MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

MDU Consultation Response

Department of Health & Social Care
Regulating healthcare professionals, protecting the public

June 2021

Opening remarks

The Medical Defence Union (MDU) is pleased to have this opportunity to respond to this important consultation.

The MDU is the UK's leading defence organisation. We are led and staffed by doctors and dentists who have real-life experience of the pressures and challenges healthcare professionals face every day. Our support spans multiple areas of their professional practice; from complaints, to claims of clinical negligence, to investigations by a regulator.

We are delighted that the Department of Health and Social Care has brought forward a blueprint for how healthcare professional regulation can be reformed across the four nations of the United Kingdom.

The MDU has been - and will remain - at the forefront of the debate about what a future model of healthcare professional regulation should look like. In so being, we are an unapologetic champion of the hardworking and dedicated doctors and dental professionals who are regulated by the General Medical Council (GMC) and General Dental Council (GDC). These professionals deserve a regulatory regime that is fair, proportionate and managed in a timely manner. It is these three standards – in addition to the importance of promoting and protecting patient safety – against which we judge the government's proposals for reform, set out in this consultation.

Healthcare professionals across the UK have waited a long time to see their regulators reformed and these proposals are a hugely significant step forward. The medical profession will particularly welcome the priority position that the GMC has been given in the government's timetable for reform. In the consultation paper, the government commits that following this consultation exercise, it will bring forward draft legislation, which will be consulted upon in autumn 2021 so the legislation can come into force for the GMC by spring 2022. We applaud this timetable and urge the government to stick to it, so reform can be delivered without delay.

In that spirit, we note in the consultation paper that no decision has been taken on which regulator(s) will be in the next cohort of reform. We ask the government to ensure that priority is

given to the GDC. While the GDC continues to make some welcome improvements in its regulatory processes, it is limited in what it can achieve with the powers afforded it by the Dentists Act 1984. Indeed, after the GMC, the GDC has the oldest governing legislation of any of the seven UK-wide healthcare professional regulators. The practice of dentistry – save for emergency dentistry – all but ceased for a large part of 2020 due to Covid-19 lockdowns. As dentistry in the UK continues to recover, with dental professionals working hard to deliver effective patient care, they deserve the reassurance that reform to their regulator is not far away.

Finally, we also note the government's continued position that it is minded to explore a reduction in the number of healthcare regulators. Given that a review has now been established to examine this, we use this consultation exercise to make our position clear: the MDU believes that the GDC must remain the dedicated regulator of dental professionals, and the GMC the dedicated regulator of medical professionals.

Consultation questions

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

The principal of cooperation is central to effective regulation. Moving forward, this will be even more important given the additional flexibility that regulators will be given to discharge their functions.

The *duty to cooperate* is one of three duties that the government proposes supplementing to the overarching statutory objectives that govern both the GMC and GDC. Specifically, it is proposed (para 56) that the regulators' duty to cooperate should extend to those organisations concerned with – amongst others – *'the regulation of healthcare professionals.'* We would welcome clarification, preferably in legislation, that the definition of such organisations is suitably broad as to include those organisations who support registrants with their dealings with the regulator, such as the MDU and other medical/dental defence organisations (MDOs / DDOs).

This is of considerable importance, as it would ensure that the GMC and GDC are under a duty to cooperate and engage with service users and their representatives – both registrants and complainants.

Registrants need to have confidence in their regulator; enshrining a duty to cooperate is an important means of ensuring that confidence, whilst also ensuring that organisations across the healthcare landscape play their role in protecting the public and providing effective care for patients.

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and should have these related duties?

The MDU agrees that regulators should be under a duty to be transparent. Transparency, however, must always be balanced against the need to safeguard vulnerable registrants. We have always engaged closely with the GMC and GDC on this point and will continue to do so.

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?

This is perhaps the most important of the three duties that the government proposes supplementing to the overarching statutory objectives governing the regulators. It is essential that it is included and the MDU fully supports it.

We have long called for the regulators to be given greater flexibility in the discharge of their functions, so matters that are of concern to registrants can be dealt with expeditiously. With greater flexibility comes a need for regulators to be held to account for how they change their rules, processes and systems. Requiring them to assess the impact of these changes, particularly on registrants, before they are introduced – is an absolute necessity.

In order to ensure this assessment has been appropriately carried out, regulators should be required to publish a standardised account of precisely what assessment it has made of its proposed change(s). Not only does this correspond with the two other supplementary duties – a duty to cooperate and a duty of transparency – but it would also provide a layer of reassurance to all of those concerned with the proposed change before it comes in to affect.

4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators?

We agree with the proposals to replace the current Council for regulators with a modernised governance structure.

On a specific point, we note the proposal that the rules for each regulators' Board structure, should require at least one member to wholly or mainly work – or live – in each of the countries in the UK in which the regulator operates.

The delivery of healthcare differs across all four nations of the UK due to its devolved status. We believe it is essential that the voice of registrants with direct experience of those different models of delivery is heard at Board level. Therefore, we ask the government to consider amending its

proposed criteria for the rules in this area, to require at least one board member to be *a current or former registrant* who has mainly worked in each of the countries in the UK in which the regulator operates. Thus, in the case of the GMC and the GDC, there should be at least four current or former registrants of the regulator on the Board – each with professional experience of working in healthcare in Northern Ireland, England, Wales and Scotland.

5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval?

At the outset, the consultation rightly notes that regulators are funded by the healthcare professionals that they regulate. Of the nine healthcare professional regulators who operate within the UK, a minority can currently set registrant fees without any Parliamentary oversight – be that via the approval of the Privy Council or the consent of the Scottish Parliament. The GMC and GDC are two regulators within that minority.

While the MDU has always had constructive dialogue with both the GMC and GDC when they have been considering a change in their registration fees, we nevertheless disagree with the government's proposals to bring all healthcare professional regulators into line with the minority when it comes to the oversight of fee setting – rather than bringing the minority in to line with the majority.

