

Response to General Optical Council consultation on process for updating gender on the register

March 2023

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to comment on the General Optical Council (GOC) consultation on a policy for updating gender on the register.
- 2.2 Although we recognise that this consultation isn't about the principle of whether to publish information on gender, we nonetheless believe it would have been helpful for the GOC to provide some rationale for continuing to provide this information on the public facing register. Amongst the regulators we oversee, the GOC is in the minority with only the General Osteopathic Council (GOsC), General Chiropractic Council (GCC) and General Medical Council (GMC) also providing this information on the public register and the GMC planning to consult on removing this information from the register.
- 2.3 In *Right touch reform* we reiterate our policy position that: 'Regulators should continue in the trajectory of keeping a pared down approach to registers. We believe only details necessary for the purposes of public protection should be on the register. If a register user wishes to find information which is unrelated to public protection, they should use other resources (such as a professional's

practice's website or a directory).¹ This position is informed by previous policy work and consumer research we commissioned looking at the information that members of the public think should be available on the register.

- 2.4 In addition, one of the pieces of evidence the Authority might look for under Standard 10 of the Standards of Good Regulation is: 'Information on the rationale for including the information displayed on the register, including legal requirements where applicable.'
- 2.5 In this context, we think it would have been helpful for the GOC to clarify why they believe it is in the public interest to continue to publish this information. It would also have been useful to see further analysis of how they believe this information is used by the public. The GMC in its recent paper to its Council ahead of a public consultation later in the year highlighted that some members of the public use gender as a proxy for birth sex and therefore may need to add caveats to this information if they continue to display it to avoid misleading the public.²
- 2.6 With regard to the process outlined, we would have liked to have seen more in-depth analysis of the range of possible impacts of the proposed policy and greater clarity on the process that has been developed. We outline some specific comments in further detail in our response to the consultation questions below.

3. Detailed comments

Question 1: To what extent do you agree with the content of the policy?

- 3.1 c) Neither agree nor disagree

If you answered 'disagree' or 'strongly disagree', please explain your reasons.

- 3.2 We would like the GOC to have clarified what they believe the ongoing purpose is of including gender on the public register and engaged with some of the potential complexities from a public interest and public protection perspective. Our policy position is that only information necessary for public protection should be on the register and under Standard 10 of the Standards of Good Regulation we can ask regulators to provide their rationale for the information they include.
- 3.3 We note that the GMC are proposing to consult later this year on removing gender from the register and have highlighted both the challenges of verifying such data and the risk of such information being used as a proxy for birth sex by members of the public.

¹ Professional Standards Authority 2017, *Right-touch reform - a new framework for assurance of professions*. Available at: <https://www.professionalstandards.org.uk/publications/detail/right-touch-reform-a-new-framework-for-assurance-of-professions>

² General Medical Council, Council meeting 1 March 2023 – Agenda item M5: Sex, gender and gender identity data, p.39. Available at: <https://www.gmc-uk.org/-/media/documents/96903689-council-meeting-1-march-2023--agenda-and-papers.pdf>

Question 2: Is there anything unclear or missing in the policy?

3.4 a) Yes

If you answered 'yes', please give details.

3.5 We have the following points to raise on the content of the policy itself:

- The policy states that the GOC will 'agree such applications [to change gender recorded on the register] unless there is a public protection reason for not doing so' but gives no explanation of what these public protection reasons might be, how applicants or members of the public would find out about them, and who would make the decision. It would be helpful for the policy to be clearer on this.
- It is unclear from the document if the change affects only the GOC's public register, or their internal data. If the GOC does not hold data on sex/gender/gender reassignments, then this change could compromise its ability to analyse data about different groups and therefore have a clear understanding of its registrants.
- Since confidentiality is clearly important in the way that applications are handled, we query whether the form could be submitted directly to a registration manager (the grade of staff member who will process these applications), instead of via the shared registration team email address (para 5.4). On a similar note, the appeals process referenced seems to be the standard corporate complaints process which may not provide an appropriate degree of confidentiality for such appeals.
- Although Gender Recognition Certificates are mentioned in the consultation document it does not appear that registrants will be required to submit any evidence of their change of gender. The wording in the application form on page 9 of the policy isn't clear on this point when discussing what evidence needs to be provided. If this is the GOC's position, then it would be helpful for this to be made clearer in the policy and further detail provided on how they intend to be clear with members of the public on the status of this information (i.e., that it is unverified) as opposed to other information on the register.
- On the form on page 9 the proposal for registrants to validate their current identity using various forms of official ID may need to be reviewed. Currently UK law only recognises male and female on official documents, and as such those already with a non-binary identity will be on the register as male or female.
- The GOC may wish to review the list of options for applicants to select their current and future gender from on page 10 of the policy within the application form. The inclusion of intersex as an option for gender identity may also need to be reviewed as to our knowledge people who are born intersex (as their biological sex) may choose to identify as non-binary, male or female as their gender. It may be beneficial to include a free text box within the form.

- On page 11 the policy doesn't explain what is meant by third party authorisation, or in what circumstances it might be required.
- As the policy states that any FtP history will be stored against the old record it may be helpful for the application form also to highlight this information to applicants.

Question 3: Are there any aspects of the policy that could discriminate against stakeholders with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, gender identity, gender expression, pregnancy or maternity, caring responsibilities or any other characteristics.)

3.6 a) Yes

If you answered 'yes', please give details.

- 3.7 In our view there is the potential for the policy to discriminate against women and/or those with specific religious beliefs who may wish to request/choose same sex care.
- 3.8 As per our previous comments, it may be helpful for the GOC to consider how the information on gender on the register might be used by members of the public, potentially as a proxy for birth sex.
- 3.9 We recognise that optical services do not have the same potential for intimate care and examinations as other professions might, and there is no established legal right to same sex care. However, would suggest that this aspect warrants further consideration as a potential unintended consequence of the policy.

Question 4: Are there any aspects of the policy that could have a positive impact on stakeholders with specific characteristics? (Please consider age, sex, race, religion or belief, disability, sexual orientation, gender reassignment, gender identity, gender expression, pregnancy or maternity, caring responsibilities or any other characteristics.)

3.10 a) Yes

If you answered 'yes', please give details.

- 3.11 We anticipate that the policy should have a positive impact on stakeholders who have or are undergoing gender reassignment or who have a different gender identity or gender expression from their birth sex.

Question 5: Are there any other impacts (including financial) of the policy that you would like to tell us about?

3.12 a) Yes

If you answered 'yes', please give details.

- 3.13 The impact assessment states that 'this topic has had little focus in the media in the last 12 months'. Whilst in the most literal interpretation the issue of gender on healthcare professional registers is likely to have had little media attention it seems inaccurate to suggest that issues associated with sex and

gender haven't been extremely high profile in recent months. We suggest this element of the impact assessment may need reviewing.

- 3.14 The references to external communications plans suggest that the main focus of this is likely to be on promoting the positive aspects of the process change from a diversity and inclusion perspective. Whilst this may be appropriate, given the queries we have raised about the potential use of information about gender by the public and possible impacts on other groups with protected characteristics we suggest that further thought be given to wider communications that may be needed around this policy change.
- 3.15 We found the impact assessment to be relatively limited in that it is primarily focussed on the positive impacts of the policy for transgender registrants. We have highlighted some possible impacts on other groups with protected characteristics and potential use of information on gender by members of the public as a proxy for birth sex.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London SW1W 9SP

Email: policy@professionalstandards.org.uk
Website: www.professionalstandards.org.uk
Telephone: 020 7389 8030