ABDO consultation response - 15 June 2021

Regulating healthcare professionals, protecting the public Consultation questions

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 - we support a duty to cooperate that is consistent across all regulators and requires cooperation with the types of bodies specified, subject to expanding one of the categories in that regulators should be required to cooperate with bodies concerned with, “the employment, education and training, and assessment of healthcare professionals.” This would cater for situations where separate bodies are responsible for education and assessment of students, as in the optical sector.

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.

Agree - subject to requiring regulators to publish records of committee meetings, as well as Board meetings, and expanding the requirement to consult.

The proposed requirement to consult on significant changes to rules and standards is too narrow. Regulators should be required to consult on significant changes to the way in which they carry out their functions, including changes to rules and guidance. This will ensure that stakeholders can comment on, for example, a regulator’s draft strategic plan and policy statements such as those produced by regulators during the COVID-19 pandemic to maintain safe delivery of eyecare.

Linked to the issue of transparency, regulators should be given an explicit power to publish information for the benefit of patients and the wider public. Despite one of the main

objectives of regulators being to protect, promote and maintain the health and safety of the public, the Professional Standards Authority has questioned, in its performance reviews, the GOC's support for the 'Love Your Lenses' campaign. This campaign was designed to raise patient awareness of how to wear contact lenses safely and the importance of regular check-ups. It was launched in response to the fact that traditional regulatory tools were inadequate to deal with evidence of the risk of harm resulting from patients buying contact lenses online from non-UK suppliers and therefore not being required to have regular aftercare appointments as specified in UK law. An express power to publish information to promote public health and safety would avoid any doubt about the ability to protect the public by supporting similar public information campaigns in future.

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

We agree, but it will be important that the impact assessments are robust and conducted in parallel with the policy development process so that they inform the relevant decisions. This means publishing a draft impact assessment when the regulator consults on proposed changes

The Government should also specify that impact assessments should involve comparing the costs, benefits and risks associated with the preferred option with other relevant options, including maintaining the status quo. Otherwise, stakeholders are not able to provide a meaningful response. For a template see section 7 of the Communications Act 2003 which imposes on Ofcom a duty to carry out impact assessment.

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 Government has asserted that unitary boards will lead to improved governance without explaining how this will happen. Coupled with the Government's intention to review and, in all likelihood, reduce the number of regulators, and give regulators freedom to determine their committee structure, there is a high risk that regulators will become more remote from the professions they regulate and as a result, will struggle to retain their confidence and that of the public.

The Government needs to present a more coherent and cogent proposal that will ensure both demonstrably strong governance and sufficient input from and awareness of the professions they regulate during what is, as the Government acknowledges, a period of

profound and rapid change. At the very least, regulators with unitary boards would need to have an advisory committee for each profession they regulate and a duty to have regard to their advice and give reasons if they decide not to follow it.

It will also be vital for regulators to understand the differences in service delivery across the four nations of the UK. This is of particular importance in relation to the delivery of eye care, where there are very different approaches. At present, the General Optical Council has a Council member from each of the four nations, which means that there is an understanding of national differences. The proposed governance changes do not provide any similar mechanism, with the purported strengthening of accountability being at the expense of ensuring that the governing board of a regulator is able to make well-informed decisions.

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 - the need for consultation on fee changes provides sufficient accountability.

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 - subject to the caveat that this would require consultation.

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.

Disagree - this question is based on a false dichotomy. There is nothing to stop regulators creating committees in addition to those required by legislation. In our view, there should be certain committees that are common to all regulators to ensure that the regulator has formal and transparent mechanisms for gaining feedback from patients and registrants. Furthermore, the absence of statutory committees with proper governance in relation to the appointments to, and operation of, the committees could lead to the perception that particular stakeholder groups have undue influence.

Being required to have formal mechanisms to gain registrant input will be particularly important if the Government proceeds with the proposal to introduce unitary boards.

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.

Disagree - the ability of regulators to charge for services should be limited to services undertaken outside the geographical region in which they operate. Regulators charging for services carried out in the region where they operate would be problematic for three reasons. First, regulators would have no incentive to operate efficiently in providing services for which they can charge third parties. Secondly, regulators would not in practice be able to precisely allocate the costs, including the overhead costs, of carrying out particular functions, with the risk that fees generated from charged for services could be used to cross-subsidise services that are not charged for. Thirdly, regulators would have an incentive to cross-subsidise services for which they do not charge in order to keep registrant retention fees down, something which they are often under pressure to do in the face of registrant and political pressure.

