



Department  
of Health

## **The General Medical Council and the Professional Standards Authority for Health and Social Care Order 2014 – Consultation**

This consultation document seeks comments and views on the draft Order “The General Medical Council (Fitness to Practise etc.) and the Professional Standards Authority for Health and Social Care (Referrals to Court) Order 2014”.

**Please provide your details and contact information:** (required)

Name of respondent, business or organisation (required)

Nursing and Midwifery Council

Address of respondent, business or organisation (required)

23 Portland Place  
London  
W1B 1PZ

Contact email address (required)

### **Consultation Questions**

Question 1: Do you agree with the proposal that the MPTS should be set up as a statutory committee of the GMC to govern the adjudication of fitness to practise processes for doctors?

We have no comment to make on this proposal.

Question 2: Do you agree that the GMC should not have the power to intervene in the areas falling within MPTS responsibility?

We have no comment to make on this proposal.

Question 3: Do you agree that the MPTS should keep a record of its

members' private interests, and publish this record in the public domain?

We have no comment to make on this proposal.

Question 4: Do you agree that the MPTS should be required to publish an annual report and accounts, to provide a public record and demonstrate accountability?

We have no comment to make on this proposal.

Question 5: Do you agree with the proposal that the over-riding objective of rules relating to fitness to practise procedures should be to secure that cases are dealt with fairly and justly?

We agree that fairness and justice are an integral part of fitness to practise proceedings. However, we are not convinced that it is necessary for these concepts to be linked to a statutory overriding objective as we consider that this may mean that other important considerations such as proportionality and transparency are afforded less significance. The comparison with civil procedure rules may also not be entirely appropriate as regulatory proceedings are not concerned with resolving disputes between parties fairly but with protecting the public.

Question 6: Do you agree that to enhance the pre-hearing case management arrangements, we should enable the MPTS to appoint case managers, including using the chair of a medical practitioner tribunal (where legally qualified) as case manager?

We have no comment to make on this proposal.

Question 7: Do you agree that the MPTS should have power to appoint legal assessors where it considers it appropriate to do so?

We agree with this proposal as we consider that, although the legal assessor model generally works effectively within fitness to practise proceedings, there will be situations where it is neither necessary nor proportionate to have one in attendance.

Question 8: Do you agree with the proposal that the MPTS should have power to award costs, draw adverse inferences and refuse to admit evidence following a party's failure to comply with rules or directions or otherwise award costs for unreasonable behaviour?

We agree that provisions regarding the drawing of adverse inferences and the refusal to admit certain evidence would assist to ensure compliance with rules or directions and prevent unreasonable behaviour by parties. However, we consider that a costs regime may have the unintended consequences of lengthening proceedings and raising ancillary questions regarding enforcement, both of which could potentially undermine any possible benefits which would be brought about by the availability of costs sanctions.

Question 9: Do you agree with the proposal to enable reviews to be held by the tribunal chair without the need for a panel hearing when the GMC and doctor are in agreement, subject to the ability of the chair to nevertheless convene a full hearing?

We agree with this proposal as we consider that there will be some cases where a

review by a panel chair is appropriate. Additionally, our experience with adjudications on the papers (known as ‘meetings’) for substantive matters has shown that this can also be a proportionate and efficient method of dealing with those cases which do not require a full oral hearing but would benefit from consideration by a full panel (including a registrant member), such as where conditions of practice are being reviewed. This approach may also be worth consideration as another option for the tribunal.

Question 10: In order to improve efficiency do you agree that the GMC should be able to provide notification of decisions by email rather than letter, when an email address has been provided for this reason?

We agree with this proposal and see it as the logical extension of serving notices of hearing by email.

Question 11: Do you agree that the over-arching objective of the protection of the public, which involves the objectives of protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the profession and promoting and maintaining proper standards and conduct for members of that profession, should be the over-arching objective of the GMC and that medical practitioner tribunals and interim orders tribunals should have regard to it when making their decisions?

We agree that public protection should be identified as the primary objective of the GMC (and all of the other healthcare regulators) and that panels should have regard to this when making their decisions. We note the reference to the three subsidiary objectives within the over-arching objective. We consider this approach to be merely a codification of the existing position in light of current case-law and it should not therefore give rise to any significant change of approach for the panels.

Question 12: Do you agree that we should require registration appeals panels to have a duty to have regard to the over-arching objective in the same way that a medical practitioners tribunal should have to?

We consider that as both types of panel are exercising a public protection function it is appropriate that the over-arching objective applies to both of them.

Question 13: Do you agree with the proposal that the GMC should have a right of appeal, corresponding to the PSA’s power to refer cases, to the higher courts in order to challenge MPTS decisions?

We have no comment to make on this proposal.

Question 14: Do you agree that we should amend the grounds of the PSA’s power to refer fitness to practise cases for consideration by the relevant court for all regulated healthcare professions and social workers in England in the manner described and also reflect those grounds in the GMC’s new right of appeal?

We consider that the proposed amendment of the grounds would reflect and clarify the approach currently taken by PSA in relation to its s.29 referrals.

Question 15: Do you agree that the GMC should be able to request, in writing,

information or documents to assist with the investigation of allegations, and where such a request has been made the registrant fails to comply, the GMC should be able to refer the case to a medical practitioner tribunal?

We support the general principle that a healthcare regulator should be able to request a registered healthcare professional to provide certain information to enable proper and effective investigation of a fitness to practise allegation, especially in situations where the professional in question is the only person who is able to supply such information.

