

16 June 2021

Health and Care Professions Council response to the consultation 'Regulating healthcare professionals, protecting the public'

Introduction

1.1 The Health and Care Professions Council (HCPC) welcomes the opportunity to respond to this consultation, which is an important step towards modernising and reforming professional healthcare regulation. Change is needed to keep pace with developments in the delivery of health and care, and to ensure professional regulation is fit for a future that will undoubtedly be characterised by further change in the way healthcare is practised and delivered.

1.2 As the statutory UK-wide regulator of 15 healthcare and psychological professions, we are committed to playing our part in ensuring the system of professional regulation is innovative, flexible and transparent and to ensuring that collectively we absorb lessons learned in the response to COVID-19 into the way regulation is conducted in the future.

1.3 HCPC protects the public through our Register of professionals, setting standards for entry to the register, approving education and training programmes for registration and dealing with concerns where a professional may not be fit to practise. We worked quickly and collaboratively to respond to the pandemic with innovations to help boost health and care workforce and support Registrant well-being.

1.4 HCPC strongly welcomes the proposals in this consultation which aim to modernise the legislative framework to enhance flexibility, accountability, transparency and consistency across the regulators, particularly those relating to governance and operating framework, fitness to practise and education.

1.5 We would suggest further clarity or minor amendments in a few areas to avoid negative unintended consequences, including in relation to publishing information relating to qualifications held by Registrants; the appeals process with regards to removing a Registrant when a renewal has not been made in accordance with the regulator's renewal process, and the rationale for introducing suspension for failure to pay the fee or to comply with the regulator's renewal/CPD requirements.

1.6 We would encourage Government to consider carefully whether all desired outcomes are best achieved through legislative means, or by other means which are less burdensome and more responsive. Where legislation is used, we would ask Government to consider whether permissive clauses would be more proportionate and efficient than new duties or requirements. This would be in line with the strategic aim of providing a modern and flexible framework that allowed regulators to respond effectively to future needs.

1.7 We would like to thank colleagues in the Department of Health and Social Care (DHSC) for their engagement with us in developing these proposals and look forward to continuing to work with the DHSC in translating these ambitions into reality.

Responses to consultation questions

Q1 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.

2.1 Yes. We believe that our current legislation already requires such a duty and this should continue.

Q2 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.

2.2 Yes. We believe we are already under this obligation through our current legislation as well as under the Freedom of Information Act.

Q3 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

2.3 Yes. Proportionality of regulatory action should always be front of mind. This is a balance between ensuring adequate public protection and regulatory burden that should be assessed before any changes to rules. The Equality Act 2010 already requires us to carry out Equality Impact Assessments to identify and address where possible any negative or disproportionate impacts on those with particular protected characteristics.

2.4 We would suggest that this duty should apply to the PSA as well as the professional healthcare regulators.

Q4 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.

2.5 We support the proposals on Board constitution. The move to a unitary structure would promote modern and effective governance.

2.6 We would want to ensure that legislation did not prevent regulators from being able to constitute Boards with appropriate Registrant representation and representation from across the four UK nations.

2.7 Registrant and four UK nations representation on our Council (Board) are key and valued parts of our current constitution. The Registrant voice and four nation representation on future Boards will be vital to ensuring Registrant confidence in regulation across the four nations and will be fundamental to our effectiveness, providing invaluable insight into the development of policy and supporting effective governance.

2.8 HCPC also has two Council apprentices to further support diversity and representation. We would want to ensure that the move to unitary boards does not limit initiatives such as our Council Apprentice scheme and would support more diverse representation at board level.

Q5 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

2.9 We agree that regulators should be able to set their own fees without Privy Council approval. HCPC needs to seek approval from different parliamentary bodies across the UK nations. This is a highly burdensome and time-consuming process. It can also lead to delays and financial strain for regulators who are wholly reliant on fees from Registrants.

