professional standards authority
for Health and Social Care

Professional Standards Authority response to consultation on reforming the General Medical Council legislative framework

1. Detailed comments

About you

1. In what capacity are you responding to this survey? [1]

- An individual sharing my personal views and experiences
- An individual sharing my professional views
- On behalf of an organisation

2. What is your name? (Optional)

1.1. Daisy Blench

Questions for organisations

8. What type of organisation are you responding on behalf of?

1.2. Academic institution

1.3. Business

1.4. Not for profit

1.5. Public sector body

1.6. Other, please specify – Oversight body

9. Where does your organisation operate or provide services? Select all that apply.

1.7. England

1.8. Wales

1.9. Scotland

1.10. Northern Ireland

[1] Question numbering added for clarity within published response. Also added for clarity are text boxes. To note text in these text boxes is from the consultation and does **not** form part of the PSA's response.

1.11. The whole of the UK

1.12. Outside the UK

10. What is the name of your organisation?

1.13. The Professional Standards Authority for Health and Social Care

Commencement

We need to ensure that the commencement of the General Medical Council Order 2026 is managed in a safe and effective way that mitigates the risks of a regulatory gap during this transition.

A 'coming into force date' mechanism has been included for parts 2 to 10 of the draft order. However, we have not specified a date for when parts 2 to 10 come into force as per article 2(2)(b) of the draft order. Article 2(2)(b) relates to the coming into force of the majority of the provisions within the draft order.

Although a coming into force date for the General Medical Council Order 2026 would provide clarity, there would be advantages in allowing flexibility regarding when provisions are activated, in particular for areas involving transition of cases from the old framework to the new. This could be achieved by specifying dates in tertiary legislation - for example, to be made through a Privy Council Order.

11. Do you agree or disagree that a specific 'coming into force' date should be included in article 2(2)(b) of the final General Medical Council Order 2026? (optional)

1.14. Agree

1.15. Neither agree nor disagree

1.16. Disagree

1.17. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.18. We think it is important that the Order commences in a timely way, which could be supported by a 'coming into force' mechanism, however, we recognise that the transition from the regulatory framework in the Medical Act to the new framework outlined in the GMC Order is likely to be a complex and lengthy process.

1.19. It therefore seems sensible to allow for flexibility in respect of when certain provisions are activated. Doing so should mean that change can be managed in a safe way. Activating specific provisions through tertiary legislation would seem to be an appropriate approach. We highlight a specific request below regarding the proposed power for the PSA to require information.

12. If you have any further comments regarding the commencement of the General Medical Council Order 2026 and the transition to GMC's new legislation, please set them out here. Do not include any personal information in your response. (Optional, maximum 500 words)

1.20. The PSA already has the power to request a revision of case examiner fitness to

practise decisions about Anaesthesia Associates and Physician Associates under the Anaesthesia Associate and Physician Associate Order (AAPAO). However, we do not currently have any powers to obtain the information that we would need to exercise this request which could make it more difficult for us to access the case files required.

1.21. It would therefore greatly assist us if the proposed power for the PSA to obtain information from the GMC could come into force as early as possible within any schedule of commencement. This would allow us to access the information we need to exercise our existing power to review decisions about Anaesthesia Associates and Physician Associates effectively in the immediate term, and support a smooth transition to changes concerning our wider oversight of the GMC going forward.

Governance

Separate to annual report requirements relating to equality and diversity, the draft order contains the following for GMC relating to equality, diversity and inclusion: a duty to ensure that, in the exercise of its functions, it applies good practice in relation to equality and diversity where it considers that an improvement may be required, a duty to take such steps as it considers appropriate to make that improvement a duty to have regard to any current or future principles set by PSA regarding equality, diversity and inclusion.

13. Do you agree or disagree with the inclusion of these requirements in the order? (Optional)

1.22. Agree

1.23. Neither agree nor disagree

1.24. Disagree

1.25. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.26. We support the proposals to ensure the GMC applies good practice in relation to equality, diversity and inclusion (EDI) including the proposal for regulators to have regard to any current or future principles of EDI that the PSA may set. We understand the reference to 'principles' at 15(3) of the draft Order to be a reference to our Standards for the regulators and Accredited Registers we oversee, which we have recently updated and which covers EDI within Standard 3.[2]

1.27. Our EDI standards have been a driver of improvements across the regulators. In 2023, we published an enhanced evidence framework for Standard 3[3] which includes several new indicators designed to encourage action in key areas, including that senior regulatory leadership, councils, committees, decision makers and fitness to practise panellists should reflect the diversity of both professionals and the public.

[2] **Standards for Regulators and Accredited Registers (2026) | PSA**
[3] **Professional Standards Authority Standard 3 evidence matrix**

1.28. There have also been improvements in how regulators collect and use data to address EDI issues. Several regulators have also taken action to strengthen their processes to ensure that they address racist and other discriminatory behaviour. In 2025 we published a good practice guide showcasing the work undertaken by regulators to embed EDI across their regulatory functions.[4]

1.29. We would however welcome clarity on the rationale for only referencing the PSA's EDI principles within the draft Order as an area for the GMC to have regard to, given that our Standards cover all aspects of the regulators' functions and that we require regulators to meet the Standards rather than 'have regard' to them. We suggest considering whether to reference our wider (non-statutory) Standards in the legislation.

1.30. This requirement is framed as a substantive duty, unlike the regulatory principle at article 7 which is framed as a principle which the GMC should have regard to in the carrying out of its functions. It would be helpful to have clarity on the rationale for this and also what is meant by 'good practice' within 15(1).

1.31. Given that these provisions also leave it to the GMC to determine whether improvement regarding the application of good practice is required and to take any steps accordingly to bring about that improvement, as the oversight body it will be helpful to understand what is envisaged by this and how it might be assessed externally. It will be important for any assessment of whether good practice has been applied to be supported by robust evidence.

