Department of Health & Social Care

Regulating healthcare professionals, protecting the public Consultation questions

The Faculty of Forensic & Legal Medicine (FFLM) was founded in 2005 as a Faculty of the Royal College of Physicians of London and it operates as a charity whose principal objective is to develop and maintain the highest possible standards of competence and professional integrity in forensic and legal medicine. The setting and maintenance of such standards helps support the professional environment where safe and competent care is provided by regulated health professionals.

The Faculty's members and fellows are doctors and dentists who are forensic physicians, practise legal medicine or who are medically-qualified coroners. The Faculty also has Affiliate and Associate members, some of whom are paramedics and nurses. We are therefore involved across the healthcare professions that this consultation is focussed on.

The Faculty's legal medicine members are medicolegal advisers and dentolegal advisors who are mainly employed by the medical defence organisations and they are intimately involved in the regulatory process when providing support to their members. Some of the comments made in our response draws on their professional expertise and knowledge of the regulatory processes for doctors, dentists and other healthcare professionals.

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

We agree that regulators should cooperate with the organisations identified in the consultation document, but cooperation does not mean that any request or demand made by a regulator should be automatically complied with in the absence of reasonable and necessary checks and balances. Regulators' primary responsibility is to patient safety followed by a duty of care to their registrants, therefore the duty of cooperation should be subject to careful consideration and consultation with those it affects. Both patients and registrants have their own rights to confidentiality and whilst some of those can legitimately and proportionately be put aside in regulatory matters, it cannot be assumed that this applies in all circumstances.

The organisations to which the duty applies (para 56 of consultation) should be set out in detail in legislation with clearer delineation as to what cooperation means. This is important as the duty to cooperate would seemingly include the FFLM as it is involved in the training and education of healthcare professionals. But the duty cuts both ways and therefore the regulators should cooperate and engage with organisations such as the FFLM, MDOs and trades union, for example in formulating policy or where changes to the regulators' rules are contemplated.

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.

Regulators should be as transparent as possible in their dealings with patients and registrants. The GDC published a statement on 21 April 2021 where it apologised for the use of private investigators who were sent undercover into a registrant's premises. The GDC subsequently admitted having breached the registrant's rights as there was no initial allegation to justify the intrusion and resulted in the payment of costs and damages. The case is an example of the failure of transparency and we welcome the consultation's premise that in the future it is a principle that must be respected and adhered to. We also have concerns about health cases which deal with sensitive, personal data and which should be held in camera. Health matters should have their own rules on transparency to protect an ill registrant. In respect of this, and we will return to the point later, the removal of "health" as a specific head of impairment in regulatory procedures is a concerning and retrograde proposal. Registrants with health problems that may impair their fitness to practise require care and confidentiality, which will become more difficult and be diluted if the consultation proposals are adopted.

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

Regulators of professions have the ability to remove an individual's ability to work, earn a living and contribute to the UK healthcare system. Therefore it is essential that regulators are held to account for how they change their rules, processes and systems. They should be required to publish a standardised account of precisely what assessment they have made of their proposed changes and their impact, proportionality and necessity.

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

We agree that a more modern governance structure is right. Registrants should have a significant say in who is appointed to the boards that will govern their regulator. There should be at least one professional member from each of the four UK jurisdictions, since these have differing health structures as well as a consideration of a fair balance between professional and lay members.

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

We do not believe the proposals provide accountability and oversight with respect to the setting of fees, which could be subject to significant inflationary pressures given the scale of the reforms proposed. We believe that parliamentary oversight of the fee-setting function is the most appropriate mechanism for ensuring such scrutiny.

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

We agree that longer term planning of fees, subject to the answer to Q5, would be sensible but these must be subject to consultation by the respective regulator.

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

We agree regulators should decide what committees they set up. We are generally supportive of the idea of the regulators having greater scope to setting their procedures as this should result in more sensible, proportionate regulation. An example is the GMC's establishment of the MPTS – we know the GDC is contemplating something similar and we believe it is right that the adjudication function is separate from the regulator's investigative and prosecutorial function.