This consultation proposes the most fundamental and wide-ranging reforms to healthcare professional regulation in a generation. Consequently, to a greater or lesser degree, all regulators are going to have to invest considerably in reforming their processes and upskilling their people to deliver new methods of regulation. To cite but one example, the proposals to give Case Examiners a vastly increased role in Fitness to Practise determinations with the accompanying powers will require a significant package of training and investment from both the GMC and GDC. While the MDU would certainly hope to see great restraint from both regulators in their fee setting in the years ahead, it is not unforeseeable that they may decide to increase their registration fees to coincide with other reforms. They must be accountable to their registrants for this.

In the consultation (para 72), the government suggests that by not requiring Parliamentary oversight, this somehow makes regulators more directly accountable to their registrants for the fees they charge. The MDU disagrees with this assertion. Parliamentary oversight is a democratic and consequently powerful mechanism to hold regulators to account; rather than detracting from it, it compliments a regulators' accountability to their registrants.

Therefore, we ask the government to reverse its position, and make all healthcare professional regulators decisions on registrant fees subject to Parliamentary oversight.

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees?

The MDU agrees that regulators should be able to take this approach to fee setting, subject to the requirement for any such approach to first be put to a full-public consultation. We also reiterate our position, as set out in response to question five, that the setting of registrant fees should be subject to Parliamentary oversight.

7. Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation?

We are broadly supportive of this proposal as it would enable regulators to be more responsive.

The Medical Practitioner Tribunal Service (MPTS) is unique, in that it is a statutory committee of the GMC, which provides for it to be a separate adjudicatory function in Fitness to Practise (FtP) matters, with the GMC performing the investigatory role. No other healthcare regulator has this model. We believe they should have the power to create it without requiring specific legislation. For instance, under existing legislation, the GDC has been taking steps to try and ensure that it is at an arms-length from decisions about the management of individual FtP hearings. The proposals in this consultation would allow the GDC to establish an entirely separate adjudicatory arm, akin to the MPTS. We would be very supportive of this and believe it would be a welcome development for all parties involved in FtP cases with the GDC.

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?

The MDU agrees with this proposal. Currently registrants carry the cost of services either the GMC or GDC provide to third parties, and it is quite right that this should stop. However, where regulators have appropriate reciprocal arrangements in place with their counterparts in other jurisdictions, it may well be beneficial for these to continue.

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?

We have reservations about these proposals.

In the first instance, we note that the government proposes limiting the ability of a regulator to delegate the holding of a register; the determination of standards of education and training for registration; the provision of advice about standards of conduct and performance, and the administration of procedures relating to misconduct or unfitness to practise. Healthcare professional regulators will, rightly, only be able to delegate these functions to another regulator and not to any other third party.

Transparency and accountability will be essential in these instances. Both the regulator seeking to delegate its functions, and the regulator seeking to assume them, should be required - through rules - to consult with their individual stakeholders prior to any delegation taking place. Registrants have a right to expect that their professions' regulator, whom they ultimately fund, is solely focused on their profession. Consequently, they should not be expected to cross subsidise the regulation of another profession through their own registration fees.

That is why prior consultation would be important, particularly for those registrants of the regulator seeking to assume the responsibilities of another regulator. It will allow registrants and their representatives to scrutinise whether the regulator has sufficient spare capacity to assume the work without it being detrimental to the interests of its own registrants, and also provide the opportunity for assurances to be given that appropriate funding is available which does not come from their own fees.

10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above?

The MDU will have to await the publication of the relevant secondary legislation before commenting fully on this question. In this instance, we do, however, note the importance of data sharing. We also note the paramount importance of safeguarding legal professional privilege between registrants and their representatives.

11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which they operate?

The MDU fully supports this proposal. While the regulation of healthcare professionals is fragmented in terms of its devolutionary standing across the UK, the delivery of healthcare to patients is of course a fully devolved matter. It is therefore right, that while remaining accountable

MDU Services Limited
One Canada Square
London E14 5GS
w themdu.com
@the_mdu

to the UK Parliament in Westminster via the presentation of an annual report, regulators should also be required to do likewise to the Senedd, the Scottish Parliament and the Northern Ireland Assembly – where appropriate.

This requirement will also correct the present, unsatisfactory position, whereby regulators are only accountable to the Scottish Parliament for those health professions which entered regulation after the passing of the Scotland Act 1998. Hence, the GDC can be held to account by Holyrood for the way it regulates dental nurses and dental technicians, but not dentists. It is right that this changes.

12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC?

We agree that the Privy Council's default powers should be extended to include the GDC. While the MDU is not in a position to express a view on this proposal in respect of the General Pharmaceutical Council (GPhC), it would appear an entirely logical move based on the fact that save for the GDC and the Pharmaceutical Society of Northern Ireland – which is accountable to the Northern Ireland Assembly – all other healthcare professional regulators are subject to this Privy Council safeguard.

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?***

The MDU agrees with these proposals. Education and training standards are central to ensuring that newly qualified doctors and dental professionals are equipped to deliver safe and effective care.

It is correct to say, that currently, the ability of regulators such as the GDC and GMC to adapt their education and training functions is restrained by an unnecessarily convoluted and lengthy process to change their rules – which requires Privy Council approval. These proposals for reform should allow both regulators to be more responsive to the evolving healthcare landscape.

We look forward to studying these proposals in detail as and when the GMC and GDC consult on new rules to give effect to them. However, at this early stage, we do put on record our view that any additional standards for specific courses, programmes or training - which lead to further annotations on a regulator's register - should be simple, clear and not unnecessarily expansive. The registers of healthcare professionals should remain as clear and penetrable as possible.

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?

The MDU has no comment to make on this question.

