Nursing & Midwifery Council

Better, safer regulation

Our response to the DHSC consultation on regulating healthcare professionals, protecting the public.

June 2021

Executive summary

We welcome the opportunity to respond to the Department of Health and Social Care (DHSC)'s consultation on regulatory reform. The reform proposals are a once in a generation opportunity to create a modern, flexible legislative framework that will enable us to regulate effectively for the public into the future and to achieve our vision: safe, effective and kind nursing and midwifery practice, improving everyone's health and wellbeing.

Five principles underpin our response. Together, these principles should facilitate regulation that enables professionals to deliver excellent care to improve everyone's health and wellbeing.

1. We are transparent and accountable to the public we serve and the professionals we regulate. We will continue to report publicly on our work and we are committed to giving people a meaningful voice in our decision-making to help shape how we regulate.
2. We are agile and adaptive, proactively supporting the workforce. We strike the right balance between promoting excellent practice, and investigating rare cases of poor practice and concerns.
3. We promote a fair, safe and inclusive culture where equality and diversity thrive. People are at the heart of everything we do: we need to treat everyone with the dignity and respect they deserve.
4. We are efficient and effective. Stripping unnecessary detail from legislation will streamline our processes and enable us to make faster decisions, within a framework which sets clear regulatory duties and responsibilities and safeguards the rights of individuals.
5. We are independent, able to conduct our affairs to secure the best outcomes for all we serve. We work independently of the government, and we welcome public scrutiny from the UK Parliament, the legislatures of Wales, Scotland, and Northern Ireland, and the Professional Standards Authority for Health and Social Care (PSA).

We are supportive of DHSC's objectives and the overall direction that has been set out in the proposals. We agree that overly prescriptive legislation should be removed and replaced with a system which is able to respond to a changing health and care landscape whilst ensuring that we are accountable to and engaged with the public and the professions we regulate.

As noted above, we welcome DHSC's proposals, which we believe will allow us to modernise the way that we regulate. We have set out our detailed response to the consultation below. However, we would like to highlight a number of points here:

- We would welcome a further discussion with DHSC on the proposal to limit the number of members of the new unitary board model to 12. One of the aims of regulatory reform is to provide regulators with the flexibility to respond to future developments in healthcare regulation; stipulating a maximum number in our legislation would seem to go against this. Regulators need boards with the expertise and the diversity to provide strategic leadership, demonstrate public accountability, and maintain the confidence of diverse stakeholders and professions across the four nations of the UK. Our legislative framework should enable that and allow our board structure to evolve, rather than constrain us unnecessarily.
- Recent high profile cases have underlined the limitations of "Nurse" not being a protected title. It is essential that we have the right protected titles and associated enforcement powers to be able to take effective action to protect the public and maintain confidence in the professions. We would welcome a further discussion with DHSC to ensure that our protected titles and enforcement powers are fit for purpose under the new legislation.
- The consultation notes that we, along with the Health and Care Professions Council and the PSA, are classified by the Office of National Statistics to the public sector and are designated as public bodies. We welcome DHSC's comments that public body status does not impact on a regulator's independence in carrying out their regulatory role. When Parliament created our current legislative framework, great care was taken to establish an independent regulator. We are an independent charity. Our Accounting Officer is appointed by the Privy Council, rather than DHSC. We are not an arm's length body of DHSC and we are accountable to Parliament, via the Privy Council, rather than directly to DHSC. Our independence is important because it enables us to secure the best outcomes for all we serve. We would welcome confirmation from DHSC that nothing in the consultation proposals will undermine or conflict with this position.

About us

Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of almost 732,000 nursing and midwifery professionals, we have an important role to play in making this a reality.

Our core role is to **regulate**. First, we promote high professional standards for nurses and midwives across the UK, and nursing associates in England. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.

To regulate well, we **support** our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.

Regulating and supporting our professions allows us to **influence** health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

Regulatory reform: the case for change

A once in a generation chance for change

Our legislation was written in 2001. Our expectations of care, and how care is delivered, have changed hugely in the last 20 years. And our expectations of how health and care professionals are regulated have changed too.

As more people live with complex health needs, as technology evolves and medicine advances, people deliver care in new ways, in new settings and in multidisciplinary teams. That has implications for how we regulate and how we collaborate with other regulators to create space for innovation to thrive.

Most recently, the pace of change accelerated as nurses, midwives and nursing associates stepped up to meet the extreme challenges of Covid-19. We did all we could to deliver for the public and support the workforce. But the pandemic showed how our legislation holds us back.

We needed to ask the government to pass new legislation to allow us to make small but important changes. It showed us that with more flexibility, we can do new things well and swiftly, regulating effectively for the public, and supporting the workforce.

Modern, flexible legislation means we can continue supporting professionals to provide excellent care for people across the UK.

A fair, safe culture

On the rare occasions when there's a concern about a nurse, midwife or nursing associate, it's our role to investigate and take action where needed through fitness to practise processes.

Fitness to practise should keep people safe: it should prevent things from going wrong again, and should treat everyone involved with the dignity and respect they deserve. We believe that the best way to do that is to give professionals the chance to address concerns, encouraging them to be honest and reflective and building a culture of openness

We'll always take action if needed, including removing people from our register in the most serious cases. But we need our processes to drive learning and improvement so care becomes better and safer for everyone.

Our legislation sets prescriptive requirements about how we manage cases. It dictates a model that focuses on assigning blame, rather than understanding why things go wrong and sharing insights to prevent future mistakes. It makes an adversarial process – one that's distressing for both professionals and the public – needlessly drawn out. It stops us sharing relevant information with the public.

We want to better support people involved in fitness to practise, promoting openness and placing information in the hands of the right people, empowering them as we do. Our new approach to fitness to practise has made a significant start – but to make more impact our legislation needs to change. It's vital we treat the public and professionals fairly and kindly, playing our part in improving working cultures while supporting safe care.

Safe, effective and kind nursing and midwifery now, and in the future

Workforce pressures in nursing and midwifery are a concern to us, as they are to health and care leaders, employers, the people on our register and the public. Shortages of the professionals on our register can threaten the quality of care for the public, as well as professionals' wellbeing.

We have a role to play to help the sector address these challenges and do all we can to ensure the way we regulate supports workforce training and development, growth and retention.

Nurses, midwives and nursing associates rely on a top quality education to deliver excellent care and build their careers from the best possible foundations. We already set ambitious standards for education that promote safe, effective and kind practice. With legislative change we can do more to support first class UK nursing and midwifery education that continues to meet the changing and challenging needs of people using health and care services.

Qualified nurses, midwives and nursing associates who meet our standards have to register with us to be eligible to practise. We can best support the workforce by making sure these people can join our register quickly. At the moment, our legislation means qualified nurses, midwives and nursing associates have to wait longer than they need before they can register with us and start to work, adding anxiety for the public and the workforce. With more straightforward regulation, professionals can spend less time on unnecessary red tape and more time caring for people.