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

We agree that regulators should be able to charge for services to third parties. This should not be a burden on registrants. An alternative would be direct government funding.

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

We do not agree that it is appropriate for a regulator to delegate functions which are part of its core, such as fitness to practise investigations and educational standard setting and oversight. We recognise, as we have said earlier, that there are difficulties with regulators combining both prosecutorial and adjudicative functions and where this happens it must be fair. Registrants of one regulator should not be in the position of cross-subsidising another profession and this will require consultation and scrutiny. Other matters can be jointly carried out but the regulator must still bear overall responsibility and accountability.

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.

Fundamentally we need more information about how this would work, what safeguards would be in place in particular for legal professional privilege and other relevant details before being able to offer meaningful comment.

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

We agree. Scrutiny, not only by the UK Parliament but also by the devolved parliaments would be appropriate

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 agree that the Privy Council's powers should apply to the GDC. Although we do not have pharmacist members of the Faculty, we believe the Privy Council's powers should extend to the GPhC too.

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.

We agree that regulators should have powers to set standards and outcomes in the educational settings described above, at both pre- and postgraduate level.

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

We agree.

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

No comment.

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.

No comment.

17. Do you agree that:

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

    Please provide a reason for your answer.

We agree with the proposal and we believe that conditions should also be subject to a right of appeal. They can be as important as non-approvals for a training body.

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

We agree.

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

We agree.

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.

We agree.

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

We agree.

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 agree generally with the proposal but suggest that the GMC must set out rules of procedure which, subject to consultation and that transparency, will be essential for doctors to have faith in any new process.

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.

Continuing professionalism requires continuing CPD and any requirements should be transparent and subject to consultation.

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

We agree. For the GDC there are currently 13 specialist lists, so it will be a considerable job of reform to reduce to a single list. Therefore, although we agree with the principle, we suggest there needs to be a suitable transition period to facilitate the move to a single register where the regulator currently, such as the GDC, has a large number of lists.

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

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

    Please provide a reason for your answer.

We generally agree with this proposal, although we have concerns about how precisely the fitness to practise history will be portrayed. In the case of fitness to practise outcomes it is important, if introduced, that it follows the regulator's rules so that when the concern is no longer subject to publication (because it has expired and there are no longer restrictions, or where the maximum period that concerns can be recorded has expired) it is no longer shown on the 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.

We agree that regulators should be able to collect data to support their statutory objectives.

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

We disagree with this proposal. The proposals do not identify good reasons to publish extra data about registrants. The proposal is open-ended with no detail. A further problem is that the more information is published on the register then the greater the risk that it will contain inaccurate information since there would be so much more data that is required to be kept up-to-date. This is not in the public interest and the information published should be limited to that which is essential and/or necessary.

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

We agree, with the proviso that should this proposal be introduced there needs to be greater detail and further consultation. However, the risk that the inclusion of too much detail will potentially lead to it becoming stale and inaccurate needs to be addressed and planned-for.

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

We agree. Future emergencies similar to Covid 19 are reasonably foreseeable. The permanent power to grant temporary registration should be coupled with a requirement for the Secretary of State for Health to give reasonable notice of the *cessation* of the need for emergency powers, as there will be considerable effort required to remove temporary registration from those who no longer need it without impacting on transitional arrangements for the provision of clinical care.

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

We agree titles should be protected.

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

We agree that these should be intent offences. A problem area might be where inadvertent or administrative error leading to a prosecution. The reason we say this is because some regulated professionals provide services that overlap other professions. For example a dentist might provide cosmetic procedures and a registered medical practitioner might provide ophthalmic services leading to misunderstanding about their professional titles. The *mens rea* requirement provides a suitable safeguard and introducing a strict liability offence sets the prosecution bar too low.

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

We agree.

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

We agree as this provides the necessary transparency. The other important point is that it allows for greater flexibility so that the regulator's requirements reflect the realities of the profession.

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

We agree that there should be a right for registrars to turn down an application but there must be an appeal procedure.

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

We agree. It is important that rules and guidance are transparent.