2.10 Privy Council approval for setting of fees is not required for all professional healthcare regulators – therefore we know that the process can be effectively managed without Privy Council approval. Removing this requirement would provide for a more efficient and consistent process for all regulators, reducing unnecessary bureaucracy.

2.11 Privy Council approval is not necessarily a guarantor of effective consultation. In any fee setting process, whether or not Privy Council approval was required, HCPC would consult widely and extensively with stakeholders prior to making any changes. This would include close engagement with Registrants, trades union, professional bodies and other affected parties, as we have carried out in relation to our recently approved fee rise.

Q6 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.

2.12 We agree. Setting out a longer-term approach would provide more certainty to Registrants and prospective Registrants and support their personal financial planning. It would also assist regulators to manage resources more efficiently through providing longer-term financial stability.

Q7 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.

2.13 We agree. Committee structures reflect and respond to priorities and needs, which may change over time. Requiring a particular committee structure could hamper the ability of regulators to establish effective governance and impact negatively on organisational performance.

Q8 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.

2.14 We agree that regulators should be able to charge for services on a cost recovery basis. This would have three key benefits:

- a. It could reduce the pressure to increase fees and thus lower the burden on Registrants (if fees were levied on other parties)
- b. It could allow regulators to respond more flexibly to the needs of the health sector.
- c. It would promote regulator financial sustainability. Regulators' income is generally fixed (fees) and we do not receive financial subsidy such as grant income or Government funding. Additional flexibility would promote effective financial management.

2.15 In addition, this mechanism would allow regulators a means to offset any additional costs and burdens that may be created by other proposals in this consultation, including proposals relating to education appeals (Question 17 below).

2.16 As above, any move to charge for services on a cost-recovery basis would need to be widely and fully consulted on this those impacted prior to any implementation.

Q9 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.

2.17 We agree with this proposal. It may, for example, make sense for regulators to share back-office services or tribunal services. This could provide significant efficiencies for some regulators and provide greater value for money to Registrants.

Q10 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.

2.18 We agree that we should be able to require data and be able to share data. We do not believe legislation is required to enable us to share our data. We can already do so and our legislation already gives us a duty to cooperate. Better use of data is a key part of HCPC's new strategy; this is important to enabling regulators and other parts of the health and care sector to work together and support each other's objectives.

Q11 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.

2.19 We welcome increased accountability and transparency. However, the process of laying reports in four different parliaments may add additional burden and delay. A reasonable alternative may be that regulators publish an annual report online and to provide the sponsor department lead in each country the report. We do not consider this process to require additional legislation.

Q12 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.

2.20 We recognise that the GDC and GPhC will be best placed to provide an informed response to this question.

Q13 Do you agree or disagree that all regulators should have the power to set:

- a. standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners.**
- b. standards for providers who deliver courses or programmes of training which lead to registration;**
- c. standards for specific courses or programmes of training which lead to registration;**
- d. additional standards for providers who deliver post-registration courses or programmes of training which lead to annotation of the register; and**
- e. additional standards for specific courses or programmes of training which lead to annotation of the register?**
- f. Please give a reason for your answer.**

2.21 Yes, we agree that all regulators should have powers to set standards as described in the five bullet points in the question, as HCPC currently does. The list above does not include reference to Standards of Conduct, Performance and Ethics. This may be because this question relates to education standards, which are referenced below, but for the avoidance of doubt we believe that regulators should continue to set Standards of Conduct, Performance and Ethics, as well as Standards of Proficiency, Standards of Education and Training, Standards of Continuing Professional Development and standards relating to annotations. In short, regulators should be able to set standards as required to secure public protection.

2.22 Our standards form the foundation for how we regulate, explaining what we expect of our Registrants and education and training programmes and courses. All our standards

are at the core of our purpose as a regulator and are of fundamental importance to our role in protecting the public and upholding standards of the fifteen professions we regulate.