We have already made big changes to the ways we work. These include making it more straightforward for qualified professionals to join and re-join our register and streamlining our international registration processes. But to improve registration further, and to make faster decisions, we need modern legislation.

Case study: supporting the workforce through the pandemic

In March 2020, as the Covid-19 pandemic took hold, we moved quickly to support the nurses, midwives and nursing associates on the front-line of the UK's response.

We created a temporary register so people could quickly and easily return to practice and deliver life-saving care. And we began to run virtual fitness to practise hearings so our most urgent investigations could progress and we could continue to protect the public.

But neither of these vital changes would have been possible without amendments to our legal framework. To get the changes we needed in time to respond to the pandemic, the government had to take urgent action to introduce emergency legislation. Without this emergency action it would have taken us a significant amount of time to change our regulatory processes.

With legislative reform, we will be able to have greater flexibility and more control over our processes. This will mean we can be more agile and effective, supporting the workforce and students' education in good times and in bad, and delivering better, safer regulation for the public.

Our response to the consultation questions

Governance and Operating Framework

New duties

Question 1: 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.

1 We agree that regulators should be under a duty to co-operate, and the list of organisations set out in the consultation reflects our current legislation. In line with our strategy for 2020-2025 and our values, we are committed to working collaboratively with regulators and others to support a more proactive and preventative approach to regulation.

2 Collaboration is key to understanding safety risks and supporting improvement. As an example, we are collaborating with the General Medical Council and the Care Quality Commission on maternity safety. We are seeking to better align how we regulate, to improve our shared understanding of risk, and to work proactively to support good practice, improve cultures and practices, and reduce risk. The focus of this initiative is maternity safety in England, but our ambition is to strengthen collaboration more broadly and in all four UK countries.

3 For the duty to be as effective as possible in ensuring closer working, we would encourage this to include reciprocal obligations. We would also suggest that the list of organisations should include police and other law enforcement bodies.

4 Within our fitness to practise process there have been a number of occasions where we've struggled to get information from the police and law enforcement bodies which has hindered how we progress cases. Therefore, it is important that bodies that play a key role in our regulatory processes are subject to the same duties.

5 We think that the PSA should also be subject to these and all other duties.

Question 2: 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.

6 We strongly support the principle of transparency. We agree that this should apply to all regulators and the PSA. As a public body we're already subject to the Freedom of Information Act 2000 and related legislation. We would therefore welcome clarity about how the proposals will add to our existing obligations and how the various legislative provisions would work together. In line with the overarching aims for regulatory reform, we would welcome clear legal frameworks.

7 The proposals make specific mention of a number of duties, for example to hold open board meetings or hearings unless confidential matters are being discussed. We strongly support the principle of these duties and they accord with what we do now

without any legislative requirement. Given that we already meet these requirements, we ask whether enshrining them in legislation is strictly necessary, especially given the proposal to introduce an overarching duty of transparency, which we wholeheartedly support. We believe there is a balance to be struck between setting a clear duty for transparency via the proposed overarching objective and allowing regulators an appropriate level of flexibility over the way in which they conduct their business.

8 Similarly, we are committed to consulting on significant changes to our rules and standards, as we do now. We understand that more minor changes will not require consultation. Providing us with this flexibility will allow us to avoid unnecessary bureaucracy and ensure that our consultations are meaningful.

9 We are aware that in their response to the consultation, the PSA have suggested that they be given powers to oversee regulators' rule-making processes. We do not believe that this would be a proportionate approach and we think it would run contrary to the principles of regulatory reform. We are committed to working collaboratively with other regulators to promote consistency, where appropriate, and in developing our rules. We believe that our governance framework and the new duties of transparency, co-operation and proportionality will provide the right safeguards to ensure accountability to the public.

10 We have a clear publication scheme in place and strive to make as much information available to the public as possible.

11 The consultation mentions the PSA's lessons learned review and the importance of regulators dealing sensitively with complaints and being open and honest. Following the review we introduced a new person-centred approach to complaints with a focus on kindness and empathy.

12 This includes our Customer Enquiries and Complaints Team now calling customers and seeking to fully understand the concerns and the resolution the customer is seeking. The team discuss any support requirements and then work with our Public Support Service to address any support needs. For example, arranging advocacy support or arranging a meeting to discuss in more detail.

13 We are open and transparent when things have gone wrong. We identify any learning and improvements to reduce the risk of another customer experiencing the same concern and ensure that this is shared with the wider organisation. In cases where a customer remains unhappy or has raised further questions we arrange a virtual meeting to discuss their concerns and explain our response more fully.

Question 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? Please give a reason for your answer

14 We are already subject to proportionality and other requirements to complete meaningful impact exercises on our proposals. For example, when we carry out our functions we're required to have proper regard for the interests of people using or needing the services of our professionals. We're also required to co-operate and consult with certain bodies and groups of people. We therefore broadly support this proposal, but would like to see more detail on how this would work in practice, particularly around the implications of assessing every change for a cost impact.

Unitary Board

Question 4: 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.

15 We consider that an effective governance structure is vital to the functioning of any organisation. Operational and financial independence forms a key part of this and enables us to fulfil our statutory responsibilities and to be fully accountable for all that we do.

16 Our current model, with 12 Council members (6 registrant members and 6 lay members), ensures accountability and effective oversight of the performance of our statutory duties. Various changes to this model have been made over the past couple of decades with the result that the Council has the fewest number of members since it came into being.

17 Notwithstanding the success of the existing set-up, we recognise that moving to a unitary board structure is likely to enable stronger lines of accountability.

18 We would query whether it is necessary to set out a maximum number of members on the face of the legislation and would suggest that it may be more appropriate for there to be a duty on a regulator to set out the number of members in rules. This would be more consistent with the flexible approach proposed in respect of other areas of the consultation.

19 We are the largest healthcare professional regulator in the UK, regulating three diverse professions which constitute a very substantial part of the health and social care workforce across the UK. To maintain the confidence of our stakeholders, we will need board members from across the UK who reflect the diversity of the communities we serve. Further, it is clear that in order to provide strong leadership and accountability we will need to draw upon expertise from a number of different areas, such as nursing and midwifery practice, health and social policy across the UK, finance and regulation. While we recognise that smaller boards are normally associated with more effective governance, there is a risk that constraining the number of unitary board members to 12 may hinder our ability to achieve the diversity and expertise we need and to respond to future developments. We would welcome further discussion on this.