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 - this power should exist to enable regulators to use the most effective and efficient means of carrying out their functions. This is subject to ensuring that in relation to the delegation of regulatory (rather than back-office) functions, the entity carrying out the function has sufficient knowledge and expertise in relation to the relevant regulated profession.

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.

Agree - but there should be a proportionality test in relation to requesting information from stakeholders. Responding to such requests will often be time-consuming and expensive so stakeholders should be required to respond to information requests only where this is reasonable and proportionate.

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.

Agree - this requirement should be accompanied by a requirement to give evidence before the appropriate parliamentary committees to allow discussion and scrutiny of the annual reports.

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.

Neither agree nor disagree

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 - we support a flexible range of powers to set standards relating to education and training. The proposed powers broadly mirror the GOC's current powers.

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 - these powers provide an incentive for providers to comply with the relevant standards and maintain high standards of education and training.

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 - these powers will enable regulators to take a proportionate approach to ensuring compliance with the relevant standards.

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 - being able to submit observations is an essential part of a fair approval process and will help to ensure that all appropriate evidence is considered.

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 that providers should have a right to appeal approval decisions.

Disagree that this appeal right should not apply when conditions are attached to an approval. The Government has argued that this is unnecessary because providers will have the opportunity to show that any requirements imposed by conditions have been met prior to having approval refused or withdrawn. This logic is fallacious, however, as providers will not have an opportunity to challenge whether any conditions are reasonable as opposed to whether they have been met. There should be a right to appeal against any conditions attached to an approval.

Agree that regulators should be required to set out the grounds for appeals and appeals processes in rules. This is necessary to ensure that there is a fair and transparent process which is followed consistently.

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 that regulators should retain their existing approval and standard-setting powers where this is necessary and proportionate. However, the Government has not made the case for allowing some regulators to retain more extensive powers but not extending these to other regulators. This seems contrary to the overall policy aim of ensuring consistency across 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.

Disagree – setting and administering exams and other assessments is in conflict with the regulators' role in setting standards and should not be necessary if standards are set and quality assured effectively.

Regulators should be limited to being able to specify whether additional exams or assessments are required and commissioning such assessments if they would not otherwise be provided because, for example, the number of applicants would make them commercially non-viable. This might be the case for assessments which some overseas applicants for registration are required to take.

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 – setting and administering exams and other assessments is in conflict with the regulators' role in setting standards and should not be necessary if standards are set and quality assured effectively.

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 – this should enable regulators to carry out their role in a proportionate and efficient way.

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.

Neither agree nor disagree.

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 – allowing regulators to set out CPD/revalidation requirements in rules and guidance rather than legislation should enable regulators to update their requirements more easily in response to developments in healthcare practice and in the delivery of professional development activities. This should provide greater assurance that CPD/revalidation schemes will support registrants in remaining fit to practise.

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 – would ensure that changes in practice can be reflected in a regulator's register. In addition, it will allow any new professions which may be brought into statutory regulation in the future to be easily added as a new part of the 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 – publishing this information will ensure that registers provide the same basic level of information about all registered professionals. However, the Government should add 'geographical location' to this list of basic information to enhance the value of registers to the public. This information would make it possible for a member of the public to locate a particular registered healthcare professional in their local area.

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.

Agree – support a power to collect information that is consistent with a regulator's statutory objectives, such as information in relation to a registrant's scope of practice, insurance and indemnity, revalidation and/or continuing professional development requirements. This would enhance the public value of the register.

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

Agree – support a discretionary power to publish specific data about registrants as this would enhance the public value of the register.

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

Agree – support annotation of the register to provide information about the skills, knowledge and experience of registrants in so far as this is relevant to public protection. It will be important for regulators to have a clear policy on annotations so that there is a fair and consistent approach.

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.

Agree – would enable regulators to respond to emergency workforce supply issues if, for example, there is a future pandemic.

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?