15. Do you agree that all regulators should have the power to issue warnings and impose conditions?

The MDU has no comment to make on the question of giving regulators the power to issue warnings and impose conditions on providers and/or courses or programmes of training.

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?

The MDU has no comment to make on this question.

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?***

MDU Services Limited
One Canada Square
London E14 5GS
w themdu.com
@the_mdu

The MDU has no comment to make on this question.

18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers?

We believe this is a sensible approach alongside the wider package of reforms to education and training. The GMC is currently able to approve some postgraduate curricula, in respect of general practice and some other medical specialities. Given that the processes in these instances are firmly established, it is right that they should be retained by the GMC.

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?

The MDU has no comment to make on this question.

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?

The MDU has no comment to make on this question.

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?

The MDU has no comment to make on this question.

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?

The MDU has no comment to make on this question.

23. Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements?

We agree that regulators should have the ability to set out in rules and guidance their CPD and revalidation requirements. It is right that legislation affords regulators, such as the GMC and the GDC, the power to determine its own requirements. However - consistent with the MDU's views on most proposals contained within this consultation – this proposal should come with an absolute duty on the regulators to properly consult stakeholders prior to making any changes.

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?

The government has made a clear case for the regulators only holding a single register. We do not object to the proposal, but note that for many regulators, particularly the GDC – which holds 13 specialist lists - this will be a considerable job of reform. As such, when secondary legislation is forthcoming to give effect to these changes for each regulator, we ask the government to include a transition period of not less than 24 months to allow regulators' enough time to build and divide their single register, ensuring it is robust.

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***

MDU Services Limited
One Canada Square
London E14 5GS
w themdu.com
@the_mdu

The MDU agrees with the proposal for all regulators to be required to publish the above information on their register. This is a well-established practice at both the GMC and the GDC.

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?

The MDU agrees with this proposal. It is a necessary power to enable regulators to carry out their statutory functions. All data collection and processing by regulators should have lawful bases for processing personal data. It should also be processed in line with all privacy and data protection requirements.

27. Should they be given a discretionary power allowing them to publish specific data about their registrants?

This is a complex, open-ended question. In short, the MDU cannot support regulators such as the GMC and GDC being given an open-ended, unspecified power such as this, without first receiving detailed reassurances about what specific data they are being empowered to publish about registrants.

In the consultation document (para 158), it states that regulators should be given a *"power to request specific information from registrants which may be published on the register"*. In the first instance, before going on to address what this information may consist of, we feel obliged to emphasise a crucial point which is not readily apparent in this question: our understanding is that the government is only giving regulators the power to 'request' this information from registrants, not the power to compel them to provide it. This is a crucial point, and we would welcome swift clarification on it. Principally, because further-on in the same paragraph it states that where *"a registrant does not provide this information, they could be removed from a regulators' register."* This is the ultimate sanction, likely career ending. Thus, there is a huge disconnect within this section of the consultation; either regulators are to be given a discretionary power to request certain information – which would need to be specified, or, they are to be given the power to require that information to be provided with the ultimate sanction available for non-compliance.

Once again, clarification is needed on this point.

Turning to the precise information which the regulators may, at their discretion, publish. The consultation suggests (again, para 158) that this information could include information in relation to

a registrant's scope of practice, their indemnity arrangements and revalidation and/or CPD requirements. The MDU believes all of these are worthy of consideration for a regulator to be empowered to publish on their register. However, the terms on which they will be empowered to ask registrants for them – and the scope and nature of their publication – needs to be specified and consulted upon separately.

Finally, it is important to remember that it is registrants themselves who are ultimately responsible for the continued accuracy of their entry on a regulator's register. The more information their entry contains, the greater that responsibility becomes – particularly where information is not static. For instance, information regarding the latest fulfilment of their CPD requirements. A failure to keep their record accurate could lead to a registrant being the subject of FtP proceedings. Indeed, in 2016 the GMC consulted on the possibility of increasing the information it published on the List of Registered Medical Practitioners (LRMP) in the UK. Amongst the proposed additions, it suggested the possibility of including a photograph of the registrant, their employment history, as well as languages spoken. While the GMC did not proceed with its proposals, this illustration of the potential scale of the spike in information a regulator may request – or even compel – is enough to give pause in the absence of any detailed proposals in this consultation.

This must all be carefully borne in mind when granting regulators additional powers to expand the information contained on the registers. The MDU has considerable reservations about these proposals as they currently stand.

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?

The MDU has no objection to regulators being able to annotate their register, noting that annotations for the purpose of this question in the consultation are marked out as being distinct from FtP sanctions. As per the government's proposals, all regulators must be required to put in place a clear policy for annotations. This should be subject to a full consultation with all stakeholders. This will be particularly important for the GDC, which currently does not annotate its registers.

Finally, as we noted in our response to question 13, any move towards increasing annotations on a regulator's register, must be done with great restraint and be based on a genuine need. The registers of healthcare professionals should remain as clear as possible.

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power?

We agree with this proposal. The Covid-19 pandemic has provided further proof, were any needed, of the immense dedication and professionalism of healthcare professionals across the UK – especially those who had recently left practice but returned to help tackle the pandemic, via various regulators' emergency re-registration powers.

It is right that these powers be given to all healthcare regulators on a permanent basis, to assist in planning for any potential future public health emergency.

As now, it is proposed that the Secretary of State for Health and Social Care will notify the registrars of the GMC, GDC and others, when an emergency is about to occur, is occurring or has occurred. For instance, in March of 2020, the Secretary of State activated section 18A of the Medical Act – thus affording the GMC its temporary registration (emergency) powers. This allowed the GMC to bring back thousands of doctors on to the register. Under the current legislation, once in place, there is no time limit for this provision; it remains in place until the Secretary of State rescinds the order. We believe this should be replicated in the amended legislation. There should also be a minimum notice period, specified in legislation, when the Secretary of State moves to rescind the relevant order. This is important, as once revoked, a regulator – for instance, the GMC - is currently required to move swiftly and remove all temporary registrants from the medical register. This requires clear and timely communication with the registrants involved, which of course takes time. Therefore, we suggest a permanent emergency registration power should be coupled with a requirement for the Secretary of State to give not less than 21 days' notice of their intention to rescind the order, to the relevant registrar.