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

We understand from the consultation that this will apply to suspension for an administrative (rather than a fitness to practise) issue. It is a new power, and the details need to be fleshed out. We have concerns about how this would work in practice, and therefore we believe a further consultation will be required.

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

We are unable to provide an informed answer to this question: we do not have sufficient detail. Suspension is a significant regulatory outcome, and could immediately deny a doctor or dentist the ability to earn a living. We believe this proposal is such a fundamental element to the reform, with such significant consequences, that it should be in primary legislation. The primary legislation must include, for example, the minimum notice period the regulator must give prior to suspension, as well as the means of serving notice, to ensure that it is fair. In some circumstances (e.g. failing to pay fees), where there is no immediate or obvious public safety risk, then the notice period should be long, say 3 months. Shorter notice periods could apply, for example, following the death of the registrant or where the registrant has made a voluntary erasure application.

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

No comment.

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.

We agree. The rules should contain the detail of how it is done, but crucially there should be a statutory requirement (primary legislation) to require them to publish such rules, with minimum criteria, rather than leaving it entirely open to the discretion of a regulator to operate without a statutory framework.

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

No comment

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

We agree.

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.

This will differ between regulators so they should be able to set their own rules.

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.

While in general we agree with this proposal, we have the following observations:

Paragraph 238, point 5 – It should not be “anyone” who can request a review of an FTP case examiner decision but only the parties to the proceedings.

Paragraph 238, point 6 – The Registrar should only review decisions on request from the parties.

Paragraphs 248, 249 and 250 – We broadly welcome the new flexibility with the potential to resolve more cases without formal hearing, where the registrant agrees. The first phase of the proposed new procedures is an assessment, and it must be borne in mind that it *is not* an investigation, with the higher standards that the latter entails.

Paragraph 251 – For the case examiner (CE) stage to be successful, then they have to have the full range of powers. The crucial balance is that where these are not agreed by the registrant then an FTP should decide.

Paragraph 255 – Please note our comments about Health in our response to Q44.

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.

The FFLM reiterates the importance of health being a stand-alone head of impairment. We do not support the proposal to reduce heads of impairment to two: misconduct and lack of competence. The GMC, in particular, has established and refined a well-developed, fair and proportionate procedure for addressing fitness to practise concerns that relate (in whole or in part) to health impairment. This is not to say that we suggest that all health concerns should follow formal fitness to practise procedures; many will be capable of being managed at a local level or with agreement with case examiners, as is proposed. Some will inevitably be considered by FTP panels and a more appropriate direction of travel for the regulation of professionals should be adoption of the current approach of the GMC and specifically to recognise three heads of impairment: misconduct, lack of competence and an adverse health condition.

45. Do you agree or disagree that:

- all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and

- automatic removal orders should be made available to a regulator following conviction for a listed offence?

Please give a reason for your answers.

We agree that all measures should be outcomes available to both case examiners and FTP panels. If this were not the case it would impair the ability of the proposed three tier system to work effectively.

Removal orders for both the GMC and GDC (new rules) currently allow for an application for restoration to be made after five years. This is reasonable and proportionate and should be retained in any new regime.

We believe the circumstances where automatic removal takes place is expressly limited to the list set out, currently, in The Social Workers Regulations 2018, Schedule 3. We oppose the regulators having powers to add to this list and, should that ever become necessary, then we believe it should require amendment to the relevant governing legislation and be subject to full public consultation, in the usual way.

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

We believe that orders coming into effect immediately should be capable of being appealed within a reasonable timeframe.

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

We agree with the proposal and that the rules should make clear who will be kept up to date regarding the progress of the FTP process; at the very least we anticipate this will be the registrant themselves as well as the person or body who has raised the complaint (or is the affected individual where the regulator has begun an own-initiative investigation).

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

We are broadly in agreement that regulators in the first stage of the three-stage process have some discretion on whether to investigate and how to investigate a particular concern. However, we would require more detail on how this would be achieved and consequently reserve our comments for any further, future consultations.