Equality Impact Assessment

1.32. We consider that a formal equality impact assessment should have been carried out on the draft order given the potential for significant impacts on different groups, particularly of the changes to the fitness to practise process. We also note that the consultation does not include any questions about equalities impacts. We recognise that most of the impacts will relate to the operational implementation of the new regulatory framework through the GMC's rules and would expect to see robust consideration of how these can be addressed at this later stage.

1.33. However, there are specific areas where decisions made on what is included in the legislation may have direct equalities impacts. Some of these could be positive such as retaining a health ground for impairment. However, more widely we are aware of evidence demonstrating disproportionate impacts of the existing fitness to practise process, for example on BAME registrants.[5] Any changes to this process are also likely to have an impact. We would encourage careful consideration of any impacts identified through the consultation more widely to strengthen the final Order.

[4] **Lessons from meeting our EDI Standard for regulators - good practice guide | PSA**

[5] The reference to disproportionate impacts of the fitness to practise process refers to the evidence that certain groups of professionals are referred into the FtP process at higher rates than would be expected relative to their representation in the workforce. This has been examined by several regulators including research commissioned by the GMC: **Fair to refer? - GMC**

Parts 2 to 4 of the draft order relate to GMC's governance and operating functions. This includes provisions relating to:

- *delegation of exercise of functions*
- *disclosure of information*
- *guidance*
- *annual reports*
- *fee setting and other financial requirements*
- *default powers of the Privy Council*

The provisions in these sections aim to improve the efficiency of GMC's administrative functions, reducing bureaucracy.

14. Do you agree or disagree that the provisions set out in parts 2 to 4 of the draft order enable GMC to carry out its governance and operating framework functions appropriately? (Optional)

1.34. Agree

1.35. Neither agree nor disagree

1.36. Disagree

1.37. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.38. The provisions set out at parts 2-4 of the draft order appear to enable the GMC to carry out the relevant functions appropriately. The enhanced reporting requirements and duties regarding transparency, cooperation and data sharing and public engagement are an important aspect of maintaining accountability, alongside the additional flexibility that will be conferred on the GMC through the decision to remove Privy Council oversight of the rulemaking process.

Schedule 1 of the draft order includes provisions to enable GMC and MTS to effectively operate. It outlines how the GMC board may operate under the order, how committees may function and how adjudicatory bodies such as appeal panels may operate. It also puts a duty on GMC to appoint a registrar and case examiner or case examiners to exercise certain functions on behalf of GMC. In addition, the Privy Council must, by order, make further provision as to the constitution of the regulator.

15. Do you agree or disagree that the powers and duties in schedule 1 on constitution of the regulator are sufficient to enable GMC and MTS to carry out their functions appropriately and proportionately? (Optional)

1.39. Agree

1.40. Neither agree nor disagree

1.41. Disagree

1.42. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.43. We remain concerned about the absence in the legislation of basic safeguards to ensure fairness of operation for the internal appeal panel (covered by

Schedule 1, Article 19 and also Article 67). This route would be the first port of call for registrants to appeal a significant number of registration and fitness to practise decisions, before going to any external court. The order lacks any legislative requirements covering:

- Panel composition (such as lay/professional balance)
- Independence of panel members from earlier decision-making
- Transparency around permission-to-appeal tests and grounds of appeal.

1.44. Although the legislation specifies that most of these provisions should be outlined in the regulators' rules, this risks inconsistency of approach across regulators and potentially undermines confidence in the internal appeal mechanism envisaged by the reforms. We would generally expect to see such key minimum safeguards in primary legislation.

1.45. As it is a new appeal mechanism, it is important that there is no perception of unfairness, particularly given that the regulator will be responsible for making decisions on whether to grant an appeal, and the appeal panel will be comprised of decision-makers employed by the regulator. It is also particularly important to note that decisions made through the GMC's internal appeals process will be outside of the PSA's oversight and will not be subject to any other public protection appeal or revision mechanism.

1.46. We recognise the overall intention to devolve responsibility for detailed operations to regulator rules but remain of the view that it would be preferable for such important provisions to be included in the legislation.

1.47. We have similar comments regarding the provisions relating to fitness to practise panels which will be convened by the Medical Tribunal Service (MTS) as outlined in Schedule 1. The MTS will be a statutory committee of the GMC (as the Medical Practitioners Tribunal Service is now) which introduces a level of operational separation, and there is a requirement that the MTS itself must have a balance of lay and professional members, which we support.

1.48. However, we still think it would be better for the legislation to include further safeguards specifically in relation to the panels which the MTS will convene, including that there should be a balance of lay and professional members. We also think it is important to have different decision-makers at different stages of the process. While our oversight can encourage this, including requirements such as this within the legislation would promote confidence and consistency.

1.49. As decisions made through the GMC's internal appeal route could effectively constitute final decisions, it may be appropriate to consider whether the absence of any means to change a decision made via this route, either through appeal or the regulator revision power, constitutes a public protection loophole. This could act against the conclusions of the Lord Mann Review that there should be: 'appropriate timely and proportionate appeal routes at every stage of the process'.[6]

[6] **Lord Mann review of antisemitism and other forms of racism in the NHS and healthcare regulatory system - GOV.UK**

The draft order proposes that the Privy Council's default powers continue to apply (they are currently contained in section 50 of the Medical Act 1983).

These are powers which the Privy Council may use if it feels that GMC has failed to carry out its regulatory functions. In relation to GMC's rule-making powers in the draft order, the Privy Council will no longer be required to approve new rules or rule changes made by GMC under the draft order.

However, should any future rules be deemed to require Privy Council approval, such approval will be put in place.