20 We welcome the principle of a board that is balanced with the expertise of the professionals on the register alongside non-registrant members, and by the experience of non-executive directors also capable of holding the executive to account from a range of different perspectives and executive directors with the skills and knowledge to lead and manage the work of the organisation. This guards against self-regulation while ensuring there are appropriate external perspectives and internal expertise. We would welcome a further discussion about how this would operate and around the definitions of current and former registrants put forward in the consultation.

Fees

Question 5: 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

21 We agree that regulators should be able to set their own fees in rules without Privy Council approval and strongly support this proposal.

22 Our financial strategy for 2020-2021 sets out our approach to financial management up to 2025. In this we set out our aims to deploy the investment we need to deliver our new organisational strategy, while also achieving financial sustainability and value for money for the benefit of the public and our professionals.

23 We take our fiduciary and stewardship responsibilities very seriously. We need the ability to make the most effective use of the resources available to us and to be able to account for this to the public for whom we regulate and to the registrants whose fees generate those resources.

24 As recognised in the consultation, a number of regulators are already able to set their fees without Parliamentary oversight. In contrast, our current processes are lengthy, complex and resource intensive, requiring collaboration with DHSC, a public consultation, approval by our Council, Ministerial and Privy Council approval and then laying in Parliament. The whole process can take over a year before any changes can be implemented, meaning that our flexibility is limited in responding to changes in our costs and the external environment.

25 Removing the requirement for Parliamentary oversight would help us to simplify this process and allow us to be more responsive. It would free up resources within the NMC, allowing us to focus on other areas of regulation, and within DHSC, Parliament and the Privy Council. It would also reduce unnecessary bureaucracy and level the playing field between regulators.

26 As noted in the consultation, the way that we are funded is central to ensuring our independence from government. We note that any fees changes, including those to put in place a longer-term approach, would require consultation, which we strongly support. This, alongside the removal of the requirement for Privy Council approval, would ensure that we are directly accountable to the public and our professionals.

Question 6: 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.

27 We are subject to a number of authorities in relation to our financial governance, including our Council, Parliament, the Charity Commission in England and Wales and the Office of the Scottish Charity Regulator.

28 As noted above, our financial strategy for 2020-2021 sets out our approach to financial management up to 2025.

29 We're conscious of the impact that increases in our registration fees can have on our registrants. While significant financial risks could mean we have to increase our fees in the future, we aim to keep registration fees affordable and stable.

30 We agree that having the option to set out a longer-term fee framework would be beneficial in terms of providing more certainty for the professionals on our register.

Committees

Question 7: 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.

31 We agree with the proposal to remove the duty for regulators to set up specific committees and replace this with a power. This is consistent with the stated aim of flexibility within the proposals.

Charging for services

Question 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? Please give a reason for your answers.

32 We welcome the proposal to allow us to charge on a cost recovery basis for services that we provide to third parties. At the moment, the cost of these services is met by the NMC and therefore by the people on our register. It is important that this is full cost recovery, including contribution to overheads.

33 One of the examples given in the consultation is the approval of education programmes. Our power to approve education providers and programmes is fundamental to ensuring that the people that join our register have met our standards. A programme for nursing and midwifery in the UK cannot run until it successfully passes through our quality assurance and approval process.

34 We believe it is right that the cost of quality assurance and the ongoing monitoring of programmes should be borne by education providers. Education providers are required to meet similar costs in relation to other subjects and pay fees to other regulators such as the Office for Students (OfS) and the Quality Assurance Agency (QAA). Our move away from approval and re-approval to indefinite approval and monitoring (as described in our response to question 14) has reduced the number of quality assurance visits we make and their associated costs. This would also lessen the costs for education providers. Our approach to monitoring includes

34.1 the use of desk-top and innovative means of applying flexible, proportionate monitoring,

34.2 the use of digital technology, and

34.3 working in partnership with education providers on proportionate metrics and data sets.

35 Being able to charge for programme approvals and monitoring will mean we can keep pace with an evolving education environment. This may involve different models of provision in the future and may require us to consider requests from a wider range of education and training providers.

36 Our legislation currently gives us the power to approve education courses outside the UK. We therefore agree it would be appropriate for the power to charge a fee to also apply outside a regulator's geographical region.

37 We note that the consultation proposes that the charges for services should be set out in rules. We are unsure how this fits with the proposal for charges to follow a cost recovery approach. We would welcome further clarification on this.

Power to delegate

Question 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? Please give a reason for your answer.

38 We support this proposal in principle but would welcome further clarity on what the new powers would allow us to do beyond our existing powers. We note the Government's intention to remove the exclusions that are currently in place around delegation, but we would like further detail as to what this would mean in practice.

Data handling, sharing and collection

Question 10: 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.

39 Better use of data is a key element of our 2020-2025 strategy, and being able to share data more widely will support this. We strongly agree with the proposal for regulators to be able to require data from and share data with the groups listed in the consultation.

40 Again, we look forward to further clarity about how these powers would interact with our existing obligations under the General Data Protection Regulation (GDPR), which we currently rely on as a basis for data sharing. We support the appropriate sharing of data, for example with non-statutory investigations and inquiry teams, and want to use our data to help the wider sector with workforce planning.

41 The ability to share information is linked to the duty to co-operate and our comments on question 1 are also relevant here. In particular, it's important that other bodies that we share information with as part of our regulatory functions are subject to reciprocal powers and duties, including the timely sharing of data and information that allows us to discharge our duties effectively.

Accountability to UK Government and Devolved Administrations

Question 11: 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.

42 We are committed to being open and accountable and to building on our strong and effective relationships across all four UK countries. We welcome this proposal and look forward to working with the four administrations to take this forward.

Powers of the Privy Council

Question 12: 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.

43 We think that this is primarily a question for the GDC and GPhC. However, we agree that it would be helpful to have consistency across the regulators in terms of the Privy Council's default powers.

Education and Training

Standards

Question 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?**

Please give a reason for your answer.

44 Our standards shape the practice of the professionals on our register and provide the foundation for safe, kind and effective care. Over the past few years we've conducted a major review of our education standards and our quality assurance processes. We're also consulting on changes to our post-registration standards.

45 Our new standards and quality assurance framework are outcome- and future-focused. This flexibility enables education institutions and their practice learning partners to innovate, respond to developments in health and care and meet the changing needs of patients and people that use health and care services. It also allows us to adopt risk-based and streamlined approaches to quality assurance, enhancing our ability to identify and act on issues early on. It's important that any new legislation supports and doesn't constrain these types of approaches.

46 We agree that all regulators should be able to set standards for education and training, and we support the principle of regulators having broadly consistent powers in this area.

47 Although we recognise the need to use broad terms to encapsulate differences between regulators, the consultation doesn't explicitly refer to standards of conduct and performance. In our case, this means the Code. The Code is not only important

in education and training, but must also be upheld throughout a professional's career. It's vital that powers to set these standards are also retained across the regulators.