Generally, we suggest that particular consideration is given to fleshing-out the following areas in terms of detail:

- Where an own-initiative concern is identified, it must be clear what the threshold for this is and relevant timescales. For example, cases that could never reach the threshold of impairment, such as the vast majority of single clinical incident complaints about outcomes, should plainly be outside the threshold. Concerns that are more than five years old at the time of their discovery by the regulator should be excluded unless it is appropriate in the exceptional circumstances of that case and in the public interest to proceed.

- The power to compel disclosure needs elaboration as it is clear that a court order may be obtained (with costs implications) as well as a self-evident administrative burden, but yet there is no explanation how the regulator will balance legitimate interests of confidentiality with the requirements. It is also not clear the extent to which the regulator will assure there has been full disclosure of all relevant material from those raising concerns, for example the full exchange of correspondence (as opposed to a selectively chosen subset of it) in a complaint at a local level may disclose that there is no realistic prospect of demonstrating impairment on the part of the registrant.

- We note that it is proposed that registrants will not normally be told about an initial assessment that is underway yet, paradoxically, it is recognised that they have a right to provide written comments on the allegations that have been made. It is clear this paradox requires a remedy and we suggest that registrants are told about concerns that have been raised sufficiently early so that they can, with appropriate professional advice, decide whether to provide a written submission. It is also implicit that the need to be told about concerns being raised must also lead to the natural corollary of being told when no further action is to be taken and the case is closed since this will feed positively into appraisal and reflective practice.

We are pleased that the consultation has expressed in clear terms that reflective material will be excluded from the requirement of disclosure.

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

We disagree with the proposal to remove the current restriction on regulators to consider complaints about matters which are more than five years old. Fitness to practise is principally concerned with *current* impairment, not historic impairment which might have been an isolated incident or subsequently fully remediated. Where the five-year rule is currently applied, such as by the GMC, it is not an absolute prohibition to the consideration of the incident as there may be sufficient public interest justification to do so. This is clear in its guidance to decision makers on this point. It is a balance that has to be struck between on the one hand ensuring that relevant evidence that may speak to the allegations of current impairment of fitness to practise is considered, while on the other hand protecting registrants from stale and/or irrelevant complaints about historic incidents.

Furthermore, there are significant evidential concerns. Clinical records are not retained indefinitely and memories fade with time. The five-year rule again helps to balance these factors and ensure that registrants are not compromised in their defence of allegations that could or should have been brought many years earlier.

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.

We consider that the powers the regulators currently have under their fitness to practise procedures is sufficient for them to address non-compliance and that no special or separate powers are necessary. For example, perceived non-compliance may be due to legal advice obtained because of concerns about self-incrimination and in such circumstances it is not appropriate that registrants are penalised for exercising fundamental rights and freedoms, nor would it be appropriate for an adverse inference to be drawn in all circumstances.

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

We disagree with the proposals for several reasons. First, there is insufficient detail to properly assess how cases will progress from initial assessment to case examiner stages. There needs to be clearer explanation of the rights that a registrant has during initial assessment, and how those rights can be exercised. Second, as we have already highlighted, there is a fundamental disconnect between not telling a registrant about an initial assessment and then expecting them to be able to exercise their rights in respect of it. Third, if grounds are to be amended then it is not clear why these would not be considered as part of initial assessment, with notification to the registrant and the consequent ability of the registrant to provide a written submission.

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

We accept the broad rationale behind this proposal, and we have provided comments in relation to it in our response to question 45. In addition, we suggest that it needs to be borne in mind that the criminal convictions set out in The Social Workers Regulations 2018, Schedule 3, may be subject to appeal. Consequently where a conviction is subject to appeal we believe that an interim suspension rather than immediate removal would be a more logical and fair sanction.

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.

As we have stated previously, we believe that case examiners (CE) need the full suite of measures available to them in order for the proposed new regime to be effective. Some of the proposals do raise concerns, however. The consultation does not appear to address who case examiners will be. It is assumed that at least one of the case examiners will be professionally qualified and on the register of the regulator which is considering the allegations against the registrant.