16. Do you agree or disagree that the powers and duties in the draft order in relation to the Privy Council are sufficient to support GMC to carry out its functions appropriately? (Optional)

1.50. Agree

1.51. Neither agree nor disagree

1.52. Disagree

1.53. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.54. It is important that there continues to be a mechanism for taking action if a regulator is failing. Given this role already sits with the Privy Council under the Medical Act it seems appropriate to keep this arrangement in place.

1.55. Although not specified in the legislation, we would envisage that the Privy Council would wish to have regard to the PSA's assessments of regulator performance and confer with the PSA when considering whether to exercise its default powers.

PSA evidence gathering

The draft order, as per a recommendation of the Mann Review, provides for a consequential amendment to be made to the National Health Service Reform and Health Care Professions Act 2002 to allow PSA to have a power to compel information from GMC.

17. Do you agree or disagree that the draft order provides PSA with sufficient and proportionate evidence-gathering powers? (Optional)

1.56. Agree

1.57. Neither agree nor disagree

1.58. Disagree

1.59. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.60. The PSA has previously called for a power to require information from regulators to avoid gaps or delays in access to information and to ensure effective public protection oversight. We welcome the proposal that we receive this power

within the draft order (outlined within the list of consequential amendments to our legislation at Schedule 5, Article 36) and the consultation.

1.61. This position is informed by our past experience of oversight where regulators have sometimes raised concerns about their ability to share information with the PSA under data protection legislation. This is similar to the power already held by another oversight body, the Legal Services Board under Section 55 of the Legal Services Act 2007 which gives the LSB the power to require information from approved legal regulators.[7]

1.62. As mentioned in relation to Questions 11 and 12, we consider this power is important in underpinning our ability to request information about cases involving decisions made by case examiners, in relation to AA and PAs in the immediate term, and doctors once the order commences.

1.63. Our position takes into account the likely future direction of the reforms in which we envisage regulators will have much greater autonomy in how they exercise their functions. Greater flexibility by regulators to determine rules makes it even more important to have effective and robust internal governance arrangements. Our new governance standard will therefore support the effective implementation of regulatory reform.[8] We think this power will support our ability to gather the types of information necessary to undertake these assessments by allowing for a clearer basis in the legislation to request it. Since the PSA may need to access new and different kinds of information in the future, we believe this power would be an important future-proofing mechanism.

1.64. The powers as outlined within the draft order will therefore give the PSA the power to obtain information from the GMC for the purpose of discharging our oversight functions and should also provide reassurance to the regulator about sharing what they may consider to be sensitive information. The power is broadly equivalent to the powers already in place for regulators (and due to be replicated for the GMC in section 9 of the draft Order) to require information for the exercise of their regulatory functions.

1.65. If this power for the PSA is introduced, we look forward to working with regulators and wider stakeholders on how we will use it proportionately and effectively to support our oversight. We note that it will also be important for regulators to continue to work with the PSA in the spirit of transparency and proactive disclosure, since we will only be able to require information we are already aware of.

Education and training

The draft order sets out that GMC can approve overseas undergraduate, foundation and postgraduate education and training programmes.

[7] **Legal Services Act 2007**
[8] **Standards for Regulators and Accredited Registers (2026) | PSA**

18. Do you agree or disagree that GMC should be able to approve overseas undergraduate, foundation and postgraduate education and training programmes?

This does not mean that people who take part in such overseas programmes would be given priority for places on the UK foundation programme or for speciality training in the UK, subject to a few limited exceptions in the Medical Training (Prioritisation) Act 2026. (Optional)

1.66. Agree

1.67. Neither agree nor disagree

1.68. Disagree

1.69. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.70. This seems like a sensible proposal to promote parity and public confidence in the quality of UK and overseas education and training to ensure that graduates meet the same standards.

Part 5 of the draft order relates to GMC's education and training functions. This includes provisions relating to:

- *standards in connection with practising as a regulated professional*
- *approval of education and training, an examination or assessment or a*
- *qualification*
- *supply and production of information and evidence*
- *criminal offences*
- *certification of completion of a course*
- *other related powers*

Our proposed changes aim to enable GMC to undertake more flexible and swifter education and training functions.

19. Do you agree or disagree that the powers and duties set out in the draft order enable GMC to carry out its education and training functions sufficiently and proportionately? (Optional)

1.71. Agree

1.72. Neither agree nor disagree

1.73. Disagree

1.74. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.75. We agree that the powers and duties set out in the draft Order will enable the GMC to carry out its education and training functions sufficiently and proportionately. We welcome the additional flexibility that the Order will provide in relation to education and training by allowing the GMC to approve individual

courses as well as education and training providers.

1.76. This increased flexibility is particularly important in the context of a rapidly evolving health and care workforce. It will enable the GMC to respond more quickly to emerging system needs and support the development of targeted, modular training that reflects changes in clinical practice, service delivery, and technology. For example, the ability to approve discrete courses could facilitate the introduction of new skills-based training in areas such as digital health, data-driven decision making, and the safe and effective use of artificial intelligence in clinical settings.

1.77. More broadly, this approach supports a shift towards more adaptive, career-long learning models, where professionals can update their competencies in line with innovation and changing patient needs, rather than relying solely on traditional, front-loaded education pathways. This is particularly relevant given the growing role of AI and data technologies in health and care, and the need for regulators to ensure that professionals are equipped not only with technical understanding, but also with the skills to manage associated risks, including bias, safety, accountability and patient trust. These issues have been highlighted in recent cross-sector discussions on AI adoption, including the need for ongoing training and clear professional guidance; and highlighted in work by the PSA such as its April 2026 report on regulating for AI use by health and care professionals.[9]

1.78. In this way, the provisions in the order are well aligned with the wider direction of travel in workforce policy, supporting greater agility, innovation and responsiveness in education and training, while maintaining appropriate regulatory oversight and standards.

