Academy of Medical Royal Colleges

Regulating healthcare professionals - protecting the public

Response from the Academy of Medical Royal Colleges

June / 2021

Introduction

The Academy of Medical Royal Colleges is the umbrella organisation for all the medical royal colleges and faculties in the UK. Individual Colleges and Faculties may well choose to make their own responses to the consultation, but this response incorporates comments from our member organisations and has been endorsed by all our members. It should therefore be seen as representing the views of all medical royal colleges and faculties.

Consultation questions

Governance

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.*

We agree. It is clearly in the public interest that regulators co-operate with each other and other health bodies.

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.*

We agree. It is clearly in the public interest that regulators act transparently.

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*

We agree. It is clearly in the public interest that regulators assess the impact of changes before they are introduced.

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.*

We support the move towards unitary Boards which are reflective of modern good governance.

We agree that current and former registrants should not form a majority of the Board membership. Whilst the split between "professional" and "lay" members of the Board may not be necessary it remains extremely important that Boards of Regulators do have input from individuals with direct experience as registrants.

It is hard to conceive how a regulatory body board could function effectively with no registrant experience input.

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*

We agree. That is currently the position for the GMC.

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.*

We agree. That is currently the position for the GMC. It is important for the organisation's ability to plan and provide stability. It is important this is a transparent process.

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.*

We agree. Legislation too prescriptive and holds back reform at a time when agility vital.

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.*

We agree. We do not see a problem with the regulators seeking to make a return on services undertaken outside the geographical areas where they normally operate.

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.*

We agree but the regulator but must retain ultimate responsibility and there must be clear accountability and audit trails.

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.*

We agree in principle. The GMC has previously agreed that information from the personal reflections in trainee doctors' portfolios would not be accessed and used in FTP cases. We would expect that to continue.

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.*

We agree. This is important in terms of public accountability.

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.*

We have no view on this question.

Education and Training

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.*

We agree. We support the current the position for the GMC.

It is important that there is a clear understanding and delineation of the roles of the various players involved in education and training.

In medicine, the content of specialist training is the responsibility of Colleges and Faculties who have the detailed specialty expertise. Whilst it is the role of the GMC to set standards and approve curricula for specialist training we do not believe that the regulator should produce the content of such training.

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.*

We agree. It is sensible that regulators have options beyond simply approval, or not, of education providers.

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

We agree. That is currently the position for the GMC and having a range of options is preferable to just one sanction.

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.*

We agree. It is important there is a clear and transparent process understood by education providers.

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.*

We agree. It is important to have the right of appeal. Retention of the right of appeal where approval is refused or withdrawn on the grounds that conditions are not met is important.

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

Yes agreed We are not seeking to remove powers from 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? Please provide a reason for your answer.*

We recognise that the GMC currently has powers to set and administer exams and assessments in relation to joining the register through the PLAB and potentially the MLA.

It may be appropriate in terms of future annotations to the register e.g. credentials.

However we repeat the point in response to Q13 that we believe it is the responsibility of Colleges and Faculties to set and administer exams for specialist training.

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.*

We agree. See 19 above. This is the responsibility of Colleges and Faculties

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.*

We agree. It makes sense to have a range of assessment options available.

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.*

The Academy fully supports the proposal for the merger of the Specialist and GP registers into a single register. We have a formal policy position in support of this.

In principle we do not see a difficulty with the proposal to provide appropriate annotations to the register in place of current arrangements.

We note (para. 135) the statement that the change relating to CCTs will not entail any immediate change to the way that the GMC regulates education and training.

If the GMC plans to utilise the flexibility that makes it no longer necessary to award CCTs before registrants have qualifications annotated on the register it is important that there is open explanation and discussion with the medical profession. Whilst such a change might be more symbolic than substantial it is important it is understood and accepted by the medical profession.

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.*

We agree. That is currently the position for the GMC

Registration

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.*

We agree. It is simpler and creates greater transparency

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.*

We agree. This is sensible and reasonable.

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.*

We agree. Without the power to collect data regulators will not be able to operate.

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

We support the proposal in theory. There have been previous discussions with the GMC on publishing additional data about registrants. Paragraph 158 states that any publication must be "consistent with a regulator's statutory objectives". That seems fine but it is unclear how that will defined or decided.

If a regulator wishes to publish specific additional data about registrant there should be consultation with registrants and other stakeholders on any proposals.

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.*

We agree. That is currently the position for the GMC.

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.*

We agree. It was useful during the pandemic.

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?*

We agree. It is sensible.

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.*

We agree these should be intent offenses. It is sensible.

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.*

We agree. It is sensible.

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.*

We agree. It is sensible.

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.*

Applicants for registration should only be turned down on the basis of not meeting the required criteria.

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.*

We agree. It is sensible.

We believe there is merit in having the option for temporary registration. One example would be for doctors on the Medical Training Initiative (MTI) scheme. This is a learn and return scheme where applicants are entitled to be in the UK for a maximum of two years. Granting permanent registration provides an opportunity for abuse of the scheme or doctors to seek to stay on beyond two years against the spirit of the scheme.

This could be managed through an annotation to the register.

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.*

We agree. It is sensible.

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.*

We agree. It is sensible.