2.23 Annotation enables regulators to provide a publicly available reference to check whether a particular qualification has been successfully completed which may relate to only one profession or one area of particularly high-risk practice, such as podiatric surgery. We agree that regulators should continue to have the power to set standards relating to annotation. Registration and annotation together provide transparency, assurance of protection of patient safety and public confidence in the profession.

Q14 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.

2.24 We agree. These powers ensure there are mechanisms to set standards and quality assurance processes which are designed to ensure public protection. This is vital in ensuring those who join the register for the first time meet the standards required to practice safely.

2.25 It is important that we have the powers to approve providers as well as individual programmes. This provides a safeguard to prevent providers who are not able to meet our standards from entering the regulated market.

Q15 Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.

2.26 We agree. Setting formal conditions on approval allows for clear requirements to be set for providers, for what to do to ensure their programme is meeting standards. Conditions also provide scope for the provider to be able to demonstrate they have addressed the issues identified over a defined period, providing for quality improvement in provision.

Q16 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.

2.25 We agree. The opportunity to provide observations, and to have those properly considered in the decision-making process is an important part of ensuring the process is fair, open and transparent. We would encourage further reflection on whether this should impose a duty on regulators or simply provide for a permissive mechanism.

Q17 Do you agree that:

- a. education and training providers should have the right to appeal approval decisions;
- b. that this appeal right should not apply when conditions are attached to an approval;
- c. that regulators should be required to set out the grounds for appeals and appeals processes in rules?
- d. Please provide a reason for your answer.

2.26 We agree with each of these proposals. In relation to the first, an appeal mechanism would enhance the checks and balances of decisions made through regulatory quality assurance processes.

2.27 We agree that appeal mechanisms should be reserved for decisions made on approval and non-approval of programmes, particularly as there are no further procedural options available for the provider beyond this point currently. Extending the option for appeal to conditions being set risks undermining the ability of regulators to ensure standards are met and maintained in a timely manner. The proposed provision of a mechanism for training providers to provide observations will enable provider's views to be taken into account when conditions are set which ensures fairness and transparency for all parties involved.

2.28 We agree that regulators should have the flexibility to design appeals mechanisms that support their own quality assurance processes; thus providing grounds for appeal as proposed. There should be minimal prescription in this area to allow regulators to adapt and respond to changes.

2.29 Provisions in this section create additional cost and burden for regulators. In determining its decision in relation to cost recovery (Question 8), we would ask Government to consider the importance of allowing regulators the means to offset potential additional costs.

Q18 Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.

2.30 We agree. These powers work in conjunction to ensure regulators are able to act independently by setting threshold standards necessary for safe, effective practice and then being able to ensure training routes leading to statutory registration meet these. An absence of powers in one or both of these areas would undermine the ability of regulators to act independently in exercising its public protection remit as it relates to the education and training of future Registrants.

Q19 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.

2.31 We agree that regulators should have the option to exercise these types of powers where it is appropriate and proportionate to do so to secure public safety.

Q20 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.

2.32 We agree. Regulators should not have power to prescribe elements of curriculum and assessment beyond the setting of standards themselves. To do so would risk undermining the independence of regulators and that of education providers who currently operate autonomously to design programmes which meet regulatory standards. These powers would also risk narrowing the educator sector's ability to innovate and to design different models of training which respond to workforce and service user needs and challenges over time.

Q21 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.

2.33 We agree that regulators should have flexibility to design quality assurance processes which are appropriate to the profession(s) being regulated in the interests of public protection. This will differ depending on the nature of the profession, the risks involved in

practice and how training is organised to achieve consensus and consistency across the workforce. It is important that regulators are able to respond to these differences in how standards are set and how quality assurance processes are applied.

2.34 Flexibility in how regulators can assess education and training providers would also support greater flexibility in how health and care professions are trained and the ability for individuals to move between professions to respond to changes in workforce needs.

Q22 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.

2.35 We recognise that the GMC will be best placed to provide an informed response to this question.

Q23 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.