Postgraduate Medical Education and Training Order of Council 2010

As a consequence of modernising GMC's register and legislative framework, many of the current provisions contained within the Postgraduate Medical Education and Training Order of Council 2010 ('the PMET Order') will become obsolete.

The draft order therefore proposes that the PMET Order is revoked, including the list of recognised specialties currently contained in the schedule to the PMET Order, and the Privy Council is given a power to specify categories of speciality in practice in the UK in an order of council.

20. Do you agree or disagree that the PMET Order should be revoked and the categories of speciality in practice should be set out in a new order of council? (Optional)

1.79. Agree

1.80. Neither agree nor disagree

1.81. Disagree

1.82. Don't know

[9] **Who is responsible? - How to guide and regulate health and social care professionals who use AI | PSA**

Please explain your answer. Do not include any personal information in your response. (Optional)

1.83. Whilst we do not have any comments currently, we welcome the commitment to consult on any further new categories of specialty to be set out in a new order of council.

Registration

The draft order provides that medical practitioners may be able to be registered despite having a complete restriction on registration. This means they will be registered as a medical practitioner but not allowed to practise.

A medical practitioner may choose to have a complete restriction on their registration, or a complete restriction could be, for example, the result of failing to complete periodic assessment.

21. Do you agree or disagree that doctors should be able to be registered with a complete restriction on registration? (Optional)

1.84. Agree

1.85. Neither agree nor disagree

1.86. Disagree

1.87. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.88. It is the PSA's position that only information necessary for public protection should be on the public register and we have previously taken the view that non-practising registers serve no public protection function.[10]

1.89. In the current context, we recognise that there may be advantages in allowing someone to remain on the register in a non-practising capacity, such as if they are working in a non-clinical role or if they are taking a career break such as going on maternity leave, shared parental leave or a sabbatical, as long as the meaning of this status is made sufficiently clear to the public. We are not aware of any specific confusion arising from the GMC's operation of the licence to practise although note that our 2010 research with the public highlighted some concerns that it could be confusing to include information on non-practising registrants on the register.[11]

1.90. However, we are not clear on why this proposal does not appear to include AAs and PAs as well as medical practitioners, since they may be equally likely to want to remain registered in a non-practising capacity for any of the reasons outlined above. As it stands, there does not appear to be a consistent equivalent/alternative mechanism in use by other regulators to facilitate such breaks from practice.

[10] **Response to Government consultation on 'Promoting professionalism, reforming regulation' | PSA**; **Right-touch reform - a new framework for assurance of professions | PSA**

[11] **Maximising the contribution of regulatory bodies' registers to public protection | PSA**

1.91. There may in fact be EDI arguments for allowing this option to be available to all professionals on the GMC register. Data available from the GMC (noting that registration for AAs and PAs remains voluntary until later in 2026) suggests that over three quarters of PAs are women compared to less than half of AAs.[12] This may suggest PAs would be more likely to go on maternity leave or shared parental leave, which the complete restriction on registration could be used for if it was extended beyond medical practitioners.

1.92. It will be important for the GMC to make it very clear when someone is registered with a complete restriction on practice, and to ensure that when someone is issued with a complete restriction on practice, this is communicated appropriately to any stakeholders who need to be aware e.g. employers and the public.

Part 6 of the draft order relates to registration and includes provisions regarding the process of entering the register. It also includes provisions which enable GMC to provide assurance that individuals on its register have the necessary education, training, knowledge, skills and experience required to practise safely in the UK.

22. Do you agree or disagree that the draft order enables GMC to carry out its functions relating to registration sufficiently? (Optional)

1.93. Agree

1.94. Neither agree nor disagree

1.95. Disagree

1.96. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.97. We agree that the draft Order will enable the GMC to carry out its functions relating to registration sufficiently. We welcome changes to be introduced via the new legislation including the creation of a single register for all professionals regulated by the GMC and a streamlined registration process.

1.98. It would be helpful if the drafting could address a potential public protection loophole regarding the PSA's ability to bring an appeal if a registrant's registration is allowed to lapse. We would also like to raise some queries on whether the minimum requirements on publication of sanctions are sufficient and to ensure the order doesn't prevent the application of good practice regarding the collection and publication of data on sex and gender:

- Removal of an entry from the register (Article 38-40) - We have previously raised concerns about registrants being allowed to lapse from the register prior to the conclusion of FtP proceedings. It would be helpful to ensure that this is addressed through the current order. For public protection purposes it is important for FtP proceedings and relevant appeal periods to be able to conclude. A key reason for this is because a registrant may seek to rejoin the register and it will be important, if so, to have a formal record of any

[12] **Workforce report - GMC**

findings of impairment or sanctions issued and any appeal findings to support consideration of any application to rejoin.

- Publication of sanctions (Article 33) - Although we recognise that this drafting is in line with the overall aim to allow regulators discretion over the detail of what information is recorded on the register, we have previously highlighted our view[13] that all regulators should keep decisions to strike off a registrant published for a minimum of five years. This was based on research into expectations from the public. It is unclear why it would not be possible or desirable to capture this within the legislation in support of a consistent, transparent approach. If not set out in the legislation, we would ideally like to see regulators take a consistent approach in rules, informed by our research and advice.
- Collection and publication of sex and gender data - Following the Supreme Court Ruling on the definition of sex in the Equality Act we have been contacted by stakeholders concerned about whether the regulators are gathering and publishing the necessary information for public protection on sex and gender. We recognise that this drafting covers only the minimum information that must be published on the register. However, it would be helpful to have assurance that the drafting overall takes into account any new requirements or expectations of regulators following the Supreme Court ruling, revised Equality and Human Rights (EHRC) Commission guidance[14] and publications such as the Sullivan Report.[15] The drafting should not create any barriers to regulators complying with good practice in this area.