Yes – this would be in line with the policy objective of moving to a more consistent set of powers for regulators. However, introducing the same offences is not sufficient in itself. There should also be consistent powers of enforcement, including powers to investigate and prosecute such offences. In particular, regulators should be given statutory powers of prosecution rather than having to bring a private prosecution in the Magistrates' Court.

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 that the offences should require intent. This would be difficult to prove in practice and so would water down the deterrent effect of having protection of title offences. Whether or not there was intention to deceive can be taken into account in deciding whether it would be in the public interest to seek a prosecution as is currently the 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 – would ensure that all regulators have the required personnel in place to be able to meet their statutory duties

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 – regulators should be able to set out their registration processes in rules and guidance. The specific requirements for registration vary between professions and regulators are best placed to set out their detailed requirements for registration. Therefore, legislation should set out the basic criteria for the regulator's registration processes and regulators should be required to set out in guidance their processes for considering applications.

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.

Registrars should not have discretion to turn down an applicant for registration. The new consistent criteria for registration mean that it is sufficient for regulators to be able to reject applications only on the basis that the criteria have not been met. Incorporating an element of discretion would create uncertainty and the potential for unfairness and inconsistency.

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.

Neither agree nor disagree

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 – the power to suspend rather than remove registrants in the specified circumstances would enable regulators to act in a more proportionate way, bearing in mind the impact on registrants of removal from the register, including removal from the designated NHS practitioners' list.

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 – this is consistent with the wider move towards allowing regulators' greater freedom to set out their processes in rules and should enable them to be responsive to stakeholder feedback and developments in practice.

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

No – the list of possible reasons appears comprehensive and leaves scope for regulators to specify additional decisions in their rules.

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.

Agree – regulators should set out their registration appeals procedures in rules in line with the wider move to allow regulators greater freedom to determine their processes.

We do not agree regulators should be able to charge fees for registration appeals. This would deter appeals and is inconsistent with the proposed approach to other types of appeal. No case for imposing charges has been made.

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.

Agree – ending student registration would reduce the administrative burden on education and placement providers who need to check that students are registered as required. There are other mechanisms that can be used to minimise the risks to the public which students can pose, including supervision, admissions procedures and education providers' internal complaints-handling processes.

However, it is important to recognise that ceasing student registration will create an extra burden for education and qualification providers in the optical sector because of the need to deal with concerns about students that would previously have been passed on to the regulator.

Admissions procedures will also have to be robust enough to ensure that students do not complete their education only to find that they are unable to register owing to, for example, a criminal conviction gained before they began their studies.

It will also be important for the GOC to continue to engage with students through, for example, student roadshows to emphasise that they are part of the optical profession, even if they are not formally required to register. This will support the efforts of education and qualification providers to instil in students a sense of professionalism.

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 – non-practising registers are not consistent with the purpose of registration which is public protection. If practitioners are not practising at any particular time, they should be registered and able to use a protected title only if they meet all the relevant registration requirements, including in relation to CPD, and therefore, the public can be assured that they would be safe to practise.

We would also like to stress that regulators should explore how they can introduce more flexibility so that a registrant who is taking a career break, e.g. taking parental leave, is able to remain on the register and therefore the NHS performers' list provided that they meet certain minimum requirements and do not therefore pose a risk to public protection.

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 – should avoid legislative requirements for the registration of internationally qualified applicants that are overly bureaucratic and may deter safe and competent overseas professionals from seeking to practise in the UK. Including requirements in rules should ensure that regulators have the flexibility to develop effective and streamlined international registration processes which assure public protection in a more proportionate way.

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 proposed three-stage process should enable cases to be resolved more quickly and without cases being referred to a final hearing unnecessarily. In particular, agree that case examiners should be able to resolve cases where the registrant is in agreement with the proposed finding and sanction.

However, it is unclear whether the Government envisages that two case examiners (one lay/one registrant) will consider a case as per the current GOC approach. This is necessary to ensure confidence in the fitness to practise process. The registrant case examiner should have experience and expertise such that they have a sufficient understanding of the scope of practice of the registrant in question.

There should be clarity and consistency about the approach which regulators are required to take.

To ensure that cases are dealt with in a timely manner, for the benefit of both complainants and registrants, the Government should also require that regulators' rules of procedure should specify target timescales for the completion of the various stages.

