Department of Health consultation[1] – measures to improve the GDC's processes on fitness to practise

NMC response – November 2014

Q1 Do you agree the GDC should be provided with the power to introduce case examiners, who have the ability to exercise the functions of the Investigating Committee?

Yes.

We agree with the proposal to introduce case examiners (we are introducing case examiners in 2015). We consider that case examiners can provide a unique level of experience and expertise, and help achieve consistent, high quality decision making. We consider that the introduction of case examiners is likely to bring about a more proportionate approach to the GDC's investigation of fitness to practise allegations and efficiencies in their case handling.

Q2 Do you agree that the Investigating Committee should have the power to agree undertakings with a registrant?

Yes.

We consider that undertakings provide a swift and effective response to situations where clinical concerns have been raised about a healthcare professional's practice and the healthcare professional accepts that some form of restriction is necessary in order to address these concerns. In such scenarios there is unlikely to be any public interest in pursuing the matter through to a substantive hearing provided the process is fair and transparent and the outcome is published. Indeed, such a course of action is more likely to be contrary to the public interest given the inevitable delay in arranging a substantive hearing and the high level of expenses involved.

Q3 Do you agree the GDC should be provided with a power to review decisions of the registrar not to refer to the IC or case examiners and of the Investigating Committee not to refer to a Practice Committee?

[1] https://www.gov.uk/government/consultations/measures-to-improve-the-gdcs-processes-on-fitness-to-practice

We agree in part.

We agree with the proposal to introduce a power to review no case to answer decisions made by the Investigating Committee or case examiners. We believe that such a power is necessary to ensure that appropriate action can be taken in situations where new information comes to light or the closure decision is found to be materially flawed. We are introducing such a review power in 2015.

However, we do not think that a review power is necessary in relation to registrar non-referral decisions as we do not consider these decisions to be closure decisions. We consider that the registrar can consider further information relating to a fitness to practise referral without having to call into question the previous decision not to refer the matters onwards.

Q4 Do you agree that upon the imposition of a warning, there should be the ability to review the decision taken, as described above?

Yes.

We accept that if there is a system whereby warnings are imposed upon the registration of a healthcare professional without their consent, there should be some way in which the healthcare professional is able to challenge that decision.

Q5 If the answer to question 4 is yes, should a limit be placed on the number of applications a person can make within the 2 year period to have the determination to issue a warning reviewed?

No.

We do not support the concept of an express limit to the amount of review applications that could be made within a two year period as we think this could lead to injustice in certain cases, however we think there should be detailed guidance for decision-makers as to the situations where it will be appropriate to review the warning, specifying that repeat review requests on the same point will not be considered.

Q6 Do you agree with the changes to the legislation permitting the Registrar to refer an allegation to the IOC at any time provided that, in cases which are referred to the IC, the IC has not yet commenced its consideration of the allegation?

Yes

We consider that any change which means that a matter can be more easily referred for an interim order at any stage is a positive development as it ensures that a regulator can quickly take action to protect the public if it considers that one of its registrants poses a sufficiently high level of risk to the public.

Q7 Do you agree that the IC should be able to refer an allegation to the Interim Orders Committee at any time, provided that, in cases which are referred by the IC to a Practice Committee, that Practice Committee has not yet begun its consideration of the case?

Yes, see answer to previous question.

Q8 Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

- **An increase**

- A decrease

- Stay the same

- Unsure

Please explain your answer.

No.

We will not be affected administratively or financially by the introduction of these proposals.

Q9 Do you think that any of the proposals would help achieve any of the following aims:

i. **eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?**

ii. **advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?**

iii. **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.

Q10 Do you have any comments on the draft Order?

We have no comment to make on the draft Order.

General comments

We support any move to modernise healthcare regulators' legislation and we do not wish to stand in the way of the proposed changes for the GDC. 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. The proposals relating to undertakings and warnings could equally apply to other healthcare regulators including the NMC. 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.

Information about the further urgent legislative changes that we need has been shared with the Department and can be found on our website[2].

[2] http://www.nmc-uk.org/Documents/Press/Better%20legislation%20for%20better%20regulation%20-%20the%20NMC's%20case%20for%20legislative%20reform.pdf