Protection of title

Protected title status means it is a criminal offence for someone to practise and use a protected title without being registered with the relevant regulator and on the relevant register, or part of the register, relating to that regulated profession.

The draft order proposes that the titles of 'apothecary' and 'licentiate in medicine and surgery' should no longer be protected in legislation as they are not reflective of current practice. It also proposes that the title of 'bachelor of medicine' should no longer be protected as this is linked to a qualification rather than a professional title.

23. Do you agree or disagree that the titles of 'apothecary', 'licentiate in medicine and surgery' and 'bachelor of medicine' should no longer be protected in legislation? (Optional)

1.99. Agree

1.100. Neither agree nor disagree

1.101. Disagree

1.102. Don't know

[13] **Maximising the contribution of regulatory bodies' registers to public protection | PSA**
[14] **Organisations receive clear, accessible guidance on how to implement equality law in updated draft Code of Practice - GOV.UK**
[15] **Independent review of data, statistics and research on sex and gender - GOV.UK**

Please explain your answer. Do not include any personal information in your response. (Optional)

1.103. We agree that these titles are no longer in common use and therefore there is no need to protect them in law any longer.

Under the draft order, 'registered medical practitioner' is due to become a protected title.

24. Do you agree or disagree that 'registered medical practitioner' should become a protected title? (Optional)

1.104. Agree

1.105. Neither agree nor disagree

1.106. Disagree

1.107. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.108. No further comments.

In line with the recommendation of the Leng Review, the draft order proposes that 'physician assistant' replaces the title of 'physician associate', and 'physician assistant' becomes a protected title.

25. Do you agree or disagree that the title of 'physician associate' should be changed to 'physician assistant' and protected in law? (Optional)

1.109. Agree

1.110. Neither agree nor disagree

1.111. Disagree

1.112. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.113. No further comments.

In line with the recommendation of the Leng Review, the draft order proposes that 'physician assistant in anaesthesia' replaces the title of 'anaesthesia associate', and 'physician assistant in anaesthesia' becomes a protected title.

26. Do you agree or disagree that the title of 'anaesthesia associate' should be changed to 'physician assistant in anaesthesia' and protected in law? (Optional)

1.114. Agree

1.115. Neither agree nor disagree

1.116. Disagree

1.117. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.118. No further comments

To allow time for the healthcare service to implement the new titles effectively, we are proposing that the protection of the 'physician assistant' and 'physician assistant in anaesthesia' titles will commence following a transition period of 6 months after the order comes into force, if approved by Parliament.

27. Do you agree or disagree that there should be a transition period in relation to moving from the associate titles to the assistant titles? (Optional)

1.119. Agree

1.120. Neither agree nor disagree

1.121. Disagree

1.122. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.123. As these roles are currently in use within the health service, it will be important to allow time for the changes to be implemented and for the necessary adjustments to be made to job descriptions, contracts, professional guidance and processes across the different parts of the UK.

1.124. It will also be important for there to be clear, consistent and coordinated communication of the change in title to members of the public and employers, to avoid any further confusion about the roles and the services that individuals are able to provide. This should include clarity about scope of practice and how these roles sit alongside other regulated professionals, to support informed patient choice and maintain public confidence.

1.125. From a regulatory perspective, consistency of approach across the four UK countries and across relevant bodies will be important to avoid variation in how the titles are understood or applied in practice. This includes alignment between regulatory standards, employer practices, and public-facing information.

1.126. More broadly, this change presents an opportunity to address some of the underlying concerns identified in the Leng Review regarding role clarity. A clear and well-managed transition could help to improve understanding of these roles among patients and professionals, and support safer and more effective team working. However, without careful implementation there is a risk that changes in title alone could create further uncertainty if not accompanied by clear explanation and supporting measures.

1.127. It is however clearly important that the transition happens in a timely way. A prolonged period of partial implementation could itself contribute to confusion, particularly if different terminology is used in different settings or parts of the UK.

28. Should there be any protection of the 'physician associate' and 'anaesthesia associate' titles alongside the proposed new titles? (Optional)

1.128. Yes

1.129. No

1.130. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.131. We don't have a firm view on this but think that it will be important to consider whether there are risks relating to people using or continuing to use these titles without being regulated/qualified and potentially causing further confusion or risking harm to the public.

1.132. We haven't quantified this risk in order to consider whether protecting these titles in addition would be proportionate or in itself cause confusion.

Fitness to practise - mandatory removal from the register

The draft order requires GMC to mandatorily remove a registrant from its register, if the registrant has been convicted of a serious criminal offence, as set out in schedule 4 (known as a listed offence), without GMC having to investigate or MTS having to hold a fitness to practise panel hearing to determine whether the registrant's fitness to practise is impaired.

29. Do you agree or disagree with the listed offences set out in schedule 4 of the draft order? (Optional)

1.133. Agree

1.134. Neither agree nor disagree

1.135. Disagree

1.136. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.137. The PSA welcomes the proposal to allow automatic removal from the GMC's register of registrants convicted of serious criminal offences (Article 48 and Schedule 4). This will allow regulators to protect the public swiftly without having to go through the whole fitness to practise process.

1.138. In particular, we are pleased to see inclusion of an expanded list of sexual offences from that set out in the AAPAO, including those where no custodial sentence has been imposed. This will send a clear and necessary signal about the seriousness of sexual misconduct across healthcare professions, that it is fundamentally incompatible with continued registration. It also aligns with the PSA's own approach to appeals of cases involving sexual misconduct.[16]

1.139. This approach is also consistent with the PSA's wider programme of work on tackling sexual misconduct in healthcare, which has emphasised the serious and enduring impact of such behaviour on patients, colleagues and public confidence. Through our research, casework and engagement with regulators, we have highlighted that sexual misconduct represents a fundamental breach of professional trust and requires a clear, consistent and robust regulatory response. In that context, the inclusion of a broader range of sexual offences within the scope of automatic removal appears to be a proportionate and

[16] **Sexual misconduct appeals: a round-up of recent successful High Court challenges | PSA**

necessary step to strengthen public protection.