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?

The legal protection of a professional title is an important means of ensuring patient safety. Doctors, dental professionals and other healthcare professionals work immensely hard to both attain and maintain their professional registration - ensuring that they are sufficiently skilled and qualified to provide care for their patients.

Not only do those who falsely and intentionally portray themselves as a qualified, registered member of either the medical or dental profession, pose an immediate risk to the health and wellbeing of the public – but they can also do damage to public trust in all healthcare professionals.

It is right that the breach of a protection of title – such as that of a 'general practitioner' – and registration, remains a criminal offence and is incorporated into the governing legislation of regulators. It is also right, as the government has committed to in this consultation (para 182), to review all protected titles, to ensure that they are consistent with current practice.

The MDU was founded in 1885: the world's first medical defence organisation. During our 136 year history, particularly in the early half of the 20th century, we have had to play our part in tackling quackery in order to protect the good names of medicine and dentistry.

Falsely and intentionally claiming to be a registered medical practitioner is a profoundly serious offence, and it should be treated as such. Currently, this is a summary-only offence – with a maximum sentence of a financial penalty. We are of the view that this should be an offence that is triable either way, meaning it can either be tried summarily in the magistrates' court, or on indictment before judge and jury at the crown court. We believe that categorising these offences in this way, with all options open for sentence, would properly capture their seriousness.

Thankfully, the assumption is that cases of people falsely and intentionally claiming to be a medical doctor are rare. While publicly available Crown Prosecution Service (CPS) figures suggest that the number of people charged under the Medical Act 1983 are in low double figures, it is not possible to know how many ultimately went on to be prosecuted. There is also the added factor, that it is quite possible that a number of offenders have instead been prosecuted under broader offences captured by the Fraud Act 2006 – which are triable either way and carry the full suite of sentencing options. That enables a proper punishment of the criminal behaviour, but at the same time makes the point that the offences under the Medical Act are ineffectual rather than carrying the weight they deserve. This is a further argument in favour of protected title offences being re-categorised as triable either way offences. This would put them on a par with other fraud offences; ensure they are prosecuted and treated with all the seriousness they merit, and crucially, allow the public to see a full and accurate picture of the number of prosecutions that take place.

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)?

The MDU agrees with this proposal - *mens rea* should be required for someone to be guilty of a protection of title offence. When considering the full range of these offences, it would not be appropriate for offences to be strict-liability, as this could potentially open registrants up to criminalisation for administrative errors – such as declaring an incorrect qualification – with no intent whatsoever to deceive. Therefore, we believe it is essential that all these offences require

MDU Services Limited
One Canada Square
London E14 5GS
w themdu.com
@the_mdu

mens rea to be present, and we support the government's proposal to make all the offences consistent in this way.

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?

This is a sensible and practical reform. We support the proposal.

33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance?

The MDU agrees with this proposal. While it is right that legislation sets out the broad criteria for dental professionals, doctors and other healthcare professionals to be admitted to a regulators' register, it is also right that regulators should have the necessary flexibility to fully define the criteria for the particular profession(s) they regulate. For instance, healthcare professionals are required to have adequate and appropriate indemnity/insurance in place for their work. The GMC and the GPhC both set out their expectations of registrants in this area, in guidance. Given that the latter has a role in regulating premises as well as individual professionals, the guidance is understandably bespoke.

Allowing regulators the flexibility to set out their own registration process in rules and guidance can give registrants clarity, and ensure that requirements reflect the reality of their 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?

Currently, only the Registrar of the GMC has a discretion as to whether an applicant should be granted registration or not, when that applicant otherwise meets all the GMC's criteria for registration. Thus, in short, this question invites a view on whether all other healthcare professional regulators should be brought into line with the GMC, or instead, whether the GMC should lose an existing power.

The MDU is broadly content for the GMC's Registrar, and those of other regulators such as the GDC, to have this discretionary power. However, as with all such discretionary powers, transparency of decisions is essential. All regulators should be required to publish their policy for refusing an applicant's registration, with specific reference to the factors they may consider even if all the

criteria have been satisfied. Finally, an applicant who is refused registration by a regulator must have the ability to appeal that decision to the relevant court.

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?

The MDU agrees with this proposal. This process should be set out in rules and guidance. Any applicant who is refused registration by a regulator must have the ability to appeal that decision to the relevant court.

36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them?

Suspension, by definition, is less final than removal from the register. Thus, suspension for administrative errors, which can be rectified, is certainly more appropriate than removal from the register in the first instance. However, this proposal needs to be viewed in the full context of all the proposed new powers that regulators are to be furnished with. We outline our concerns further in response to question 37.

This proposed new power for the regulator needs to be considered with considerable caution. The MDU neither supports nor opposes this proposal at this stage.

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?

The MDU disagrees with elements of this proposal. Our firm preference would be for the process of removing a registrant from the register for administrative reasons, to be set out in primary legislation.

If done incorrectly, suspension from the register could be deeply traumatic for the registrant, as well as being time consuming to rectify. While we are broadly supportive of the regulators being afforded greater flexibility – with appropriate safeguards – in this instance we believe that registrants require the safeguard of clearly defined legislation.

MDU

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

Regulators governing legislation should set out the minimum time period that must elapse, following a registrant receiving notice from the regulator that they are due to be suspended from the register for one or more administrative reasons, before that suspension could take effect.

