GMC consultation[1] – reforming fitness to practise investigation and adjudication processes

NMC response – May 2015

Section 1: Formally separating investigation and adjudication functions

Q1 We have drafted new rules for the MPTS Committee. Do you agree with the arrangements for the MPTS Committee as set out in these rules?

We have no comment to make on the draft rules.

Q2 We propose making provision in the rules for the MPTS to be responsible for setting and publishing the criteria for appointing panellists and panel chairs. Do you agree?

We agree with this proposal. We consider that open and transparent processes in the appointment of panellists and panel chairs are important to maintain public confidence in the regulatory process.

Q3 We propose that where legally qualified chairs advise the panel on a question of law they will do so either in the presence of the parties or, where the parties are not present, they will include their advice in their decision. Do you agree?

We agree that it is good practice for any legal advice received by panels to be given in public, or published in decisions in the event that the parties are not present.

[1] http://www.gmc-uk.org/concerns/26390.asp?dm_i=CUG,39TZ0,IFGMHZ,BPQBB,1

Q4 We propose that the MPTS should send the notice of the hearing and the GMC should send the notice of the allegation. Do you agree?

We have no comment to make on this proposal.

Q5 Do you agree that we should change our rules to reflect our current practice of giving doctors at least 28 days' notice of all matters relating to the hearing (including the time and venue)?

We agree with this proposal on the basis that it is fair that parties are given sufficient notice of important details relating to a hearing. We note that such a change would mirror Rule 11(3)(a) of the NMC FTP Rules which requires us to give at least 28 days' notice of all matters relating to the hearings including the time and venue.

Q6 We propose to remove the rule that provides that the MPTS should tell the GMC when an interim order is due to expire. Do you agree?

We have no comment to make on this proposal.

Section 2: Streamlining and modernising hearing process

Q7 We propose clarifying the circumstances in which we can refer a doctor with panel undertakings for a review where the doctor does not agree to changes we want to make to their undertakings. Do you agree?

We have no comment to make on this proposal.

Q8 We propose making clear that a doctor with undertakings whose language skills either deteriorate or otherwise give rise to further concerns can be referred to a panel. Do you agree?

We have no comment to make on this proposal.

Q9 We propose giving our hearings a more logical order, identifying a doctor at a hearing before hearing any legal argument. Do you agree?

We agree with this proposal and support any change which makes the hearings process more logical and accessible to those who are involved with it.

Q10 We propose allowing both parties to make submissions on the facts before the panel decides which facts are true. Do you agree?

We agree with this proposal on the basis that closing submissions from both parties can be of considerable assistance to a panel and save time in certain cases. We note that such a change would mirror Rule 24(10) of the NMC FTP Rules.

Q11 We propose removing the need to refer to transcripts of previous hearings in review and restoration hearings unless this is necessary. Do you agree?

We agree with this proposal. Provided it is possible for transcripts be referenced when required, we consider this to be a more proportionate and cost effective approach and is a practice we have adopted since 2012.

Q12 We propose clarifying that the MPTS arranges recordings of panel hearings and the registrar arranges recordings of Investigation Committee hearings and that, on request, the MPTS or registrar (as the case may be) can provide a written record. Do you agree?

We agree with this proposal.

Q13 We propose clarifying the terminology we use, in particular what we mean by 'witness'. Do you agree?

We agree with this proposal.

Q14 We propose allowing case managers and Investigation Committee members to adjourn hearings that are part heard when either party requests this. Do you agree?

We agree that for practical reasons it would seem sensible to allow case managers and IC members to manage adjournment requests, rather than panel members.

Q15 We propose that, to protect the public, when the panel has adjourned a review hearing before it has made a finding of impairment, a panel should be allowed to extend a sanction until the panel can reconvene to consider impairment. Do you agree?

We agree with this proposal. We consider this to be a sensible measure to ensure public protection is maintained and any potential regulatory gap is closed. For reasons of fairness and certainty we think that it is important that any extension power has a maximum time period.

Section 3: Making case management more effective

Q16 Do you agree with the circumstances we have set out in the draft rules for when case management decisions will not be treated as binding?

We agree with this proposal.

Q17 Do you agree with our proposals for awarding and assessing costs, as outlined in the draft rules?

We have no comment to make on these proposals.

Section 4: Removing the need for parties to attend review hearings

There are no questions in this section.

Section 5: Making investigation processes simpler and more effective

Q18 When we make provisional enquiries to decide if we need to carry out an investigation, we propose removing the need to tell a doctor's employer. Do you agree?

We agree with this proposal. Informing an individual's employer about each and every fitness to practise referral before any decision has been made on whether it is to be investigated further appears to be disproportionate and unfair to the individual. We consider that informing the employer at an early stage may be appropriate in some cases but should not be an automatic act.

Section 6: Improving compliance and making assessments more effective

Q19 We propose introducing a process for a new type of non-compliance hearing to deal with substantive non-compliance with assessments or requests for information required in order to enable us to investigate concerns. Do you agree with that process?

We have no comment to make on this proposal.

Q20 Do you think any of our proposals will adversely affect people from groups with protected characteristics? This could include doctors, patients and members of the public.

We have no comment to make.