1.140. We have emphasised in our oversight work the importance of regulators taking a consistent and decisive approach to cases involving sexual misconduct, including through our analysis of fitness to practise decisions and the use of our appeal powers where outcomes have not adequately protected the public. The proposals in the draft order support this direction of travel by reducing the risk of variation in outcomes and ensuring that the most serious cases are addressed swiftly and transparently. This will help to reinforce professional standards, support a culture in which such behaviour is clearly unacceptable, and maintain public confidence in the regulatory system.

1.141. We are however aware that there are some outstanding queries regarding how the proposals for automatic erasure will operate in relation to historic offences. As it stands, there will be no retrospective application of the proposals, meaning that a registrant could be eligible for automatic erasure for an offence which, had it been received prior to commencement of these provisions, would not have resulted in automatic erasure. It will be important for there to be a clear approach agreed as to how regulators will deal with registrants who may have been convicted of a listed offence prior to the introduction of automatic erasure, to be in line with broader legislative requirements including on human rights.

Under the draft order, former registrants of GMC who have been mandatorily removed from the register following conviction for a listed offence in schedule 4 of the draft order will not be able to apply for re-entry to the register.

Exceptions would apply where the conviction has been quashed or was for a lower-level listed offence (blackmail or extortion), and the custodial sentence has been quashed and replaced with a non-custodial sentence.

30. Do you agree or disagree that former registrants who have been mandatorily removed from the register following conviction for a listed offence should not be able to apply for re-entry to the register, save for in the limited exceptional circumstances prescribed in the draft order? (Optional)

1.142. Agree

1.143. Neither agree nor disagree

1.144. Disagree

1.145. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.146. The basis of this power is that the seriousness of offences warranting mandatory removal from the register are fundamentally incompatible with registration. This means that re-entry should only be permitted where a conviction has been overturned or for relevant convictions, overturned and replaced with a non-custodial sentence as outlined at Article 35(4).

1.147. We consider this approach to be proportionate in the context of public protection, providing a clear and consistent mechanism for addressing the

most serious cases without undermining due process.

1.148. It is also consistent with the PSA's strengthened focus on professional suitability within our new Standards. This emphasises the importance of regulators considering not only technical competence, but whether individuals are fit to hold a position of trust and responsibility. In this context, the proposals appropriately recognise that certain behaviours are fundamentally incompatible with that trust, and support a clearer and more transparent link between professional standards, regulatory action and public confidence.

Fitness to practise - grounds for action

Grounds for action set out the basis on which regulators can investigate and take action where there is a concern about a regulated healthcare professional's fitness to practise. A regulated professional's fitness to practise can only be found to be impaired if one or more of the grounds for action are met.

The draft order proposes that the fitness to practise of a regulated professional may be impaired if the regulated professional:

- *is unable to provide care to a sufficient standard*
- *has behaved in a way which amounts to misconduct*
- *is adversely affected by a physical or mental health condition*

31. Do you agree or disagree with the grounds for action set out in the draft order? (Optional)

1.149. Agree

1.150. Neither agree nor disagree

1.151. Disagree

1.152. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.153. We agree with the grounds for action laid out in the draft Order. We are pleased to see the reintroduction of the ground for impairment if the regulated professional 'is adversely affected by a physical or mental health condition.'

1.154. This should allow regulators to intervene early and proportionately in cases where conditions or restrictions on practice may be required in the interests of patients. It should also allow regulators to tailor their approach to ensure that a registrant whose fitness to practise may be impaired due to health can be dealt with compassionately in line with the Equality Act, based on the need to ensure reasonable adjustment and to prevent discrimination arising from a disability so that support can be provided where needed.

Fitness to practise - proceedings

Fitness to practise proceedings are one of the primary ways by which GMC ensures public protection. The fitness to practise model outlined in the draft order aims to make fitness to practise proceedings swifter, fairer and less adversarial for GMC's registrants and people who raise concerns.

32. Do you agree or disagree that the fitness to practise powers and duties set out in the draft order for GMC and MTS are sufficient and proportionate for the safe and effective regulation of the professions GMC regulates? (Optional)

1.155. Agree

1.156. Neither agree nor disagree

1.157. Disagree

1.158. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.159. We agree that overall the fitness to practise powers and duties set out in the draft Order are sufficient and proportionate for the safe and effective regulation of the professions the GMC regulates. We support much of what is proposed and have laid out below some particular areas we support along with areas where we think further consideration is needed.

1.160. It is important to recognise the potential for differential impacts (both positive and negative) on both complainants and registrants of the proposed new fitness to practise model that will be introduced by the order. There is already broad recognition of the differential impacts of the current fitness to practise process on groups with protected characteristics with research indicating differential rates of referral of BAME registrants and data indicating different outcomes for men and disabled nurses and midwives.[17] [18] There has also been a focus previously on the disadvantage that unrepresented registrants may be at within the fitness to practise process which could compound existing inequalities.

1.161. In addition, evidence including that from the Witness to Harm (WtH) project highlights the potential for the complaints process to add to the trauma experienced by patients making a complaint to a regulator. [19] Both WtH and the PSA's Barriers to Complaints research highlight variable impacts on and ability to access the complaints processes across groups with protected characteristics.[20]

1.162. The new fitness to practise model has the potential to create a less adversarial process and to allow faster resolution of cases which would benefit all parties to the process, including those with protected characteristics. However, if not carefully implemented, there is scope for the new process to exacerbate existing inequalities both for registrants and complainants. This should be a key consideration both for Government in shaping the final order and for the GMC in developing the rules and operational processes that will sit below it.