48 The consultation touches on inter-professional learning (paragraph 131) and notes that our standards require courses or programmes which lead to registration to include inter-professional learning. We welcome the position taken by DHSC in acknowledging the benefits of inter-professional learning and providing regulators with the flexibility to require inter-professional learning where appropriate. Inter-professional learning is recognised as being beneficial in building professional identity in a multi-disciplinary team and in forming well-functioning teams to provide safe and effective care, and is reflected in learning from various independent reviews.

Approvals, warnings and conditions

Question 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? Please give a reason for your answer.

49 The power to approve education and training providers, qualifications, courses and programmes is an essential part of our regulatory functions and provides assurance that students will meet our standards. As noted in our answer to question 13, we have recently updated our approach to quality assurance. Our updated approach aims to provide additional flexibility to assure new models of education programme delivery and streamlines our processes.

50 The new Quality Assurance Framework incorporated the concept of indefinite programme approval (as opposed to re-approving institutions) with proactive monitoring. Approval is granted once, but may be withdrawn if an approved education institution or practice learning partner doesn't meet our standards, or if we receive a report that indicated significant risks or concerns. This means that we're able to reduce the overall number of quality assurance visits, focusing our resources on situations where the risks are greatest. We appreciate that other regulators may approve and re-approve, but we would like to ensure we continue to be able to award indefinite approval under any new legislative framework.

51 It is also important for us to retain the flexibility to approve both education providers and individual courses or programmes. This allows us to address issues on a single programme, but also provides us with the powers to address issues at provider level that may impact on more than one programme.

52 The ability to set our quality assurance procedures in guidance rather than more prescriptive legislation is in line with our overarching approach. It provides us with the flexibility we need to keep adapting to and supporting the changing educational environment.

53 We also support the proposals to publish our procedures, decisions and lists of approved courses. This reflects our current legislative requirements and our commitment to transparency.

Question 15: Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.

54 If our quality assurance process identifies that an approved education provider is potentially not meeting our standards, we'll investigate and take action. However, our current powers are limited, with our only recourse being to withdraw approval from the provider if the concern remains. This can be disproportionate.

55 We would welcome enhanced powers in this area to issue warnings and to impose conditions. This would allow us to intervene at an earlier stage and take targeted and proportionate action. It would enable us to work collaboratively with providers to improve the situation in the interests of public protection and the quality of education provision.

56 In our view, the power to issue warnings and the power to impose conditions should be separate and part of a suite of measures that can be used independently, as appropriate to the circumstances.

57 The consultation sets out two separate scenarios where conditions might be imposed: one at the point of initial approval, and one after approval has already been granted. Although we appreciate that some other regulators take this approach, we are unlikely to apply conditions at the point of initial approval. Our approval process follows a gateway model where education institutions are required to provide specific evidence before being able to proceed to the next gateway. This means that any concerns highlighted are dealt with during the process. We haven't identified any circumstances where we'd wish to impose conditions upon initial approval in place of asking providers to resolve these issues before approval was granted. We would, however, find it helpful to be able to apply conditions after approval has been granted.

58 We agree that the procedures for imposing, modifying and removing conditions should be set out in guidance. We also agree with the proposal for conditions to be published. We currently publish any conditions that are part of the initial approval process in our approval reports. As well as providing transparency, publishing conditions could incentivise improvement.

Appeals

Question 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? Please provide a reason for your answer.

59 Our legislation currently entitles education providers to make observations as part of the approval decision-making process. We agree that this right should be retained. This ensures that all the appropriate evidence is taken into account in approval decisions and promotes fairness.

60 We think that the detailed processes relating to the right to make observations should be set out in rules and/or guidance as determined by the regulator. This would be consistent with the approach taken in other areas.

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?**

Please provide a reason for your answer.

61 We agree that education and training providers should have the right to appeal approval decisions. This is not provided for in our existing legislation but aligns with our commitment to ensuring fairness in our processes.

62 We agree with the approach proposed in the consultation to provide regulators with the powers to set out the grounds for appeal and appeal processes in their rules.

63 Although we agree that a formal appeals process would not be appropriate in the case of conditions, we do think that there should be some mechanism for providers to submit observations. If a provider feels that a condition is disproportionate they have no recourse under the current proposals other than to meet that condition or have their approval refused or withdrawn. At the point of refusal or withdrawal they can make observations and appeal the decision if necessary.

64 Conditions could vary from limiting student numbers to stopping students being placed in a particular area for a period of time. In these circumstances it would seem unfair not to allow providers to make observations before a condition is imposed.

Variations in regulators' approval and standard setting powers

Question 18: Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.

65 We agree that regulators should have broadly consistent approval and standard setting powers, but should also be able to retain any additional existing powers.

Exam and assessment powers

Question 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? Please provide a reason for your answer.

66 Qualified nurses, midwives and nursing associates who meet our standards have to register with us to be eligible to practise – no matter whether they trained in the UK or overseas. So it is vital that we are able to set and administer exams or other assessments for applications to our register. We currently use our test of competence to assess international applications and to provide an alternative route back on to our register to those people who've had a break in practice.

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? Please provide a reason for your answer.

67 We believe that education providers are best placed to set and administer exams or assessments for approved courses. Approved education providers will have been assessed against our standards through our quality assurance process. We therefore support this proposal.

Delegation and methods of assessment

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? Please provide a reason for your answer.

68 As noted in the consultation, some of our approval functions are carried out by a third party, although we retain responsibility for the final approval decision. Being able to do this ensures that we can provide an objective, independent and fair process.

69 We use a variety of methods as part of our approval process. As a result of the pandemic and social distancing guidelines, we introduced virtual visits to enable our programme activity to continue. These have been well received and we're exploring where these types of visits could be used more routinely as part of our normal quality assurance activity.

70 We therefore support the proposal to allow regulators to delegate and to use a range of assessment methods.

Certificates of Completion of Training (CCTs)

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? Please give a reason for your answer.

71 We do not have any comments on this proposal.

Continuing professional development and revalidation

Question 23: 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.

72 As noted in the consultation, for us revalidation is linked to renewal. Our legislation requires those applying to renew their registration to meet CPD and practice hours requirements as well as meeting the conditions of safe and effective practice, English language and having the appropriate indemnity. These form part of our revalidation requirements, alongside other non-legislative requirements.

73 We agree that legislation should continue to allow us to require CPD and/or revalidation with detailed requirements set in rules and guidance.

Registration

A duty to hold a single register

Question 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? Please give a reason for your answer.

74 We welcome this proposal, which broadly reflects our current structure.

75 Registers have often been shaped more by historical contingency than by public protection. Consistency across regulators would help improve public understanding of what a register is and how it works.

76 We support a register that is flexible, consistent and fit for the future. We would like the power to review and update our register on an ongoing basis (subject to consultation) in line with the evolving nature of professional practice.