However, given that such a power would inevitably raise questions regarding the right against self-incrimination, we consider that detailed guidance would be required on the limited circumstances in which this power would be exercised and the threshold which would lead to referral to a tribunal for non-compliance.

Question 16: Do you agree that where a doctor fails to engage or comply with a direction to undergo a performance, health or language assessment, the GMC should be able to refer the case to a medical practitioner tribunal to consider a suspension order or conditional registration?

We agree with the proposal in general, although we would make the same comment as above regarding the need for detailed guidance on the threshold for any referral to a tribunal.

Question 17: Do you agree with the proposal to enable medical practitioners tribunals to require review of their directions before expiry?

We agree with this proposal. Our current legislation requires that every suspension and conditions of practice order is reviewed by a panel prior to its expiry. This can be an onerous requirement and unnecessary in cases where orders have been made solely on the grounds of public interest. We consider that there should be some flexibility in whether a review actually takes place and agree that the panel which makes the order is best placed to decide whether it should be reviewed in the future.

Question 18: Do you agree that we should confirm expressly on the face of the Medical Act the powers to close cases at the initial consideration stage, the power to review investigation stage decisions and the public interest test which applies where the matters giving rise to the allegation are more than five years old, but that we should remove the 'exceptional circumstances' element from that test?

We have no view on whether the review power and the five year rule should be expressly referenced within the Medical Act or simply sit within the Fitness to Practise Rules, however we would note that the section 60 order we are currently seeking granting us the power to review no case to answer decisions would amend our primary legislation (the Nursing and Midwifery Order 2001) to include this.

We consider that the removal of the 'exceptional circumstances' element would help to ensure public confidence in the regulatory process as it could lead to further scrutiny of serious allegations that may have once been closed without any investigation.

We would also note that there may be a mistake in the drafting as it appears to suggest that the Investigation Committee would have the power to review its own decisions

whereas we believe this power is currently vested in the Registrar.

Question 19: Do you agree that we should specifically reflect the new arrangements of the GMC referring a case to the MPTS (rather than directly to a medical practitioner tribunal) by making express provision for their powers to continue investigating and the procedure for cancelling a referral?

We have no comment to make on this proposal.

Question 20: Do you agree that we should clarify that undertakings can be agreed between the doctor and the GMC at any point following a referral for a public hearing until a determination on impairment has been made and subsequently undertakings should only be agreed by the medical practitioner tribunal itself and subject to appeal/referral to the higher courts?

We support the proposal for undertakings to be an available outcome for a registrant at any time before the commencement of the final hearing and we do not consider that a finding or admission of impairment should be a prerequisite for such an agreement. We consider that such an agreement could be approved by the Case Examiners as an officer of the Council. We would welcome more clarification as to perceived benefit of allowing panels to agree undertakings rather than imposing conditions once a finding of impairment has been made as we consider that there is a significant need for consistency and transparency in the use of undertakings.

Question 21: Do you agree that we should close the regulatory gap where, in certain circumstances, an order might lapse during an appeal against a subsequent review order?

We agree with this proposal as we consider that closing the regulatory gap would improve public confidence in the regulatory process.

Question 22: Do you agree that the Registrar should be able to direct the form and content of professional performance assessments and whether it should be carried out by an individual assessor or an assessment team?

We have no comment to make on this proposal.

Question 23: Do you agree that the GMC should have the described power in order to investigate the fitness to practise of a doctor who has been erased from the medical register but subsequently makes an application for restoration?

We are unclear as to the circumstances in which it would be necessary for this power to be utilised. We consider that if a doctor had been erased following a fitness to practise investigation there should be no need for further investigation. Furthermore, we would question whether the existence of such a power could lead to the GMC being criticised for devoting some of its resources to the investigation of individuals who are not on its register.

Question 24: Do you have any other comments on the proposals contained in the draft Order?

We support any move to modernise healthcare regulators' legislation and we do not

wish to stand in the way of the GMC's proposed changes. However, given the long-term shared aim of more consistency across healthcare regulation we would wish to highlight the wider risks of individual regulators developing their policies and legislation in isolation.

The Law Commission recognised the serious difficulties for the public, healthcare professionals and the regulators themselves resulting from the current variance in their governing legislation and we are concerned that the net result of these further changes to the GMC's legislation will be to leave the NMC and the other healthcare regulators even further behind. The NMC is already ten years behind the GMC in terms of legislative reform and many of these proposals could equally apply to other healthcare regulators including the NMC. In these circumstances, we do not understand the rationale in terms of public protection behind prioritising further changes in the regulation of doctors.

We would strongly welcome greater clarity from the Department in relation to how decisions about the prioritisation of legislative reform for different regulators are made.

Question 25: Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

- An increase;
- A decrease; or
- Stay the same
  
- Please explain your answer

We have no comment to make on this proposal.

Question 26: Do you think that any of the proposals would help achieve any of the following aims:

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

We have no comment to make on this proposal.

**Thank you for participating in this consultation.**

The Department of Health will only contact you should we seek further information about your response.

**Responding to this consultation**

Filing in the response form by downloading it at:  
[www.gov.uk/government/consultations](http://www.gov.uk/government/consultations)

Emailing your response to:

[HRDListening@dh.gsi.gov.uk](mailto:HRDListening@dh.gsi.gov.uk)

Posting your response to:

Adjudication Consultation  
Professional Standards  
Room 517  
Department of Health  
Richmond House  
79 Whitehall  
London  
SW1A 2NS