2.36 We agree. HCPC sets standards for continuing professional development (CPD). Undertaking CPD (or revalidation) ensures that Registrants remain up to date and continue to develop new skills throughout their career ensuring safe practice. We agree that the legislation should continue to allow us to require CPD and/or revalidation with detailed requirements set in our Rules and guidance.

Q24 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.

2.37 We agree. As a multi-profession regulator, the HCPC currently holds a single register which is divided into parts for each of the 15 professions we regulate. A single register divided into parts allows regulators to easily include new professions, if required.

Q25 Do you agree or disagree that all regulators should be required to publish the following information about their registrants:

- a. Name
- b. Profession
- c. 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)
- d. Registration number or personal identification number (PIN)
- e. 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)
- f. Registration history

Please provide a reason for your answer.

2.38 We agree with all but one of the proposals made about what information all the regulators should include on a single register (each), as including these areas would support consistency and aid public understanding/accessibility.

2.39 We believe that publishing information relating to qualifications held by Registrants is *not* in the public's best interests and may be confusing. Not all regulators currently publish this information and overseas qualifications vary considerably. For example, an application made by an international applicant is assessed based on relevant qualifications and experience, rather than based on particular qualifications. Some courses are broader with

less in-depth coverage and others are more detailed but have a narrower scope. Significant experience may make up for shortfalls in training. Therefore, publishing qualifications may be misleading to patients and members of the public as it may not reflect an individual's route to registration or experience.

2.40 It is important to consider that from an equality, diversity and inclusion perspective, the proposal to include qualifications in the register may disproportionately and negatively impact on Registrants with older qualifications or those who qualified overseas which may disproportionately impact on refugees or Black, Asian and other ethnic minority groups.

Q26 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.

2.41 We agree. The ability to collect, hold and process data is fundamental to ensuring public protection. Effective regulation would not be possible without this. This provision would give regulators the flexibility to request specific data from Registrants in the interests of public protection.

Q27 Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer.

2.42 We agree. The publication of information on a public register is fundamental to securing public safety. This provision would provide regulators with the flexibility to publish specific data from Registrants in the interests of public protection.

Q28 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.

2.43 Yes, we agree that all regulators should be able to annotate their registers, as the HCPC currently does (as a discretionary power).

2.44 In general, we only annotate the Register where we are legally required to do so (for example for medicines and prescribing) or in exceptional circumstances where there is evidence that we can improve public protection in a specific area by annotating a qualification (for example, for podiatrist/chiroprapist Registrants qualified to undertake surgery).

2.45 As previously mentioned in response to question 13, we believe that annotation (in addition to entry level registration) is particularly important as a multi-profession regulator. Annotation is also an important part of maintaining public confidence in the professions and ensuring transparency and patient/service user choice whereby an individual can search the register for annotation for a Registrant.

2.46 In relation to the second part of the question, we agree that annotations should only be made where they are necessary for the purpose of public protection. As referenced in the consultation document, in our policy we set out that:

'We will only annotate a qualification on the Register where there is a clear risk to the public if we did not annotate and if we could mitigate the risk through annotation and not through other processes.'

2.47 We consider that our fundamental purpose for existence is public protection and any other relevant reasons for introducing annotation (such as public confidence in the professions) could be captured within this definition. We think the threshold of 'exceptional circumstances' is important to uphold, because registers need to be accessible and clear,

and too much, and potentially unhelpful or confusing information won't serve the purpose of public protection.

Q29 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.

2.48 We agree. This will ensure regulators can respond effectively in the event that an emergency, such as the global COVID-19 pandemic has caused, is declared by the Secretary of State for Health and Social Care. We would highlight that we would expect such a power to only be used in exceptional circumstances. We would not wish for a temporary register to be used alongside a permanent register for anything other than a specific, limited time period as this could cause confusion amongst employers and the public. It could undermine the status of the permanent Register as a record of people permitted to practise in the UK

Q30 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?