1.163. Although we do not have specific proposals to make at this stage, we note the importance under the new fitness to practise model of ensuring that the voice of the complainant is properly heard, particularly in circumstances where there

[17] **Fair to refer? - GMC**

[18] **Ambitious for change: Research into NMC processes and people's protected characteristics**

[19] **Witness to Harm-Holding to Account. Improving patient, family and colleague experiences of Fitness to Practise proceedings: A mixed-methods study | NIHR Journals Library**

[20] **Barriers and enablers to making a complaint to a health or social care professional regulator | PSA**

may not be a formal hearing or opportunity for witness testimony to be heard. While not necessarily a legislative consideration, we think this will be key for the GMC when exercising its new powers, and an area where consistency across regulators would be preferable. We will seek to support this through application of our new Standards.

5-year rule

1.164. We strongly welcome the proposal to remove any legislative restrictions on regulators from being able to consider fitness to practise concerns more than five years after they occurred. This is commonly known as the '5-year rule' and under the Medical Act the GMC was able to develop rules to prevent allegations about events that are more than five years old from being investigated.

1.165. Concerns have previously been expressed by patients and complainants that the 5-year rule has prevented legitimate concerns from being investigated, particularly in the case of sexual misconduct where complainants may require more time before they are able to take forward their concerns. Its removal from legislation is an important step forward for public protection.

Case examiner referral to a panel

1.166. Overall, the new fitness to practise model should support a more flexible and less adversarial approach to resolving concerns raised about professionals. We welcome the retention of the broad discretion for case examiners to refer to a panel in the draft GMC Order (Article 51(1)(b)) and think it is important that this remains. This is the approach taken in the AAPAO[21] with case examiners permitted to refer to a panel when they felt it was appropriate. The PSA's oversight experience and research support the position that different types of cases may be most appropriately resolved in different ways.

1.167. As outlined in our guidance for regulators on the use of accepted outcomes in fitness to practise,[22] referral to a panel may be appropriate in certain circumstances. These include when there is a dispute of fact or conflict of evidence that can only be fairly tested at a hearing, where there are particular complexities in a case or evidence, or when it may be beneficial to test insight at a hearing.

1.168. As it is not proposed that decisions made by case examiners will be covered by the PSA's s.29 appeal powers, there should also be a robust mechanism for case examiner decisions to be revised if required, including if they are insufficient to protect the public. This should promote confidence by registrants, members of the public, employers and others in the new fitness to practise model. Our comments on the revision power are covered in detail under question 36 on this power.

Determination by case examiner

1.169. At Article 51(5) the draft order states that the case examiner may impose the proposed registration measure if the regulated professional:

[21] **The Anaesthesia Associates and Physician Associates Order 2024**
[22] **Using accepted outcomes in fitness to practise: guidance for regulators | PSA**

- accepts that his or her fitness to practise is impaired, and
- agrees to the proposed registration measure being imposed, or if
- they have not responded by the end of the relevant period.

1.170. Alongside the usual scenario where an outcome is agreed with a registrant, we think that broadly speaking, in the case of non-responding registrants the option for a case examiner to impose a sanction should be reserved for situations where a registrant has not engaged with the process and also has not responded during the relevant period. If a registrant has simply not responded, then it may be appropriate for there to also be the option to refer the case to a panel. It will also be important for the relevant period to be long enough to allow for circumstances such as illness.

1.171. In addition, we are concerned that in contrast to the Anaesthesia Associate and Physician Associate Order there is no requirement for the regulated professional to accept the case examiner's findings of fact. Ideally, we would like to see it specified that the case examiner's findings should also be accepted.

1.172. The legislation also allows the GMC to make rules to specify the circumstances in which an alternative proposal may be issued to the regulated professional. If the professional has already rejected a proposed finding and sanction, then this lays open the possibility that the case examiner could seek to reduce the seriousness of the finding and sanction to try to encourage the professional to accept it. This could lead to plea bargaining and could ultimately risk sanctions which do not adequately protect the public.

1.173. While we would expect the GMC to address this risk through its policies and processes, we would prefer the legislation to prevent a case examiner from being able to issue new proposals if a professional has not been willing to accept the initial proposed finding and sanction. If agreement cannot be reached, then the case should be referred to a panel. If it is considered necessary to allow scope to revisit the detail of a proposal, for example to ensure workability of proposed conditions or if new information has come to light, in our view it will be important that the grounds for doing so are clearly defined and limited, preferably within the legislation.

Interim registration measures

Under the draft order, a fitness to practise panel's powers will be extended so that the panel can impose interim registration measures during registration proceedings, as well as during fitness to practise proceedings.

This would allow the panel to impose an interim registration measure while investigating whether a register entry is fraudulent, for example.

33. Do you agree or disagree that a fitness to practise panel's power should be extended so that it can impose an interim registration measure during registration proceedings as well as fitness to practise proceedings? (Optional)

1.174. Agree

1.175. Neither agree nor disagree

1.176. Disagree

1.177. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.178. No further comments.

Evidence gathering

Under the draft order, GMC may, for the purpose of gathering evidence in connection with registration, fitness to practise and interim registration measure proceedings, require a person to supply such information or produce such a document as GMC may specify. GMC will also be able to require a witness to attend a fitness to practise panel hearing or an appeal panel hearing.

34. Do you agree or disagree that the draft order provides GMC with sufficient and proportionate evidence-gathering powers? (Optional)

1.179. Agree

1.180. Neither agree nor disagree

1.181. Disagree

1.182. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.183. We are supportive of most of the proposed powers relating to evidence gathering. However, we note that the only powers provided to the GMC when a registrant fails to provide relevant evidence or information is to commence fitness to practise proceedings, with the ultimate consequence of removal from the register if they refuse to comply.