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 – there should be three grounds for action – lack of competence; misconduct; and health.

Agree that concerns about English language should be viewed as a question of competence but disagree that concerns about health should be viewed in the same way.

It is not appropriate for concerns relating to a registrant's health to be expressed as a matter of competence. This could lead to registrants being stigmatised, particularly if there are no concerns about competence other than those linked to health.

Retaining a focus on health as a ground for action would promote a targeted approach and enable registrants to receive the appropriate support.

Adopting three grounds for action would still make the system easier to navigate for registrants and complainants, fairer for registrants experiencing ill-health and support more consistency in decision-making.

We also call on the Government to define more clearly the notion of 'upholding the public reputation and confidence in the profession'. The primary concern of regulators should be whether a registrant continuing to practise would create a risk to public protection. Where it is established that there is no such risk, a regulator should consider restricting a registrant's ability to practise only where a risk of seriously undermining public confidence in the profession.

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 that all the specified measures should be available to case examiners and fitness to practise panels. Agree that regulators should have the same measures available and the specified range of measures should enable case examiners and fitness to practise panels to take a proportionate approach.

Agree that automatic removal orders should be made available to a regulator. This will avoid the unnecessary use of the fitness to practice process in cases where removal is inevitable.

We do not agree that warnings should remain in place for two years or that they should be published automatically. Given that warnings are issued to registrants whose fitness to practise has been found to be unimpaired, it would be unfair for them to be published as a matter of course and disproportionate for them to remain in place for more than one year, particularly if they are published.

Currently, warnings issued by GOC case examiners are not published and fitness to practise panels have discretion as to whether to publish. This is a proportionate approach which should be maintained.

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

Agree that regulators should be able to review a measure at any point and registrants should also be able to request a review at any point. However, to ensure that this power is used in a proportionate and reasonable way, there should be specified criteria that a regulator would need to meet, such as the availability of significant new evidence or a change in circumstances which means that there is a risk to patient safety.

There should also be a limit on how long a measure can remain in place for. It should not be possible for measures to remain in place indefinitely as this would place an unreasonable burden on registrant. We suggest that measures should remain in place for no more than three years.

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 – setting out the process in rules will provide transparency for both complainants and registrants and should ensure that all parties are kept informed about proceedings.

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 with the proposal that regulators should have discretion to decide whether to investigate and if so, how. What is also needed, however, is a requirement for regulators

to issue rules providing clarity about the threshold for referring concerns to a regulator. This would be of benefit to employers and other stakeholders.

There also needs to be clarity about what test regulators will use to determine whether to investigate a fitness to practise concern.

We note the proposed right for a registrant to provide written submissions to the regulator during the course of the initial assessment. However, we are concerned that this could result in unfairness given that a registrant would not usually be notified that an initial assessment is underway.

While we understand that some registrants may have raised concerns about their own fitness to practise with the regulator or otherwise be aware that a concern has been raised, all registrants should in our view be notified of an initial assessment and given sufficient time to provide information.

Registrants who happen to know about an assessment and are able to make representations are less likely to be referred to the case examiner stage. Notifying all registrants of an initial assessment would be of benefit to registrants and regulators in that cases would not be referred unnecessarily to the case examiner 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 that there should be consistency among regulators. However, the case for removing the five-year rule has not been adequately made. We can understand that a time limit on cases involving misconduct might not be appropriate as the conduct in question might not come to light for some time. However, there should be a time limit for cases concerning competence and we would favour a five-year rule in these cases. It is hard to imagine how an isolated incident which occurred more than five years ago could raise concerns about continuing fitness to practise.

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

No, regulators should not be provided with a separate power to address non-compliance. This would add additional complexity to the fitness to practise process and no evidence has been provided that a public protection risk has resulted from other regulators not

having this power. It is sufficient for regulators to be able to make adverse inferences in the event of non-compliance with reasonable requests or directions.

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

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 that automatic removal orders should be made available to a regulator. This will avoid the unnecessary use of the fitness to practice process in cases where removal is inevitable

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 – the current process is unnecessarily time-consuming, expensive, adversarial and stressful for all parties. We support the objective of closing more cases at an earlier stage of the fitness to practise process, especially where the registrant accepts the findings and the proposed outcome.