2.49 We agree.

Q31 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.

2.50 We agree that offences should be intent offences only. Introducing strict-liability offences would penalise those who are not aware they are using protected titles and where they do so in genuine error with no intent to deceive or make gain.

Q32 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.

2.51 We agree. HCPC has this provision in current legislation.

Q33 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.

2.52 We agree. HCPC currently sets out our registration processes in Rules which apply to all applicants across all 15 professions. This ensures all individuals applying to become registered are treated fairly and consistently.

Q34 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.

2.53 We do not consider this to be a power we currently need. However, it is important that our legislative framework is future-proofed so that we can adapt as needed in an agile way.

Q35 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.

2.54 We recognise that the GMC will be best placed to provide an informed response to this question.

Q36 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.

2.55 In relation to the grounds for the new power of suspension for failure to pay the fee or to comply with the renewal/CPD requirements, we would ask for greater clarity on the rationale for introducing suspension in circumstances where we would currently remove a Registrant from the Register (after we had taken the appropriate steps to remind a Registrant of what they need to do to remain on the Register).

2.56 If an individual had not completed their CPD, renewed their registration and paid the fee, to suspend them may be confusing to the public as this is a sanction associated with fitness to practise proceedings. Furthermore, if a regulator does not have assurance that an individual has kept their skills and knowledge up to date via CPD (or revalidation), remaining on the Register (albeit suspended) may cause confusion.

2.57 We propose that in the circumstances of failing to renew their registration, completing their CPD and paying the fee (following appropriate steps to remind the Registrant of what is required to stay on the register) individuals should be removed from the Register but with a straightforward and non-bureaucratic process for readmission to the Register.

2.58 We would welcome further clarity about whether the appeals process should include a decision to 'remove a person's entry from the Register where registration renewal has not been made in accordance with the regulator's renewal process.' We note that paragraph 216 of the consultation document highlights that it will not be appealable where the Registrant has failed to pay the fee or engage in the renewal process but the list as referenced is unclear about what the grounds Registrants could appeal.

Q37 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.

2.59 We agree. The HCPC Registration and Fees Rules make provision for the removal of a Registrant's name from the Register in cases where our CPD requirements have not been met or where evidence of CPD activities have not been provided on request. The Rules also allow us to remove a Registrant from our Register in cases where a payment has not been made either in full or by direct debit. Setting our processes for removal and readmittance in Rules would allow greater flexibility than having these set out in primary legislation. Setting out such detail in primary legislation would not allow regulators the flexibility to respond appropriately to any changing needs or risks which may arise over time.

2.60 We note the reference in the consultation for the regulators to work together to develop their rules so they are consistent across regulators, and are committed to supporting this approach.

Q38 Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.

2.61 We do not have any additional appealable decisions that we think should be included in the legislation.

Q39 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.

2.62 We agree these should be set out in rules to provide regulators with the power to set out aspects of their internal processes in rules rather than governing legislation. This is because the legislative reform process can be lengthy and there will be a continuing need for the regulators to be able to adapt with agility to the rapidly evolving context in which our Registrants work. Therefore, it makes sense for the procedures to sit within rules where they can be reviewed efficiently as appropriate.

Q40 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.

2.63 The HCPC Register is a list of practising health and care professionals and as such, we do not agree that it should include students or that there is a need for a separate register for students. The HCPC sets standards of conduct, performance, and ethics, which apply to the professionals we regulate and set out in broad terms how we expect our Registrants to behave. These standards also apply to people who are applying to join our Register. On application, individuals are expected to sign a declaration to confirm that they have read and will keep to the standards once registered. All of our approved programmes have processes in place for dealing with concerns about a student's profession-related conduct.

2.64 Student registers risk reducing clarity and undermining the role of the Register as a record of people permitted to practise in the UK. Introducing a student register would also introduce additional cost burdens on regulators which would need to be covered. A charge may need to be levied which may make such a register difficult to implement. We are not aware of an evidence base to support the inclusion of students in professional regulation.