Within the numerous proposals contained in this consultation document, particularly those pertaining to FtP, it is suggested that 28 days must pass before action can be taken, where the regulator has not received a response from the registrant. We believe this is far too short. In a world beyond Covid-19 restrictions, business trips and holidays of more than two weeks are not uncommon, neither sadly are prolonged periods in hospital or other unexpected life events. In reality, a registrant could plausibly miss an entire 28-day notice period with suspension then taking effect, or, be left with very little time to consult their representatives and/or defence organisation before a suspension occurs. This is not fair on the registrant.

The MDU accepts that there must be a cut-off point for the regulator to receive a response from a registrant. In studying the reasons for which a regulator could remove registrants from the register (para 208), we believe they could be separated into three categories, for the purpose of providing a minimum time period in legislation.

Not less than 90 days

- *Failure to pay any relevant fees*
- *Failure to maintain an effective means of contact and contact details with the regulator*
- *Failure to meet revalidation and renewal requirements*
- *Failure to provide any information reasonably required by the regulator pursuant to its statutory objectives and functions*

The final point is particularly worthy of note. When considered against proposals in this consultation – as at question 27 – to increase the amount of information a regulator may be able to request of the registrant for their entry on the register, the scope for administrative error increases markedly.

Not less than 56 days

- *Fraudulently obtained or incorrectly made entries on the register*

Not less than 28 days

- *On notification of a registrant's death*

- *Voluntary removal from the register at request of the registrant*

With this and other elements of the process for removing a registrant for administrative reasons, clearly stipulated in legislation, the MDU would be content to see the rules for readmittance to the register set out in the rules, rather than suggesting that that too should be defined in legislation.

38. Do you think any additional appealable decisions should be included within legislation?

We have no suggestions of any additional appealable decisions that could be included within a regulators' governing legislation.

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?

While we support regulators setting out, in rules, their internal appeals procedure – they should be under a statutory requirement to do so, rather than simply having the ability to create rules if they deem it necessary.

40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers?

The MDU has no comment to make on this question.

41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers?

The MDU has no comment to make on this question.

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation?

The government is right to highlight the hugely important role international healthcare professionals play in the delivery of healthcare in the UK. As it states in the consultation (para 228), in 2019/20, 43% of new joiners to the GMC register were internationally qualified professionals.

The MDU supports the government's ambition of making the process for all internationally qualified healthcare professionals less bureaucratic and more adaptable to change. For instance, the incredibly prescriptive legislative requirements for the GDC'S Overseas Registration Exam are unnecessary and a prime example of where regulators could reasonably be given more flexibility. We do, however, place on record our very clear view that while the governing legislation in this area can and should be less prescriptive, it must not detract from the duty on a regulator to ensure that all those whom it admits to the register are qualified and fit to practise.

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:

i. Initial assessment
ii. Case examiner stage
iii. Fitness to practise panel stage?

In a crowded field of reforms, the creation of this new, three tier Fitness to Practise (FtP) process is undoubtedly one of the most significant.

While the vast amount of our observations will apply to the rules that in due course both the GMC and GDC will have to create to give effect to this new three tier process, in principal, we warmly welcome the creation of this new FtP regime. If implemented correctly, it has the potential to be the most consequential FtP reform for decades. We want to see an FtP process that is less adversarial at both the GMC and GDC, with more cases appropriately resolved without the need for a full FtP panel hearing. Healthcare professionals and their patients deserve a regulatory regime that is fair, proportionate and managed in a timely manner.

From question 43 to 63 we raise specific concerns and comments about the proposals for a new FtP model, but in response to this question, we make the following brief observations.

On the first of the new FtP stages – initial assessment (IA) – its success will in large part depend on the thoroughness and clarity of that assessment, and the status it is then afforded at the second stage: case examiner (CE) stage. To elucidate, regulators will need to ensure that Case Examiners

appropriately distinguish between what assessment has been made at IA stage, and what investigations are now required at this second stage. It is clearly not envisaged that the IA will be an investigation – hence the name. There is a clear difference between assessment and investigation. Case Examiners will need to properly separate matters which have been assessed as X, from those that require investigation to confirm whether they are Y or Z.

As we have already commented on in this consultation, this new model of FtP will require considerable training and investment in the GMC and GDCs people. It will also require clear rules, policies and procedures – all of which must be thoroughly consulted on prior to their inception. The MDU looks forward to playing an active and constructive role in their formulation in the months ahead.

44. Do you agree or disagree that:

i. All regulators should be provided with two grounds for action – lack of competence, and misconduct?

ii. Lack of competence and misconduct are the most appropriate terminology for these grounds for action?

iii. 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?

iv. This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?

The MDU has profound misgivings about these proposals, specifically the proposal to remove health concerns from the *heads of impairment* and leave all regulators with only two grounds for FtP action: lack of competence, or, misconduct.

Having studied pages 62 and 63 of the consultation document particularly closely, it is readily apparent that the government is making this proposal with the best of intentions and with the interests of registrants in mind. However, it is our respectful submission that this proposal will not have the desired effect of delivering a fairer FtP process for registrants, but instead, will force regulators to discard current well-established practices for dealing with FtP cases involving concerns about a registrant's health – which we return to momentarily – and would in all likelihood result in

MDU Services Limited
One Canada Square
London E14 5GS
w themdu.com
@the_mdu

such cases being re-categorised under the banner of 'lack of competence.' The semantics alone, of categorising health concerns under the lack of competence head of impairment would, in itself, represent a deeply retrograde step.

Of course, wherever possible, regulators should be dealing with health concerns about a registrant outside of the FtP process. However, sadly, there will always be cases involving health concerns about a registrant which mean that the matter will inevitably have to proceed through a formal FtP process.

