261 second bullet). Could such a finding not apply equally to competence? If so, the option to address such a finding under either competence or conduct would be more logical.

In the light of the above, we disagree that the proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection.

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.

Agree, with appropriate registrant safeguards including decisions made by case examiners on suspension or erasure being consensual.

In theory, the widest range of measures should be available at both case examiner and fitness to practise panel level in order to protect the public and to be fair to registrants. However, we do have concerns about how case examiners would be trained up to the new levels of responsibility, the legal advice case examiners will have to support them, and the legal safeguards registrants will have, which should be the same as at fitness to practise panels. These include registrants always having appropriate rights to respond in both case examiner and fitness to practise cases.

We welcome that fact that a regulator will be able to review conditions before the end of the term to which they apply (Paragraph 271) and would suggest this should also apply to suspension orders (Paragraph 272). We agree regulators should have automatic removal powers given the gravity and risk of the offences listed. However, we also welcome the right of appeal to the High Court against an automatic removal order (Paragraph 275). This is an important protection for individuals.

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

Agree.

Circumstances can always change, and it is right and fair that regulators should be able to review final measures at any point before expiry and that registrants should also be able to request this. Consultation on the rules setting out the process for making and considering such reviews (Paragraph 280) will provide the opportunity for regulators to get this right for the professions they oversee.

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.

Agree.

This is fair to all parties. The right for registrants also to request updates on case progression is an important protection. However, for complainants, the information needs to be at a high level with clear limits on what can be provided, as they are in effect a witness in the case and their evidence must not be contaminated in any way. This should be set out in legislation to protect all parties and to preserve the integrity of the process.

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.

Agree in part.

We do not, however, support the proposal (Paragraph 292 – third bullet) for regulators to be able to require information from a registrant against whom a complaint has been made as this is contrary to natural justice and the human right not to self-incriminate. Nor is it clear to us why a registrant would not normally be informed that an investigation has been opened (Paragraph 292 – sixth bullet); we believe registrants should always be informed and have the right to make representations.

We welcome however the specific protections planned for reflective material in line with the Williams Review, and also the power to close a case at initial assessment stage.

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.

Agree.

Fitness to practise is a continuous matter and, although (as noted) time since a concern is a consideration in assessing current fitness to practice, this should not prevent an earlier concern from being investigated to ensure public protection. However, there is always a risk of evidence becoming degraded over time and so there should be clear rules about when a concern over five years old can be investigated.

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.

Agree.

Public protection should not be impeded by failure to comply and 'adverse inferences' is a less reliable means of achieving this. Equally, registrants should retain the right not to engage with a process if they wish, and the right of appeal provides an important protection for registrants.

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.

Agree.

This is the logical next step in the process and also provides important protections for registrants. These should include the right for the registrant to make representations before any onward referral.

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.

Agree, given the gravity and risk inherent in the offences listed. However, we also welcome the right of appeal to the High Court/Court of Sessions/High Court NI against an automatic removal order (Paragraphs 275 and 319). This is an important protection for individuals.

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.

Agree.

It is logical and fairer to all parties for case examiners to have the full suite of measures available to them in concluding cases, subject to the important protections for registrants set out in Paragraphs 311-312 and 318-319.

Although we recognise that this is not a negotiation (Paragraph 312), the registrant must have the opportunity to make submissions which could cause the regulator to re-consider the matter.

As in our responses to Questions 38 and 43, we also believe that making case examiner conclusion appealable, even when consensual at the time, will be a safeguard against miscarriages of justice and hence an important element in protection of both the public and 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.

Agree subject to the safeguards for registrants set out in Paragraphs 331-332 and 334 -336, especially the requirement to review at least every six months and at the registrant's request.

Our only additional recommendation would be to qualify in primary legislation the regulator's absolute direction about whether or not to review at a registrant's request (Paragraph 336) and to require, instead, that the regulator should review if the registrant's request is reasonable. The tests of reasonableness can then be set out in rules**.**

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.

Agree but within a statutory framework common to all regulators, which would be fairer for all including clearer for the public. This should then enable regulators to establish fair fitness to practise procedures relevant to the professions they regulate but within a common framework across all the health and care professions. The duty to consult on fitness to practise rules is crucial and should enable the regulated professions to raise any issues the regulators may have missed or got wrong.

However, within a statutory framework, we assume that

- on grounds of fairness and efficiency, the prohibition on access to the accepted outcome process once a case has been referred to a Fitness to Practise panel (Paragraph 343), does not include voluntary removal. This should be made clear.
- on grounds of justice and fairness fitness to practise panel decisions will not be made public (Paragraph 346) in those cases where facts are not found proven or the statutory ground is not met, unless the registrant wishes them to be published.

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.

Agree.

Unfortunately, errors do occur even in the best of systems, and this is an important protection for registrants when their professional reputations, careers and livelihoods are at risk.

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.

Yes. The Higher Courts are an important ultimate safeguard and, given the need to maintain the independence of this quasi-judicial function, an internal appeals process would not be appropriate in all cases. However, we would strongly encourage the government to explore whether some kind of regulatory appeals tribunal could be a more accessible and lower cost first-line alternative. This would offer better and swifter outcomes for patients, practitioners and the system overall.

Whatever the form of appeal, however, appeals against a criminal conviction should allow submissions against the underlying conviction as well as the fact of conviction (Paragraph 350).

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.

Agree.

There may need to be some profession-specificity about restoration and so flexibility for regulators within a common legal framework makes sense.

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.

Agree.

This an essential part of the fairness of regulation and protects both the public and the legitimate interests of registrants.

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.

The Higher Courts are an important ultimate safeguard. However, as we suggest in our response to Question 57, some kind of regulatory appeals tribunal may provide a more accessible, lower cost alternative between the regulator and the High Courts.

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.

Agree. This seems proportionate and fair provided the registrant has the right to make representations.

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? Please provide any reasons for your answer.

Agree. This seems proportionate and fair provided the registrant has the right to respond to the review.

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

None at this stage.

64.Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give a reason for your answer.

We have no views on these matters.

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? Please give a reason for your answer.

We have no views on these matters.

66.Do you agree or disagree with the transitional arrangements for PAs and AAs set out above? Please give a reason for your answer

We have no views on these matters.

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? Please give a reason for your answer.

We have no views on these matters.

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.

Mainly agree subject to the protections for registrants highlighted in our response to other questions above. We however do not believe unitary boards are appropriate given the

discretionary functions of registrars, or that they will necessarily result in better public protection or improve the effectiveness or efficiency of healthcare regulation. (Please see our response to Question 4.)

We also believe that more oversight of fees and information demands are necessary to ensure maximum efficiency and effectiveness for the healthcare system as whole. (Please see our responses to Questions 5-6 and 10.)

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.

Mainly agree but it would be more transparent to state that the costs to regulators are mainly borne by registrants upfront in Table B rather than delegating the explanation to Footnote 18.

Healthcare regulation is about the totality of health care not just the NHS (important though this is for most sectors). The references to NHS plans (Paragraphs 30, 197, 202, 229, 365) may therefore reveal a public sector bias in the consultation. To correct this, whilst the costs to public sector employers are flagged, equivalent consideration should be given to identifying the costs the changes might impose on private sector healthcare employers or self-funding patients through higher professional fees.

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.

Not in so far as the protected characteristics are concerned or separately from the potential benefits for the general public and all registrants with the exception that, as noted in our response to Question 44, we believe health matters should be given greater priority and focus. If they are not, this omission may impact disproportionately on some people with protected characteristics.

End