However, regulators will need to ensure that case examiners are appropriately trained and that this part of the process is properly resourced by ensuring that, for example, expert reports are commissioned where appropriate.

One of the case examiners should also be legally-qualified to offset the risk of inconsistent and unfair decisions.

We are concerned about the prospect of a case examiner being able to resolve cases in situations where a registrant is not represented by a lawyer or other appropriate person. This is an area which warrants further consideration, particularly in the light of research carried out by the GMC which shows that registrants from ethnic minorities tend to be disproportionately unrepresented during fitness to practise proceedings.

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

Agree with the overall approach. However, we question the proposal that a regulator may put in place an interim measure for a period of up to 18 months, when conditions and suspensions can be imposed for only 12 months at a time. 18 months is a long time for restrictions on practice to be in place and does not give regulators an incentive to ensure that final determinations are made quickly.

Regulators should not be able to put interim orders in place for more than 12 months and their ability to extend such orders should be strictly controlled. It should not be possible for interim orders to be extended as a result of delay by the regulator in processing the case.

To ensure that cases are dealt with in a timely manner, for the benefit of both complainants and registrants, the Government should also require that regulators' rules of procedure should specify target timescales for the completion of the various stages.

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 – allowing regulators to set out in rules the details of how fitness to practise panels will work is appropriate and consistent with the overall approach of allowing regulators greater flexibility to adapt their procedures as circumstances change.

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 that registrants should have a right of appeal in the circumstances described. These appeal rights will be necessary to ensure confidence in the system, particularly given the prospect of more cases being resolved without a full hearing.

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.

Agree that appeals should be heard in the courts specified.

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 – it is reasonable for regulators to set out the detail of their restoration processes in rules and this is consistent with the overall approach.

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 that there should be a further onward right of appeal in order for there to be public confidence in the system, particularly given the serious consequences of a registrant not being restored to the register as a result of an internal process.

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.

Agree with a right of appeal to the specified 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.

Disagree - we are concerned that the registrar will have competing incentives as there will be an interest in resolving cases quickly. There should be a greater degree of independence in the review process.

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.

Agree that the PSA should not have a right to refer decisions made by case examiners. There should be sufficient confidence in the new system without introducing this additional and costly mechanism.

We also question whether the proposed compromise option is satisfactory. The PSA would still need to review decisions in order to decide whether to request a registrar review and greater clarity is needed about the costs that it would be reasonable for the PSA to expend on this area of activity.

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

We note that the regulator will only have a duty to direct a review when a request for a registrar review meets the grounds set out, with one of these grounds being that there is new information which would have, wholly or in part, led to a different decision.

Given that registrants will not be informed that an initial assessment is taking place, there is likely to be a higher number of requests for registrant reviews on the basis that there is new information which the regulator should be aware of. Introducing the requirement for registrants to be notified of any initial assessment and given the opportunity to make representations, would make these assessments more robust and reduce the number of requests for registrar reviews.

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

Neither agree nor disagree

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.

Neither agree nor disagree

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

Neither agree nor disagree

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.

Neither agree nor disagree

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.

For reform of this scale, we are surprised that the analysis of costs and benefits is so high-level, partial and lacking in detail, including in relation to the risks and assumptions involved. We would also have expected the Government to set out the costs and benefits associated with maintaining the status quo to make it possible to compare the costs and benefits that are expected to accrue under the proposed new system.

Also, we are surprised that the Government has not recognised professional bodies as a relevant stakeholder group. Such bodies provide a range of services for their members, including continuing professional development, professional indemnity insurance and support during fitness to practise proceedings. The expected costs and benefits for professional bodies should be specified.

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.

We are surprised that the Government has not recognised professional bodies as a relevant stakeholder group. In particular, such bodies will incur transitional costs in moving to the new system given their role in, for example, supporting members during fitness to practise proceedings.

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 - negatively

Please provide further information to support your answer.

The proposals could impact negatively on registrants from ethnic minorities. Based on GMC research, we understand that doctors from ethnic minorities are less likely to have legal representation and therefore may be at a disadvantage if more cases are resolved without a hearing. It is reasonable to assume that this is also likely to be the case in relation to other groups of healthcare professionals.