77 We recognise that the proposals may also have implications for our register, for example in relation to our approach to specialist community public health nurses, fields and advanced practice and the extent to which these aspects are dealt with by way of annotations or some other regulatory approach. We are committed to engaging with DHSC and stakeholders on these complex questions as we acknowledge that there are a number of different considerations to take into account.

Question 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**

Please provide a reason for your answer.

78 We support the principle of regulators providing the same basic information about registrants but with discretion for individual regulators to provide additional information.

79 We disagree with the requirement to publish a registrant's qualification as not all regulators hold this information. This conflicts with the aim of the proposal to ensure that basic information is consistent across regulators.

80 For historical reasons we don't hold the details of some registrants' qualifications. Qualifications have changed over time, meaning that someone who joined the register some time ago may not have the same qualification as someone who recently joined the register. In addition to this, overseas qualifications are varied, may not be translated and could be unclear to people accessing the register.

81 For us, a qualification is a way of demonstrating that an applicant meets the required standards to join the register at the point of application. After initial registration the qualification serves less of a public protection function and CPD and revalidation become more relevant. We are committed to transparency, and in order for it to be effective, the information shared needs to be meaningful and to empower rather than confuse those accessing it. We feel that requiring regulators to publish qualifications, particularly when not all regulators may hold this information for all of their registrants, risks creating confusion around a registrant's capabilities. It also risks undermining the clarity that a register entry itself indicates competence for practice in the UK.

82 For the reasons outlined above, we consider that requiring the publication of a registrant's qualification could have a disproportionate impact on older people (whose qualification we may not hold or which may not appear to align with current qualifications) and those with qualifications awarded in other countries (whose qualification may not be easily understood).

83 We also think it would be helpful to clarify what is meant by 'registration history' as this could be interpreted in a number of ways. We currently publish the start date for someone's registration, alongside the start date of any annotation for recordable qualifications (for example, independent prescriber or specialist practitioner qualifications).

Question 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? Please give a reason for your answer

84 We agree that regulators should have the power to collect, hold and process data. This is necessary for the good functioning of our register and to assure us that registrants meet our requirements, for example, in having the appropriate indemnity in place or meeting our revalidation requirements.

85 We learn from our data and use it to improve what we do. We responsibly share our insights to help improve the wider health and care system and support the workforce. As noted above in response to question 10, powers that facilitate data sharing and collaboration will play a key role in supporting this work.

86 The consultation provides for a power for regulators to be able to request specific information from the professionals on their register. It notes that when someone doesn't provide this information they could potentially be removed from the register, although this would be a last resort. We agree that removal from the register in these circumstances should only be considered as a last resort, once other steps to obtain the information have failed.

Question 27: Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer

87 We consider that, while the basic level of information published by regulators should be the same, regulators should be able to publish additional data as fits with their particular requirements.

Annotation of the single register

Question 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? Please give a reason for your answer.

88 We welcome the proposal to provide regulators with the full suite of powers in relation to annotations. This would allow us to remove and update our annotations.

89 We use annotations to indicate recordable qualifications (such as independent prescribing or specialist practitioner qualifications) or fields of practice. Currently we're only able to add annotations to register entries. Once we've annotated a register entry we cannot then remove that annotation or replace it with a new one. This is the case even if that annotation is no longer relevant to someone's practice. We think that this undermines the clarity and purpose of the register and risks creating confusion for people who access our register.

90 We agree that the power to annotate should be used in a way that is consistent with public protection and we support the proposal to create a policy setting out our approach to annotations.

Emergency registration

Question 29: 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.

91 We agree with this proposal.

92 Following the outbreak of the pandemic, temporary emergency powers were inserted into our legislation under the Coronavirus Act 2020. These powers have been essential in allowing us to respond to Covid-19. In July 2020 more than 14,000 professionals were registered on our temporary register. Since then a number of these professionals have gone on to join our permanent register.

93 This has underlined the importance of having similar powers incorporated into future legislation. As with the current emergency powers, any future powers should only be activated following notification of an emergency from the Secretary of State. Current legislation ties the meaning of an emergency to the Civil Contingencies act 2004, which we think should be reflected in any new provisions.

Offences in relation to protection of title and registration

Question 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?

94 We agree that it is helpful to have a similar list of offences across regulators. We consider that there needs to be parity of offences and enforcement powers between

the regulators in this area. We do not think that our current powers are sufficient in this space given that they are primarily based around titles that are not widely understood by the public or used by the professions, and we want to ensure that we have sufficient regulatory levers to be able to protect the public in the future. Recent high profile cases have underlined the limitations of "Nurse" not being a protected title. It is essential that we have the right protected titles and associated enforcement powers to be able to take effective action to protect the public and maintain confidence in the professions. We would welcome a further discussion with DHSC to ensure that our protected titles and enforcement powers are fit for purpose under the new legislation.

95 We note that some of the wording in the consultation document refers to 'falsely claims' rather than 'falsely represents'. We acknowledge that the language used in the consultation is intended to be accessible and doesn't necessarily reflect the final legal drafting. However, we would be concerned if 'falsely claimed' was used in the legislation itself. We believe that 'represents' is the more appropriate terminology as 'claim' implies an active statement or assertion rather than the way in which an individual conducts themselves.

Question 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)? Please give a reason for your answer.

96 We support the proposal for protection of title offences to be intent offences. This reflects our current approach and is necessary to allow us to take action in a proportionate manner.

The Registrar, Deputy Registrar and Assistant Registrars

Question 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? Please give a reason for your answer.

97 We have the power to appoint deputy or assistant registrars under our existing legislation and would support retaining that power. As the regulator with the largest register of healthcare professionals in the UK, we make lots of important regulatory decisions on a daily basis. Reserving these decisions to the Registrar alone would not be feasible. We believe that the use of deputy and assistant registrars is key to the effective operation of our processes.

Registration processes

Question 33: 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.

98 We agree that regulators are best placed to specify their own detailed requirements for registration. We need to make sure that we're able to update and adapt our registrations processes in response to developments. Putting our requirements in rules (which no longer require Parliamentary oversight) and guidance will allow us to do this.

99 We note the call for regulators to work together to develop their rules so that they are consistent across regulators. We support collaborative working with other regulators in the interests of promoting consistency, where appropriate, and sharing expertise. We are committed to doing this when it comes to developing our rules in all of our regulatory areas.

100 We agree that legislation should set out the basic criteria for registration. This is in keeping with one of the aims of regulatory reform - to provide regulators with autonomy and flexibility over their operational processes. Any criteria should provide clarity, but should be broad enough to capture the different requirements that regulators need to assure them that applicants are suitable for registration.