The MDU works closely with the GMC – and the GDC – to ensure they treat registrants experiencing adverse health issues appropriately and considerately. Registrants in these cases deserve to be treated with the utmost respect and care by their regulator. The GMC, for example, has in recent years taken positive steps forward in developing protocols and procedures to deal with health concerns about a doctor through its FtP process. An example is the GMC ensuring that sensitive, personal information about a doctor's health is separated from other publicly available content about FtP matters. We are concerned that the removal of health as a head of impairment could blur the lines in such matters, which would be profoundly unfair on the registrant. Another example is how the GMC communicates with a registrant during health FtP cases; where the MDU is the organisation representing the registrant, we can ask the regulator not to send the correspondence directly to them but to us instead. This allows us to act as a filter, ensuring that the information is only passed on at the most opportune time and/or when necessary, thus minimising the opportunity for the correspondence to reach the doctor whilst they are in the midst of a health crisis. Such a process greatly helps us support our members through the process. We fear it could be one of many that is lost if cases become labelled as 'lack of competence.'

The government should provide all regulators with three grounds for action in FtP cases: a lack of competence, misconduct, and adverse health. If the government does not do so, it risks undoing the many advances that have been made by the GMC in establishing sensitive and bespoke procedures for dealing with doctors in poor health.

45. Do you agree or disagree that:

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

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

We agree that all measures should be made available to both Case Examiners and FtP panels. This is necessary for the new three tier process to work. We provide further details about our concerns about the current proposals for the CE stage at question 53.

In respect of automatic removal orders, while we accept the rationale for the government granting the regulators this power, we place on record our clear view that these orders should be confined exclusively to the offences listed in Annex A of the consultation. Other offences should only ever be brought within the purview of automatic removal orders through changes in a regulator's governing legislation – and this should also be the subject of a full public consultation, in the unlikely event it would ever occur.

46. Do you agree or disagree with the proposed powers for reviewing measures?

We agree with the proposed powers for reviewing measures. Placing regulators under a requirement to set out, in rules, the process for making and considering a review – notably when a registrant requests an early review of a measure to which they are subject – will be beneficial to all parties.

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?

It is important that regulators are subject to a duty to keep registrants up to date – notifying them when a substantive decision is being made about their case. It is equally important that registrants have the right to request updates from the regulator about case progression. Therefore, we welcome the proposals for regulators to be required to set out this process in rules. Once again, as with so many proposals in this consultation, the detail of any concerns we may have will be found in the rules themselves; we will be scrutinising the GMC and GDC rules in this area closely in due course. However, at this stage, we place on record our strong view that rules should stipulate a minimum notice period of 28 days for giving notice.

Finally, it is important that the duty to keep the person(s) who raised the concern about a registrant's fitness to practise up to date, throughout the FtP process, is discharged proportionately by the regulators. A key test for this will be the extent to which those raising concerns are kept informed compared with the registrant themself. For instance, we believe that it would be wrong for those raising a concern to be notified that the registrant in question has been offered an outcome

MDU

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

at CE stage. This should be for the registrant to consider with their representatives. This should be considered without the concern of any undue external influence, or the potential for any future FtP panel stage to be prejudiced if that offer of an accepted outcome is ultimately not accepted.

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?

While the MDU agrees with the central thrust of this proposal, we have concerns about a number of the proposed powers that regulators are to be given at initial assessment (IA) stage.

In the first instance, we will require considerably more information about the detail of the power of a regulator to require information from a third party, and to seek an order from courts requiring that information should it be refused. It is not possible for us to comment on this specific proposal – and others contained at paragraph 292 – without the precise detail of its scope.

It is also proposed that a registrant should have the right to provide written submissions to the regulator during the course of an IA. Registrants should absolutely have this right. However, the consultation also states (para 292) that a registrant would not usually be notified that an IA is underway. Hence, what in effect is being proposed, is a right of the registrant which is near impossible to exercise – save for those instances when they have learned of the process via some other route, or have self-referred themselves. It also highlights our nervousness, as set out in our response to question 47, that the potential exists for the person(s) who raised the concern about a registrant's fitness to practise, being kept more fully up to date than the registrant themself. We urge the government to look again at this section and bring forward revised proposals.

Finally, we welcome the proposal to exclude reflective material from any revised power that regulators are to be given to require registrants to provide them with information. As per the government's commitment to implement this proposal - as it was recommended in the conclusions of the Williams Review - this new power must not only exclude reflective practice material, but that exclusion must be explicit and absolute.

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?

The MDU strongly disagrees with this proposal.

In the first instance, it feels necessary to emphasise what the purpose of an FtP process is. As the government itself reiterates in this consultation (para 235), regulated professionals are required to

meet the standards for practising safely and effectively. FtP is about determining whether someone's practise is currently impaired and whether restrictions are required on their practise to protect the public. The key element here is current impairment. It is not, nor should it be, for a regulator to investigate historic complaints and concerns where there is no question of the fitness to practise of the healthcare professional involved being currently impaired or the registrant posing a risk to the safety of patients or the public at large.

Something we feel that is being lost in this proposal – as it is not included in the three-sentences afforded to it in the consultation document – is that for a regulator such as the GMC, who has operated the 'the five-year rule' for some time, the 'rule' is in fact a presumption, not an absolute. It is a rebuttable presumption. If a concern or complaint is more than five years old but corresponds with potential current impairment and/or a patient safety risk, then the GMC can consider the matter. Instead of being categorised as a block on investigations, the 'rule' would be better described as a filter. We believe that this filter allows FtP to be focused on what it is there to do; ensure that any current impairment is addressed, and patient safety protected, without needlessly subjecting registrants to proceedings for historic concerns which are no longer of relevance to their practise.

We urge the government to reconsider this proposal. Not only would we argue that regulators should be able to retain a five-year rule moving forward, but we would also argue that the few regulators who do not currently have this provision should be expected to operate a variant of the 'five-year rule', which if operated along the lines of the GMC's rule, will still give discretion to open an investigation where circumstances require this.

Once again, we urge the government not to proceed with this proposal.

50. Do you think that regulators should be provided with a separate power to address noncompliance, or should non-compliance be managed using existing powers such as "adverse inferences"?