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

We would consider that decisions about registration should be appealable and agree with the appealable decisions and reasons described. We have no suggestions as to additional appealable decisions.

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.*

The appeals procedures should be set out in rules so it is straight forward to amend them

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.*

In medicine, students are not subject to GMC regulation and so presumably could not be on the GMC register. There might well be practical difficulties in establishing and maintaining a student register.

However we do not have any objection in principle to regulators maintaining a student register. Being able to contact at least final year medical students may be of value – as during the pandemic.

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.*

Having a record of non-practising registrants is very valuable. During the pandemic it was extremely useful for the GMC to be able to contact non-practising doctors.

Non-practising status can be shown via an annotation to the register and does not require a separate register.

We therefore believe regulators should have this power. However this should not be subject to more than nominal fees if at all and, unlike the GDC register, should not require any need to maintain CPD or skills.

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.*

We agree. It is sensible.

Fitness to practice

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.*

We agree. We presume that current arrangements for the GMC with separation of responsibilities between the GMC and the Medical Practitioners Tribunal would continue.

44. *Do you agree or disagree that:*

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

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

— *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?*

— *This proposal provides sufficient scope for regulators to investigate concerns about registrants*

and ensure public protection?

— *Please give a reason for your answers.*

We believe that the grounds relating to health should be retained. Whilst we recognise that inability to perform because of ill health could be classified as lack of competence, it has unfortunate and unnecessarily pejorative connotations.

For a registrant unfortunate enough not to able to continue to practise through ill-health it seems unduly harsh for them to be classified as lacking in competence. The connotation of "not being competent" when in fact you are "ill" is incredibly damaging.

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To maintain a degree of dignity for the registrant at an already difficult time, we believe the grounds for action relating to ill-health should be maintained

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.

We agree. It is sensible.

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

We agree. It is sensible.

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.*

We agree. It is important to keep both the person who raised the concern and the registrant informed throughout the process.

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.*

We agree. It is sensible and an important part of the flexibilities being offered to regulators.

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.*

There are varying views on this issue. As it stands the 5-year rule is somewhat arbitrary. We do, on balance agree with the statement in the consultation that "While the time since a concern arose is a relevant consideration in assessing fitness to practise, it should not be a limitation on whether an incident can be considered as the basis for a fitness to practise concern".

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"? Please give a reason for your answer.*

This is a technical issue on which we do not have a view although we note the GMC already has this power.

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.*

We agree. It is sensible.

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.*

We agree. It is sensible.

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.

We agree these proposals are sensible.

We are certainly supportive of the concept of accepted outcomes which should improve the efficiency of the FTP process and, in many instances, make for a better experience for the registrants.

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

We agree. It is sensible.

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.*

We agree. It is sensible.

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.*

We agree. It is essential that registrants have a right of appeal.

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.*

We are not qualified to make an assessment on this issue. The right of appeal is essential. We would not want to see a whole new independent appeals mechanism established so the High Court or equivalent would probably seem right.

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.*

We agree. It is sensible.

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.*

We agree. It is sensible.

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.*

See answer to Q57

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.*

We agree.

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.*

We are aware of the differing views on this issue between regulators and the PSA. We understand both side of the argument.

However, on balance we support the proposal that the PSA should not have the power to refer decisions made by case examiners to court. This is for two reasons

— It is not in line with the overall sense of direction of the reforms in giving greater autonomy to regulators.

— In the case of an Agreed Outcome where both parties are satisfied with the decision reached we are uncomfortable with the concept of the possibility of appeal by a third party. It could potentially undermine confidence in the Agree Outcome process from the perspective of the registrant and the regulator. Would registrants be less likely to go for an Agreed Outcome if they felt that the decision could be appealed by an external body?

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

No.

Regulation of PAs and AAs

64. *Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give any reasons for your answers.*

The Academy has strongly supported the regulation of Medical Associate Professionals (MAPS) by the GMC and we agree with the proposed approach to the regulations of PAs and AAs.

However we continue to believe that Surgical Care Practitioners and Advanced Clinical Practitioners should also be regulated.

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 any reasons for your answer.*

We agree the GMC should have the power to approve high level curricula for PAs and AAs. However we are very concerned at the reference in para 384 about the GMC powers to "set and administer exams". As with the training programmes for doctors we believe this responsibility righty sits with the relevant Colleges not the GMC. It is important that this distinction is followed equally for PA and AA curricula.

Paragraph 377 setting out the proposed powers of the GMC in relations to PAs and AA refers to

— setting standards of practice, conduct, education and training, and continuing competence

— approving and quality assuring education and training programme.

Whilst we would expect the GMC to have those powers it does not refer to setting or administering exams.

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

These seem sensible but the relevant Colleges may have more detailed comments.

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.*

Yes we think this should be required.

However there needs to be detailed discussion with the Colleges concerned and PAs and AAs themselves as to the most appropriate and proportionate arrangements. As the consultation recognises PAs on the FPA's voluntary register are required to re-certify every six years by sitting the knowledge element of the national exam. It will need to be agreed whether this is the best way to demonstrate continuing fitness to practise or there should be alternative arrangements.

General

Questions 68-71

We do not have a view on these questions.