101 We think that the set of criteria proposed in the consultation could be amended to bring it closer to the above aims. A number of the criteria could be grouped together under broad categories, with the detail of the evidence required set out in rules. For example, 'being capable of safe and effective practice' could encapsulate declarations of fitness to practise, health and character requirements and knowledge of English. The requirement to provide evidence of identity might sit better alongside other administrative requirements such as payment of the fee and following the correct application process.

102 We think that a simplified criteria would allow for greater consistency but would also provide regulators with flexibility in terms of the evidence required to support the criteria. We're continuing to explore what this could look like for us.

The General Medical Council's registration processes

Question 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? Please give a reason for your answer.

103 We do not support this proposal. In our current legislation, if a person meets our registration criteria they are entitled to join the register. We do not have an additional discretion to grant or refuse an application.

104 We haven't identified any situations where such additional discretion would be useful. Any exercise of discretion must be done fairly and consistently and would be subject to legal challenge. Therefore, if this discretion was given to us we would need guidance or policy on how it would be exercised by the Registrar, effectively building a subset of criteria.

105 It is unclear to us what the purpose of this discretion would be or what considerations would be relevant that weren't relevant to the registration criteria. We would be concerned that having this additional discretion could cause uncertainty, confusion and unfairness.

Question 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? Please give a reason for your answer.

106 We do not have any comments on this question.

Removal, suspension and readmission to the register

Question 36: 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.

107 We disagree with the proposal to provide regulators with a general power to suspend people from their register outside of the fitness to practise process.

108 Fundamentally, we're not sure what the benefits would be of having such a power. Suspension outside of the fitness to practise process could also have implications under article 6 of the Human Rights Act 1998.

109 The consultation considers suspension as an option when someone fails to pay their fees, fails to maintain contact or provide information or fails to meet revalidation and renewal requirements.

110 We currently have the power to grant extensions to people who are struggling to pay their fee or to meet our renewal/revalidation requirements. These extensions maintain a person's registration for a specific period of time and allow them to continue to practise. If they're unable to meet our requirements they're removed from our register once the extension comes to an end and can re-admit at a later date. This approach is simple, clear and effective, particularly given our streamlined readmission processes.

111 We're already able to consider the failure to provide information as part of the question of whether someone's fitness to practise is impaired. Fitness to practise panels can also use common law to draw adverse inferences if information isn't provided.

112 We would need to develop a considerable number of processes around any power to suspend to ensure fairness and consistency. Therefore having a power to suspend would not necessarily save us costs or time.

113 We would also have concerns about the potential similarities to interim orders, in particular if the thresholds for administrative suspension and interim orders were the same. Using internal members of staff to make decisions of this type would be inconsistent with the approach taken in fitness to practise.

Question 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? Please give a reason for your answer.

114 We agree that regulators should be able to set out their removal and readmission processes in rules.

115 Currently, in order to effectively manage our register, we automatically remove people who don't pay their fees. Given our size it will be important to retain the capacity to automatically remove people from the register for failure to pay fees, instead of requiring this to be a positive decision, which would create a significant administrative burden.

Registration appeals

Question 38: Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.

116 We haven't identified any additional appealable decisions to be included in the legislation.

117 However, we do have a number of questions around the appealable decisions listed.

117.1 We question whether decisions around annotations should be appealable as these do not affect someone's main register entry. Registrants' concerns could instead be addressed through an internal process.

117.2 We are also unsure why it would be possible to appeal removal where a person's renewal application has not been made in line with the process. If someone doesn't apply in line with the process it is difficult to see what the grounds of appeal would be. This seems to conflict with the proposal in paragraph 216 of the consultation which states that failing to apply in accordance with procedure would not be appealable.

117.3 An appeal against refusal to allow someone to voluntarily remove (as proposed) isn't currently in our legislation. We do not understand the rationale for including it, particularly as it has the potential to delay or disrupt final fitness to practise outcomes.

118 We would welcome further clarity in these areas.

Question 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? Please give a reason for your answer.

119 We agree. This fits with the overarching principle of removing prescriptive detail from the legislation.

Student registers and registration of non-practising professionals

Question 40: 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.

Question 41: 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.

120 We agree with DHSC's proposals on student and non-practising registers.

121 Registration is widely understood to apply to people whose ongoing capability for safe and effective practice is assured by meeting regulatory requirements (e.g. revalidation). Without this assurance we could not be confident that an individual would be immediately capable of safe and effective practice.

122 Student or non-practising registers risk reducing clarity for people using our register and undermining the role of the register as a record of people permitted to practise in

the UK. There are non-regulatory alternatives which could be used to access the details of those who could be called upon for registration.

Registration of internationally qualified healthcare professionals

Question 42: 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.

123 We've already taken a number of steps to streamline our overseas processes, within the limits of our current legislation. Removing further prescriptive detail from our legislation would help take us further.

124 We welcome the Government's commitment to updating our legislation to:

124.1 remove the requirement to consider whether a person's qualification is of a comparable standards to a UK qualification.

124.2 allow us to set out the detail of our international registration processes in rules.

125 This will provide us with the additional flexibility we need.

Fitness to practise

Three-stage fitness to practise process

Question 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:

• 1: initial assessment

• 2: case examiner stage

• 3: fitness to practise panel stage?

Please give a reason for your answer.

126 We agree with the proposal for a three-stage fitness to practise process. We support the greater focus on resolving concerns at an earlier stage meaning that more cases should be able to be resolved without the need for a fitness to practise panel hearing. This is in keeping with our strategic approach to fitness to practise .

Grounds for action

Question 44: Do you agree or disagree that:

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

127 We agree that regulators should have common grounds for action and agree that these should address situations whereby a registrant is either unable to practise safely (lack of competence) or that they have done something of such seriousness inside or outside of their professional life that regulatory action is required (misconduct).

- **Lack of competence and misconduct are the most appropriate terminology for these grounds for action?**

128 We agree with these two grounds for action but would prefer for ‘lack of competence’ to be changed to ‘being unable to provide safe care’.

129 ‘Being unable to provide safe care’ is a kinder way of identifying issues that may have underlying causes. Using this terminology may address concerns about including health under this ground. It also better focuses attention on risks and prevents interpretations being tied to case-law that may no longer be relevant.

- **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?**

130 We broadly support this approach, save to note that health matters may on occasion need to be investigated in respect of conduct issues as well.

131 For public protection reasons, it is crucial that regulators are able to fully investigate cases where a registrant is unable to practise safely or has done something which amounts to misconduct. We consider that such investigation includes requesting health or language assessments if these appear to be the cause behind the concerns raised about the registrant. A separate heading of impairment for health or language is not necessary to achieve this.

132 We also recognise the importance of safeguards within the fitness to practise process for registrants who have health concerns. Again, these safeguards do not require a separate heading of impairment in order to exist.