Given our role in supporting members with matters before their regulator, non-compliance is something we have very limited experience of. However, we recognise the need for regulators to have the power to move a case forward if a registrant has entirely disengaged. We have no further comment to make on this question.

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

MDU

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

We neither agree nor disagree with the proposed approach, principally because the proposals surrounding onward referral of a case at the end of the IA stage appear contradictory with other proposals in this consultation.

The proposals state (para 300) that regulators will be required to make rules which set out *"the ability to amend the grounds for action [on completion of the IA stage]. These rules will need to set out arrangements to provide notice to the registrant and a right for a registrant to make written submissions."* Yet at paragraph 292, the consultation states that a registrant will *"not usually be notified that an initial assessment is underway."* So, it would appear, that the proposal is for registrants to be notified that grounds for action are being amended, when a registrant would be hitherto unaware of the original grounds or the fact any proceedings concerning them were even underway. The notification of referral to the CE stage should not be the first the registrant hears about the complaint.

At best this is a confusing approach, at worst, it has the potential to cause significant distress for registrants receiving a notification of onward referral of a case at the end of the IA stage.

We respectfully ask that the government revisits its proposals for the IA stage and provides clarification alongside amended proposals, in the forthcoming legislation.

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?

As we outlined in response to question 45, while we accept the rationale for the government granting the regulators this power, we place on record our clear view that these orders should be confined exclusively to the offences listed in Annex A of the consultation. Other offences should only ever be brought within the purview of automatic removal orders through changes in a regulator's governing legislation. Again, in the unlikely event this would ever occur, this should be the subject of a full public consultation.

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

i. have the full suite of measures available to them, including removal from the register?

ii. **make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?**

iii. **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?**

iv. **be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days?**

Through our dealings with both the GMC and the GDC, we have seen the difference that Case Examiners can make. We agree with the government's contention in this consultation (para 307) that *"there is a strong argument for closing more cases at an earlier stage of the FtP process, especially where the registrant accepts the findings of the proposed outcome."*

For this new three tier FtP process to work, and for there to be the ability to have cases closed via an accepted outcome at CE stage, it is necessary for case examiners to have the full suite of FtP measures available to them.

The rules governing CE stage, both at the GMC and the GDC, will be where much of the detailed scrutiny will be required. The MDU looks forward to scrutinising those rules in due course. A general observation that we once again make, is that this vastly expanded role for Case Examiners will require considerable training and upskilling if it is to be effective. Regulators must be prudent and efficient in resourcing this investment in their people. The MDU stands ready to play any supportive role it can, working with the GDC and GMC to support the training programmes that will be required while this new system is embedded. It is within everyone's interests that this new FtP model is as robust as possible, as quickly as possible.

We do have a number of concerns with some of the headline proposals for the CE stage.

The first of those concerns, is the requirement that all Case Examiner decisions should be made publicly available. We recognise the importance of transparency in this new process, to ensure both the public-at-large and registrants themselves can have confidence in a regulator. However, when this requirement is viewed through the prism of the simultaneous proposal to remove health concerns as a ground for FtP, we do foresee problems. For instance, as we said in our response to question 44, the GMC has recently taken positive steps forward in developing protocols and procedures to deal with health concerns about a doctor through its FtP process – such as ensuring that sensitive, personal information about a doctor's health is separated from other publicly available content about FtP matters. Our concern that the removal of health as a head of impairment could blur the lines in such matters is particularly acute in relation to CE stage.

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

The second concern we wish to raise relates to the proposals surrounding accepted outcomes.

We are enthusiastic supporters of the role accepted outcomes can play, however, we fear what is being proposed could make them overly rigid and not allow for them to be used to their full potential in the FtP process. Specifically, the government suggests (para 312) that an accepted outcomes process is not a negotiation between a registrant and a Case Examiner – and proposes that unless the registrant accepts both the proposed measure, and crucially, the findings – the case must proceed to a full FtP panel forthwith.

The MDU believes that this is unnecessarily restrictive. It is quite easy to foresee a case where a registrant accepts the finding of impairment and the proposed measure, as well as the majority of the Case Examiner's findings. However, there may be one or two points in those findings about their case with which the registrant profoundly disagrees – which are immaterial to the level of measure imposed or to the protection of patients, but of genuine concern to the healthcare professional given that the Case Examiner's decision will be made public.

Therefore, we urge the government to provide regulators with enough flexibility in their new governing legislation, to allow for a constructive dialogue to take place between a case examiner and the registrant (and their representatives) about whether findings need to be agreed wholly or in part, for an accepted outcome to be achieved. In short, on findings, we do not believe it should be all or nothing.

Finally, the MDU places on record its strong objection to the suggestion that if a registrant does not respond within 28 days of the Case Examiner proposing to conclude a case via an accepted outcome, the proposed measure will come into force. We believe this is simply far too short. As per our comments in response to question 37, a registrant could plausibly miss an entire 28-day notice period with a measure then taking effect, or, be left with very little time to consult their representatives / defence organisation beforehand. This is not fair on the registrant. The MDU accepts that there must be a cut-off point for the regulator to receive a response from a registrant, but 28 days is inappropriate. We propose a period of 90 days must elapse before a measure can be imposed by a case examiner. Any concerns about public protection can of course be dealt with via Interim Measures. Where a decision is imposed by a Case Examiner, the registrant must have a statutory right of appeal against that decision to the relevant court.

54. Do you agree or disagree with our proposed powers for Interim Measures, set out above?

The MDU will await the detail of the rules concerning Interim Measures, both in respect of the GMC and GDC before commenting further. We have no observations to make on the proposed powers at this stage.

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?

The MDU agrees with this proposal. We look forward to carefully studying the new rules for how the FtP panel stage will operate, in due course.

In response to this question, we make the following observations.