First, it is proposed that all CE decisions should be in the public domain. Given our stated concerns about the removal of health as a head of impairment it follows that there will be very real concern on the part of registrants with adverse health conditions that their confidentiality may be impacted directly or indirectly by publishing the decisions to the public. If the health head of impairment were to be retained there is much less risk of this occurring.

Second, it is proposed that the registrant accepts an “all or nothing” approach with regard to accepted outcomes. This does not have regard to the perfectly legitimate differences that might arise between the regulator and registrant. For example, there could be agreement with the finding of impairment and sanction but differences with regards to the facts (that could only realistically be tested in a FTP panel hearing). Given those differences would not make any material difference to the outcome, we suggest that there should be greater flexibility in the process to allow for publication only of the essential elements of the CE decision.

Third, we do not believe that the proposed notice period for the measure coming into force of 28 days is reasonable. Some cases may be complex and require further clarification and correspondence with the CEs. We suggest that a longer notice period is reasonable and proportionate and that this should be subject to further consultation when detailed arrangements are proposed.

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

We are not able to offer comments at this stage as we would need to see the full details of how this would work in practice. However, in general terms we agree that there is benefit in having a pathway that allows an agreed interim measure at the case examiner stage. Where this is not agreed then it is reasonable the matter is placed before an appropriate panel, such as the Interim Measures Panel. We agree with the principle of flexibility that this consultation is intended to address, and therefore it is reasonable that regulators have the power to set their own rules. However, we believe that regulators *must* be required to set such rules and that they cover the full scope of circumstances where interim measures may be applied (CE, Interim Measures and Fitness to Practise Panels).

55. Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates? Please give a reason for your answer.

We agree with the general principle, as we have said elsewhere, that regulators have sufficient flexibility to determine how their fitness to practise procedures operate. For example, it would allow regulators such as the GDC to adopt the separate adjudicatory model that was established with the GMC/MPTS.

One point that does not appear to have been addressed is the need for FTP Panels to consider matters afresh, and only on the evidence presented to it. Although it may be reasonable to infer that the reason a case has been referred to a FTP Panel by the CEs is because there was no agreement on a factual outcome that in itself should not count against the registrant. Failure to agree should not be equated to a lack of insight or a failure of cooperation. Therefore, material placed before the FTP Panel should exclude correspondence between CEs and registrant unless the latter wishes that it be disclosed.

In paragraph 342 it is noted that the regulator will have powers to compel the attendance of witnesses. Presumably this may be on the application of either party.

We have earlier made our concerns clear about the proposal to remove health as a head of impairment. Consequently, the exact process described in paragraph 344 will be much more difficult to operate. The fair and equitable solution, in our view, is to retain health as a head of impairment.

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

We agree.

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.

We agree.

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

We agree.

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

We agree.

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

We agree.

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

We generally agree with the Registrar Review proposals. However, we have concerns about some aspects of how it will operate. First is the suggestion (paragraph 362) that a Review considering a CE decision must proceed to a FTP Panel. This is illogical, unfair and appears inconsistent with the general thrust and intention of the consultation. It is much better for the Review decision to return the matter to CEs in this case (possibly to fresh CEs). There would be no loss of public confidence in the process, as the CEs would have precisely the same powers as they would normally have, but in addition have the findings of the Review to consider and take into account.

Given that the Review may have arisen because of new information there is no reason whatsoever that the CEs will not be able to consider the matter anew, with the additional information. Alternatively, the Review may have arisen because the original CE decision was materially flawed. There is no particular reason why an original flawed decision cannot be retaken by the original decision maker; at worst, and in the interests of fairness, probably all that is required is for fresh CEs to retake the flawed decision.

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

We agree.

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

No comment.

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 agree.

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 agree.

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 agree.

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 agree.

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.

We agree.

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 agree with the consultation paper's assessment of costs. However, we disagree that the costs of the delivery of reform (upfront and transitional) should be borne by the

professional regulators, as this will mean potentially large additional sums being levied on registrants. Therefore we suggest that the government should be responsible for meeting in full the upfront and transitional costs of the reforms, with registrants responsible only for the continuing, “business as usual” costs.

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.

No comment