133 We think that the proposed approach avoids regulators being tied to showing that the concerns about someone’s practice 'amount to' one of a list of factors that don’t necessarily focus in on the risk caused by that person’s practice.

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

134 We agree that this proposal would provide sufficient scope for us to investigate concerns, provided that the necessary investigative powers (including requesting health and language assessments) are contained within the legislation.

Measures

Question 45: Do you agree or disagree that:

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

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

Please give a reason for your answers.

135 Giving case examiners a full suite of measures to reach final decisions is crucial to the delivery of the broader policy objective to reduce the general adversarial nature of fitness to practise.

136 We consider that automatic removal is a sensible and proportionate step in respect of cases where a serious criminal offence has been committed and there is no basis for the person continuing to be on the register.

137 We note that the consultation proposes a maximum period of 12 months for a conditions of practice order. For us the current maximum period is three years. Whilst we do have some experience of cases which have required the full three year term, we think that a reduced period of 12 months would be workable provided that we have the ability to extend the period through a review on the papers.

Question 46: Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.

138 We agree that regulators should have powers to review a measure at any point before it expires and should be able to set out in rules a clear process to follow when reviewing a measure. We also agree that this power should be available to both case examiners and fitness to practise panels.

Notifications

Question 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? Please give a reason for your answer.

139 We agree with the proposal on notification provisions, allowing regulators to set out the process for notifying registrants and the person who raised the concern in rules. This is consistent with our person-centred approach to fitness to practise.

140 It will be important that regulators have the flexibility to determine the timing and content of the notice to ensure that updates are meaningful and that their content takes account of data protection and other factors.

Initial assessment stage

Question 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? Please give a reason for your answer.

141 We agree that regulators should have a broad power to assess the registrant's fitness to practise at any stage. Investigations are an important part of achieving our overarching objective of protecting the public. They allow us to gather information from the people affected so we fully understand their concerns and act on the information provided and enable our decision makers to make the right decision at the earliest opportunity.

142 We also agree that regulators should have a clear discretion to decide whether there is a need to refer the case to another stage of the fitness to practise process. They

should also have the power to decide, if appropriate, that there is no further action to be taken and close the case.

143 Currently, for most health and care regulators, if a complaint qualifies as an 'allegation' about a professional's fitness to practise, the regulators are legally obligated to investigate.

144 Creating a clear discretion and associated powers (for example, to require information from a registrant or a third party) will simplify our regulatory approach. We'll be able to decide for ourselves when and why a fitness to practise investigation is needed, and when it isn't. This will make our process clearer and easier to understand. The focus will be on whether a full investigation is needed, rather than whether a referral qualifies as a fitness to practise 'allegation'.

145 We are assuming that the new wider duty to co-operate will mean that it is possible for us at an early stage to redirect referrals to third parties (eg employers) in situations where it is clear that they are better placed to investigate a concern than us. If it is not envisaged that the duty to co-operate will extend to this sort of situation then we would suggest that this option should be made clear on the face of the legislation.

146 We note that the power to require information from a registrant will exclude reflective material. This aligns with our approach and that of the other health and care regulators, as set out in our joint statement on the benefits of becoming a reflective practitioner.

Question 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? Please give a reason for your answer.

147 We agree with the proposal to remove the five-year rule. This is consistent with the proposed discretion for regulators to consider whether there is a proper basis for the onward referral of a fitness to practise concern.

148 We are not currently subject to a limitation period and can consider cases that are more than five years old. We do not see how having an arbitrary time limit for allegations is consistent with our overarching objective of public protection. However, we recognise that the age of any allegation will be a relevant factor when it comes to assessing whether there is any ongoing risk posed by a registrant and availability of evidence

Question 50: 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.

149 Firstly, it should be noted that powers to address non-compliance through suspension and drawing adverse inferences are not necessarily mutually exclusive. Indeed, we consider that both could exist together and provide regulators with a range of options in terms of how such situations are dealt with.

150 We currently manage non-compliance through the use of adverse inferences, in that panels are able to take account of whether a registrant has refused to comply with a request (eg for a health assessment or language test) in deciding whether their

fitness to practise is impaired. However, it is acknowledged that adverse inferences are of limited use in circumstances where we're unable to progress our investigation due to non-compliance. In those cases we often need co-operation to ensure a meaningful investigation. Stronger case management powers would help us to reduce non-compliance issues within our existing proceedings, meaning that separate non-compliance powers would only be required in limited circumstances.

151 We also think it is important to consider how these powers would fit with the proposed power to suspend someone for administrative reasons outlined in question 36, although it should be noted that we have outlined our concerns about that proposal.

Onward referral following initial assessment

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? Please give a reason for your answer.

152 We agree with the proposal that regulators should have the flexibility to:

152.1 consider interim measures at any time during or after initial assessment,

152.2 make rules about how they will deal with multiple concerns against a single registrant, and

152.3 make rules allowing amendment of grounds for action in relation to a case.

153 This flexibility enables us to take a holistic view of the registrant's fitness to practise and gives us the agility to react quickly to emerging concerns and risks.

Automatic removal in relation to specified criminal offences

Question 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? Please give a reason for your answer.

154 As noted above in question 45, we support automatic removal and anything that brings efficiency in those cases where a serious offence has been committed and there is no basis for the person continuing to be on the register.

155 We support having a right of appeal in automatic removal cases (as proposed in paragraph 350 of the consultation) where there is a factual change of position. However, it is important to ensure that regulators are able to take into account the steps that might be needed to bring a person's professional competence up-to-date in such circumstances.

Case examiner stage

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

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

156 We agree with these proposals. This area of the legislative drafting will be crucial to delivering the broader policy objective of reducing the adversarial nature of fitness to practise. Only those cases involving a dispute that the case examiners cannot resolve should need to go a fitness to practise panel.

157 Where the registrant accepts both the findings and the proposed measure, we consider that it's in the public interest that these cases should be concluded as early in the process as possible.

158 We agree that case examiners' proposed outcomes and measures should come into force where a registrant doesn't respond after a specified time. This will enable the regulator to conclude cases in a safe and efficient way when registrants aren't engaging with the process.

Interim measures

Question 54: Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.

159 We agree with the proposed powers for interim measures set out in the consultation.

159.1 We agree that there should be a power to consider interim measures at any stage from initial receipt of the concern until a final outcome is reached.

159.2 We agree that there should be a power to convene interim measures panels but that interim measures may also be considered by fitness to practise panels and case examiners. We also agree that the regulator should have the flexibility to set the process in rules.

159.3 We agree with the proposals that reviews can be conducted by a case examiner, interim measures panel or a fitness to practise panel.

159.4 The flexibility to enable case examiners to consider interim measures needs to be balanced with the need to act urgently where interim measures are deemed

necessary. Therefore we see a greater role for case examiners conducting reviews of existing interim measures, but more limited benefit in asking case examiners to propose an interim measure where one is necessary to protect the public immediately.