We are pleased that a regulator will not have the right to appeal a decision made by an FtP panel. In respect of the GMC this means the repeal of section 40A of the Medical Act, removing its right to appeal decisions of the Medical Practitioner Tribunal Service (MPTS) – as recommended in the Williams Review. This repeal is long overdue and welcome.

Further to our comments in response to question 7, we welcome the proposals in this consultation that would allow the GDC to establish an entirely separate adjudicatory arm for FtP panels, akin to the MPTS. We would be hugely supportive of this and believe it would be a welcome development for all parties involved in FtP cases with the GDC.

Finally, mindful that this is a matter to be dealt with in the rules that will govern the FtP panel stage at each of the regulators, the MDU nevertheless wishes to place on record our firm view that FtP panel hearings should be *de novo*. Members of an FtP panel and the party who raised the concerns should not be privy to the fact that a registrant was offered the opportunity for an accepted outcome, if that was the case. While we accept that the panel may infer that to have been the case, they must not be formally notified of it. We believe this is important for fair and due process to be maintained.

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?

The MDU agrees fully – registrants should have a right of appeal against a decision by a Case Examiner, FtP panel or Interim Measures panel. The circumstances in which these appeal rights would apply, as set out in paragraphs 349 to 350 of the consultation, are all necessary to ensure that fair and due process is maintained.

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

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?

We agree with this proposal. These courts are best placed to hear such appeals.

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?

We agree with this proposal. We will scrutinise any revised rules in this area closely.

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?

The MDU agrees with this proposal. It is necessary to ensure that fair and due process is maintained.

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?

We agree with this proposal. These courts are best placed to hear such appeals.

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?

The MDU believes that the proposed Registrar Review power strikes the right balance and that it does provide sufficient oversight of all decisions involved in the FtP process; both to protect the public and ensure a fair process for registrants.

As stated in the consultation (para 360), regulators will be required to set out in rules the process for conducting Registrar Reviews. It is our submission, that in the interests of fairness to all parties, a regulator's governing legislation should require these rules to stipulate that the decisions of the Registrar must be made publicly available. We believe this is important, as those who may criticise

this proposal and believe that Registrar Reviews do not deliver enough accountability for the regulator, would then have the option to seek Judicial Review if a registrar's decision was thought to be inconsistent with the requirements and grounds placed upon the Registrar Review process (as at para 359 of the consultation).

We believe that the foundations for the proposed Registrar Review are sound and would benefit from only minor alteration. Specifically, it should not be the case that where a Registrar Review results in a case being reopened which had been closed at CE stage, the regulator is then required by its governing legislation to transmit that case automatically to the FtP panel stage. This is the current proposal in this consultation (para 362).

It is the view of the MDU that not only is this disproportionate and inconsistent, but it could unintentionally lead to an unnecessary number of cases being transmitted to the FtP panel stage in the early life of this new FtP model – where it is not inconceivable to suggest that an unrepresentative number of cases could be reopened while the new process beds-in.

We believe it is disproportionate because the two proposed grounds for a Registrar Review are, that in the judgement of a registrar: *there is new information which would have, wholly or in part, led to a different decision, and/or, the decision was materially flawed – wholly or in part*. On that first ground, there can be little if any criticism of the way in which the original Case Examiner arrived at their decision, given this is new information. Hence, there can be no reason not to convey the case back to CE stage, rather than escalate it to FtP panel stage. On the second ground (a materially flawed decision, wholly or in part), we do not believe that in of itself is reason enough to escalate a re-opened case to the final stage. Instead, it should be referred to a senior Case Examiner.

Finally, we believe the proposal at paragraph 362 is inconsistent with the proposal at paragraph 361. There, it states that the government intends that where a Registrar Review results in a case being reopened which had not reached the CE stage, the regulator will decide the most appropriate stage of the fitness to practise process for this to be reconsidered. This could be IA stage, CE stage or FtP panel stage.

In short, if regulators are to be given this discretion to determine where best to assign a re-opened case at IA stage, then they should have the same discretion at CE stage.

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. Do you agree or disagree with this proposed mechanism?

MDU Services Limited
One Canada Square
London E14 5GS

w themdu.com
@the_mdu

The MDU fully agrees with this proposal. This achieves the right balance in the referral process.

While the PSA undoubtedly has a role to play in the regulatory process, providing an oversight role, this is not a role confined to the PSA – others play it as well. The fact that any person(s) may request a Registrar Review; patient, registrant, MP, charity, the PSA and so forth, provides for ample oversight. Indeed, under this proposed mechanism, there is potentially a new role for the PSA to play, supporting others who want to request reviews of decisions by Case Examiners.

We believe that the government's proposal is correct, and we urge it to proceed accordingly.

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

The MDU has no further, substantive comments to make at this stage. The strength of these proposals will only be able to be fully assessed when individual regulators consult on their rules to give effect to them. We look forward to scrutinising those carefully, in respect of both the GMC and GDC.

Finally, we reiterate our view that if implemented correctly, these FtP reforms have the potential to be truly transformative. We want to see an FtP process that is less adversarial at both the GMC and GDC, with more cases appropriately resolved without the need for a full FtP panel hearing. Healthcare professionals deserve a regulatory regime that is fair, proportionate and managed in a timely manner. We encourage the government to work at speed on these proposals, to deliver just that.

Questions 64 – 70

The MDU has no comment to make in response to these questions, at the present time.

Closing remarks

We hope our responses to these consultation questions are helpful and assist the government in bringing forward the necessary draft legislation in good time, to meet its timetable for a further consultation in autumn 2021 – in order for the legislation to come into force for the GMC by spring 2022. We applaud this timetable and urge the government to stick to it, so reform can be delivered without delay.

Please do not hesitate to contact us if you require any further information.

Contact

Thomas C.J. Reynolds
Head of Governmental & External Relations
t 020 7202 1532 | e thomas.reynolds@themdu.com