Q41 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.

2.65 We agree. The HCPC Register is a list of practising health and care professionals and as such, we do not agree that it should include or there should be a separate register for non-practising individuals.

2.66 One of the benefits of professional regulation is that it ensures those who are registered keep their skills and knowledge up to date via CPD or revalidation. If individuals are not practising and not keeping their skills and knowledge up to date, a non-practising register does not add value from a public protection point of view.

2.67 As with student registers in question 40, non-practising registers risk reducing clarity and undermining the role of the Register as a record of people permitted to practise in the UK. And as above, they would also create an additional cost burden with little added value.

Q42 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.

2.68 We agree. This will enable regulators to set out these arrangements in rules to ensure they have flexibility to develop effective international registration processes.

Q43 Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering:

- a. 1: initial assessment
- b. 2: case examiner stage
- c. 3: fitness to practise panel stage?

Please give a reason for your answer.

2.69 Yes, we agree that we should have a clear three step process. This will allow us to ensure proportionate and appropriate regulatory outcomes are made at the earliest opportunity. It provides for a less adversarial system, where only the most serious cases progress to the panel stage. There are benefits to both Registrants, the public and regulators in providing for a more flexible and potentially shorter process to resolve cases.

Q44 Do you agree or disagree that:

- a. All regulators should be provided with two grounds for action – lack of competence, and misconduct?
- b. Lack of competence and misconduct are the most appropriate terminology for these grounds for action?
- c. 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?
- d. This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?

Please give a reason for your answers.

2.70 We agree with the two proposed grounds of action.

2.71 We agree that Fitness to Practise concerns relating to a Registrant's health or English language skills should be removed from the legislation, as these can be effectively investigated under lack of competence and misconduct (as suggested in paragraphs 263-265). There are clear misconduct elements that could and often do apply in health/language matters (for example, working whilst unfit to do so, attending work under the influence) which are not adequately covered by lack of competence alone. Regulators require the scope to be able to determine whether these are misconduct or lack of competence issues.

2.72 We have found in our experience, that handling health cases under a separate route can create unnecessary complexity as there is often overlap with the other grounds of impairment. This means that in practice such cases can be referred between two processes or committees and may not be dealt with as efficiently and quickly as they could be. The streamlined process outlined in the proposals is preferred.

Q45 Do you agree or disagree that:

- a. all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and
- b. automatic removal orders should be made available to a regulator following conviction for a listed offence?

Please give a reason for your answers.

2.73 We agree. Having all measures available to both Case Examiners and Fitness to Practise panels will ensure that proportionate and appropriate regulatory outcomes are

made at the earliest opportunity. This will also support a less adversarial system and bring potential benefits to both the public, Registrants and regulators.

2.74 Automatic removal orders for convictions for listed offences will lead to swifter public protection for the most serious of cases that are highly likely to end in a removal order.

Q46 Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.

2.75 We agree with this proposal.

Q47 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.

2.76 We agree with this proposal and the ability of the complainant to 'opt out' as set out in paragraph 289. Effective and timely communication is an important part of ensuring an efficient process; we would encourage Government to consider whether this should be a prescriptive or a permissive provision. Such a provision could result in process-based challenges which may take up significant regulator capacity and divert resource way from casework, leading to delays and financial pressures.

Q48 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.

2.77 We agree. The ability of the regulator to investigate a concern at any stage would enable us to consider further information coming to light more efficiently and remove the delay caused by waiting for new concerns to catch up with linked Fitness to Practise cases further through the process. Written submissions from a Registrant at the initial stages may assist with decision making and achieving quicker resolution of cases. We also welcome the ability to be able to compel the Registrant to provide information relevant to the Fitness to Practice matter in order to support effective and timely conclusions of cases.

Q49 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.