160 The consultation sets out two grounds for interim measures – to address a public protection risk and/or a registrant protection risk. It would be helpful to have more detail on these considerations.

Fitness to practise panel stage

Question 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? Please give a reason for your answer.

161 We agree that regulators should be able to determine the details of how this stage operates in rules. This is in keeping with the wider aim of regulators having more flexibility in terms of their processes.

162 We note that the consultation does not provide any detail around case management powers in the run-up to fitness to practise panel hearings. We consider that such powers need to be provided for on the face of the legislation to ensure fairness and that hearing time is effectively used.

Registrant appeals

Question 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? Please give a reason for your answer

163 We agree that registrants should have the right to challenge any decision that affects or restricts their practice. In principle, we believe that fitness to practise and interim measures panel decisions should be challenged through appeals (that is, externally) and case examiner decisions should be challenged through local processes (that is, internal review powers). We consider this to be a proportionate response that acknowledges the distinction between independent panels and employed case examiners.

Question 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? Please give a reason for your answer.

164 As noted above, we agree that there should be independent external oversight of our fitness to practise and interim measures panel decisions. We take a neutral position over whether this should be to the High Courts / Court of Sessions or potentially to another independent tribunal within Her Majesty's Court and Tribunal Service and think the relative merits of these options could be further explored.

Restoration to the register

Question 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? Please give a reason for your answer.

165 We agree that regulators should have the flexibility to set out our restoration processes in rules. This is consistent with the overarching enabling principles of regulatory reform.

Question 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? Please give a reason for your answer.

166 We agree with the proposal and do not foresee an objection to this additional right of appeal once initial/internal appeal is exhausted.

Question 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? Please give a reason for your answer.

167 This will depend on who will decide the initial/internal appeal. If this is decided by the panel, then the onward appeal should go to the High Court or the Court of Session.

Registrar review powers

Question 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? Please provide any reasons for your answer.

168 We agree that there needs to be effective safeguards in the future fitness to practise framework.

169 We think that the registrar review power would provide sufficient oversight of case examiner decisions.

170 The proposed model also involves reviewing initial assessment and case examiner decisions, including decisions to take no further action. This process would allow people affected by the decisions to challenge them. The review would be carried out by specialist trained staff, applying public law principles and published guidance. Staff will be able to refer decisions to a panel as a possible outcome, and the decision will also be subject to judicial review.

171 Regulators (including us) have a long track record of operating these review processes in respect of case examiner decisions. The decisions are taken by staff who are expected to act independently and in line with our fundamental duty to protect the public.

172 We've not received any claims in judicial review about these decisions since our case examiners were introduced in 2015. There are clear risks inherent in parallel systems of oversight, accountability and appeal for individual fitness to practise decisions. Confusion over roles and responsibilities could lead to duplication, or to an unintended regulatory gap.

173 When it comes to the legal drafting we suggest that the grounds for a review should be more definitive. We consider that the registrar should only change a decision when they consider that:

173.1 the decision *is not* sufficient to protect the public (rather than *may not be* sufficient to protect the public), or

173.2 the review *is* necessary for the prevention of injustice to the registrant (rather than *may be* necessary).

174 Such an approach would enable a regulator to consider the merits of any referral and quickly provide a reasoned decision.

Question 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 as detailed above. Do you agree or disagree with this proposed mechanism? Please provide any reasons for your answer.

175 We agree with the proposed mechanism.

176 In our response to question 61 above we have set out why we consider the registrar review process to be an effective and proportionate safeguard to address concerns raised about decisions which occur prior to the panel stage and thereby protect the public. We do not think that the PSA's powers should be extended to earlier in the process for the reasons set out below.

177 Firstly, we think that this would fundamentally change the nature of an accepted outcome process by seeking resolution of a subset of cases through a lengthy appeal process, settled in the Courts.

178 Secondly, we consider that a separate right of appeal for the PSA against final case examiner decisions that are accepted by the professional would be disproportionate, in view of the:

178.1 very limited public safety risks, since most of these cases would end with the professional's right to practise being restricted in some way

178.2 extremely low rate of panel decisions the PSA has appealed to court historically, and

178.3 complexity, delay and lack of finality that such appeals would involve.

179 Finally, we note that the PSA is funded by fees paid by healthcare regulators. As the largest regulator, we pay around £2 million a year to the PSA. We are concerned that extending PSA's oversight into case examiner decisions could increase the PSA's costs, which are ultimately borne by registrants through the registration fees they pay to their regulator. Given that we do not see any added benefit from extending the PSA's powers in this way, such an increase in costs and financial burden on registrants would not be warranted.

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

180 We do not have any further comments save to reinforce our view that the proposed model will significantly enhance the ability of regulators to manage fitness to practise concerns in a proportionate and timely way, helping to strengthen a fair and safe culture in health and social care that protects the public more effectively.

Regulation of PAs and AAs

Question 64: Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give a reason for your answer.

Question 65: 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.

Question 66: Do you agree or disagree with the transitional arrangements for PAs and AAs set out above? Please give a reason for your answer.

Question 67: 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.

181 We do not have any comments in relation to these questions.

Impact assessment and equalities impact assessment

Question 68: 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.

182 We agree with the benefits identified in the consultation.

Question 69: 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.

183 We agree with the costs identified in the consultation.

Question 70: 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?

• Yes – positively

• Yes - negatively

• No

• Don’t know Please provide further information to support your answer

184 The principles at the heart of regulatory reform provide regulators with greater autonomy over their operating processes. This is balanced with greater accountability and transparency.

185 We believe that providing us with greater flexibility will have a positive impact on people with protected characteristics. It will allow us to adapt to the changing health and care landscape, making us more responsive to the needs of people using health and social care services, the public and our professionals.

186 The way in which we implement this new flexibility will need to include consideration of any impacts on people with protected characteristics. We'll be conducting full Equality Impact Assessments as we begin to work on the development of our legislation, including our rules.

187 In October 2020 we published our *Ambitious for change* report, part of our Together in Practice campaign. This work seeks to assess the impact of our regulatory processes on different groups of nurses, midwives and nursing associates. The report has highlighted a number of disparities including higher referrals of particular groups of nurses and midwives, and different outcomes for different groups. We need to do more work to understand why this is happening, but the flexibility we'll have due to regulatory reform will provide us with more ways to respond.

188 The new governance duties of co-operation, transparency and proportionality have the potential to contribute positively to the experience of people with protected characteristics. We also hope that greater data handling and sharing powers will facilitate a better understanding of health and care professionals and their needs. We look forward to exploring how these proposals will work in practice.

189 We've highlighted a number of specific impacts in relation the publication of qualifications in our response to question 25.

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