2.78 We agree. HCPC does not have a time restriction on fitness to practise referrals and this does not cause us operational or procedural issues. It allows us to consider incidents in the public interest and/or where the referrer may not have been aware that the incident was of concern at that time. The evidentiary impact of 'older' cases should be considered on an individual case basis. We should not put a barrier to people bringing concerns to the attention of the regulator based on the age of the allegation. Allowing this approach for all regulators may have positive equality impacts, for example in cases relating to sexual or racial harassment / abuse.

Q50 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.

2.79 We think there is good reason to provide this power. A specific power to deal with non-compliance would improve our ability to conduct Fitness to Practise cases where Registrant non-cooperation is a barrier and would provide clarity about expectations of the level of engagement Registrants should have in the Fitness to Practise process. A non-compliance power would be more transparent than an 'adverse inferences' power which

is not designed for this purpose and can therefore be more difficult to use in such circumstances.

Q51 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.

2.80 Yes, we agree.

Q52 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.

2.81 We agree. This power will allow regulators to take swift action to protect the public in the most serious of cases, already proved in court, and where a strike off order is highly likely to be imposed.

Q53 Do you agree or disagree with our proposals that case examiners should:

- a. have the full suite of measures available to them, including removal from the register?**
- b. make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?**
- c. 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?**
- d. 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.

2.82 Yes, we agree with these proposals. Where the Registrant accepts both the findings and the proposed measure, it is right that these cases should be concluded as early in the process as possible. This proposal is crucial to deliver the broader policy objective to reducing the adversarial nature of fitness to practise. Only those cases involving a dispute that Case Examiners cannot resolve should need to go a Fitness to Practise panel.

2.83 In relation to the proposal at paragraph 317 (that Case Examiners can impose a measure if a Registrant has not responded within 28 days), consideration should be given to specifying any powers for Case Examiners or regulators' own internal teams to grant requests from Registrants to extend that timeframe. This will provide clarity as to how such requests should be considered given the tight timeframes and the impact of Case Examiners making a decision in the absence of any response from a Registrant. This will enable the regulator to conclude cases in a safe and efficient way when Registrants are not engaging with the process.

Q54 Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.

2.84 We agree with the general approach set out but would suggest greater clarity is provided in relation to the rationale for the proposed difference in powers for fitness to practise panels to impose interim measures and the powers for Case Examiners to propose an interim measure. It is unclear from the consultation document how this would work in practice. It is unclear in the consultation why Case Examiners should be able

impose a final determination without a Registrant's agreement in some circumstances but not be able to do so with an interim measure. Further consideration of this area would be welcomed.

Q55 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.

2.85 We agree with this proposal which is fundamental to achieving a key purpose of these reforms, namely, to enhance flexibility and autonomy in regulation. We agree that regulators should be able to determine the details of how this stage operates in their own rules. These measure would mean regulators would be better able to respond to fast-changing external environment in an agile and timely way without unnecessary administrative burden.

Q56 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.

2.86 Yes, we agree. This supports fair process. If the Case Examiner has access to a full sanction/determination powers then it is important to conducting a fair process to allow the Registrant an opportunity to appeal the decision. To provide for a proportionate approach, in our view, Fitness to Practise panel decisions should be appealable externally to the High Courts / Court of Session) while Case Examiner decisions should be reviewable internally (e.g. by way of Registrar review).

Q57 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.

2.87 We agree that the appeal should be to the High Courts/Court of Session. To aid clarity, we believe that there should be a simple mechanism to determine the appropriate court, for example, based on the Registrant's address and this should be made clear in the legislation.

Q58 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.

2.88 We agree with this proposal. It is in line with the key purpose of these reforms, which is to enhance flexibility, autonomy and agility of the regulators to respond appropriately to a changing operating environment.

Q59 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.

2.89 We agree that Registrants should have a right of appeal to the High Courts/Court of Session as set out in Q60 below. However, we do not agree that the Registrant should have a right of review internally prior to the appeal route for restoration cases. The restoration process is more closely aligned with the FTP panel process rather than a registration panel process, given that the Registrant has been previously removed from the Register following a finding of fact by an FTP panel. The appeal process should therefore align with that following an FTP panel for consistency.

Q60 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.

2.90 We agree. As outlined in question 57 this should be based on the Registrant's address and made clear in the legislation.

Q61 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.

2.91 We agree. However, consideration should be given to specifying a time limit within which the review should be brought and we consider this should be aligned with the appeal or judicial review time limits. This is important to minimise the potential burden of the review process, ensure the availability of evidence and currency of approach and thought if further questions are required, and to ensure review is not used as means to delay the regulatory process. Clarity in legislation that any decision stands whilst a review is carried out may mitigate the latter point.

Q62 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.

2.92 We agree that the PSA should not have a right to refer or appeal decisions made by case examiners. Such a right would be likely to be unhelpful as it will increase the adversarial nature of the current Fitness to Practise process and would likely cause delay in reaching a final judgement, in opposition to the aims of these reforms. In addition, patient safety risks will be very limited given that the cases which the PSA is concerned about (accepted outcomes) will result in the professional's right to practice being restricted in some way (and a return to unrestricted practice will only be possible after there has been a further review by the regulator).

2.93 In addition, the Registrar review mechanism will be able to address any issues with the decision. In HCPC's case, there is a very low rate of panel decisions the PSA has appealed to court historically.

Q63 Do you have any further comments on our proposed model for fitness to practise?

2.94 The consultation does not address the question as to whether interim measures should be applied following a final measure being imposed by a Fitness to Practise panel or Case Examiners to cover the appeal period. Clarity is required about whether measures imposed at CE or FTP panel stage come into effect immediately and remain in place whilst an appeal is ongoing, or whether interim measures would be used to ensure public protection is maintained whilst an appeal is ongoing. From a public protection point of view it is important that either sanctions come into effect immediately or there is provision for interim measures until any appeal is concluded.

Q64 Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give a reason for your answer.

2.95 This does not relate to HCPC's powers and as such we recognise that other regulators will be best placed to provide an informed response to this question.

Q65 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.

2.96 We recognise that the GMC will be best placed to provide an informed response to this question.

Q66 Do you agree or disagree with the transitional arrangements for PAs and AAs set out above? Please give a reason for your answer

2.97 We recognise that the GMC will be best placed to provide an informed response to this question.

Q67 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.

2.98 We recognise that the GMC will be best placed to provide an informed response to this question.

Q68 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.

2.99 We agree with the benefits identified in the table. In particular, the impact on the efficiency and volume of Fitness to Practise cases is likely to be beneficial in the longer term, leading to quicker resolution of cases and enhanced public protection

Q69 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.

2.100 We consider that it is vital that potential costs to regulators of these proposals is balanced by the ability of regulators to set fees and recover costs. In making final decisions, we would encourage consideration of all the factors, such as those set out in the table, which impact on regulators. As bodies not in receipt of public funding, reliant on income from fees, this is a critical balance to successfully achieve, to ensure professional healthcare regulation remains viable. We would welcome discussions with Government about how these reforms can be funded to avoid using Registrant's fees to implement these changes.

Q70 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?

- a. Yes – positively
- b. Yes - negatively
- c. No
- d. Don't know

Please provide further information to support your answer.

2.101 Overall, we believe that the reform proposals are likely to have a positive impact with regards to persons with protected characteristics because they set out clear mechanisms for enhanced flexibility, transparency, assessment of proportionality and

fairness and consistency across regulators. In addition, as noted in question 49, provisions to allow cases older than 5 years to be brought could have positive impact on some groups, for example in relation to sexual or racial harassment / abuse cases.

2.102 As noted in our response to question 25, requiring publication of qualification on the Register could have a disproportionately negative impact on those who qualified overseas, including ethnic minorities, refugees, or those with older qualifications (who are more likely to be older).