1.184. There are a number of reasons why it may be appropriate to keep a registrant on the register in such circumstances. For example, if they are currently the subject of separate fitness to practise proceedings, or if they hold information which the GMC might need for fitness to practise proceedings relating to another registrant. The GMC may need to be able to compel the registrant to provide this information, such as in the case of major failures of care.

1.185. The proposed mechanism for the GMC to require evidence from witnesses who are not registrants is to seek a court order to obtain the relevant information. A court order could presumably be sought after a registrant had been removed from the register when they are no longer a registrant. However, there is no guarantee that removal will be the outcome of fitness to practise proceedings and even if it was this could create a lengthy and protracted process to obtain the necessary information. One option would be to allow the use of a court order to obtain information from a registrant, where necessary.

1.186. We recognise that there might be questions over the proportionality of allowing the use of court orders in these circumstances, however, this is a power currently held by Social Work England, under Regulation 16.[23] On balance we

[23] **The Social Workers Regulations 2018 - Social Work England**

think it would be preferable for there to be consistency across the regulators regarding powers to deal with non-compliance taking into account the points we and others have raised for consideration.

Rule-making powers

Under the draft order, GMC is able to make rules on specific procedures in relation to: governance and operating framework:

- *education and training*
- *registration*
- *fitness to practise*
- *interim registration measures*
- *revision of decisions and internal appeals*

35. Do you agree or disagree that the rule-making powers in the draft order are sufficient and proportionate for the regulation of the professions GMC regulates? (Optional)

1.187. Agree

1.188. Neither agree nor disagree

1.189. Disagree

1.190. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.191. The rule-making powers within the draft order appear sufficient and proportionate for the regulation of the professions the GMC regulates.

1.192. We note that the shift to remove Privy Council oversight of the rule-making process will allow the GMC greater flexibility and autonomy but will also place greater importance on the transparency and robustness of its internal processes governing the making and amending of rules.

1.193. The PSA has produced good practice guidance to guide regulators in the use of the new rule-making powers. We will have regard to this guidance as part of our assessments of the GMC and other regulators, once reformed.[24]

Revision of decisions

Under the draft order, GMC will be able to revise specific:

- *registration decisions (except emergency registration decisions)*
- *fitness to practise decisions (except fitness to practise panel decisions)*
- *case examiner interim registration measure review decisions*

36. Do you agree or disagree that the draft order provides GMC with sufficient and proportionate powers and duties in relation to revision of decisions? (Optional)

1.194. Agree

[24] **Good practice in rulemaking: guidance for regulators | PSA**

1.195. Neither agree nor disagree

1.196. Disagree

1.197. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

Equivalence of assurance between revision and appeal powers

1.198. The proposed revision power (outlined at Article 66) which will cover fitness to practise decisions made by case examiners is a crucial part of the new fitness to practise model in ensuring that the public are as well protected if a case is resolved by a case examiner as by a fitness to practise panel.

1.199. This consultation proposes to retain the PSA's right to appeal final fitness to practise decisions made by panels to the Court and the similar power held by the GMC. Both the PSA and GMC can appeal a decision if it is not 'sufficient for the protection of the public'. As outlined in our answer to question 39 we consider this to be an important safety net to allow decisions that do not protect the public to be challenged and changed if necessary.

1.200. Since the level of risk will not be a factor in determining whether a case is considered by a Panel, or by case examiners, it is important that equivalence of assurance for both decision-making routes is achieved.

1.201. We strongly welcome the inclusion of decisions covered by the revision power in the draft Order, which is an evolution from the AAPAO and goes some way to achieving this equivalence of assurance. The regulator revision power for case examiner decisions (and other eligible decisions) has been developed to provide an alternative to the PSA's appeal powers for panel decisions and therefore should provide broadly equivalent safeguards to maintain public confidence.

1.202. However, in our view this should be strengthened by including the grounds for a revision within the GMC order. Doing so would provide consistency, transparency and confidence in this mechanism as a robust alternative to the appeal powers that it is proposed will remain in place for decisions made by fitness to practise panels. This would also be in line with the reported findings of the Lord Mann Review that there should be: 'appropriate, timely and proportionate appeal routes at every stage of the process'.[25]

1.203. In addition, we are concerned that in contrast to the AAPAO there is no requirement for the regulated professional to accept the case examiner's findings of fact. We think this is important, for reasons set out under question 32. Without it, there is a greater risk that case examiner decisions are perceived as less rigorous than panel determinations.

1.204. The AAPAO, which was the template for the draft GMC Order, included the grounds for revision on the face of the legislation. Although the PSA raised

[25] **Lord Mann review of antisemitism and other forms of racism in the NHS and healthcare regulatory system - GOV.UK**

concerns that these grounds could also limit requests for revision on public protection grounds, having them on the face of the legislation was nonetheless preferable to their being left to regulator rules. The AAPAO also did not specify the decisions to be covered by the revision power in the Order.

1.205. The absence of the grounds for a revision within the draft GMC Order raises the following concerns:

- It appears at be at odds with what we understand to be the policy intent, that the revision power should function as a meaningful alternative safeguard for case examiner decisions
- It does not align with the conclusions of the Lord Mann Review that serious cases, potentially involving racism or discriminatory behaviour, should be capable of being changed regardless of the route they are taken within the fitness to practise process, that there should be 'appropriate, timely and proportionate appeal routes at every stage of the process'[26]
- That if the grounds for a revision are outlined in rules, there is a risk that rules may differ across regulators, and there is the potential that revision may not being possible on public protection grounds. This could have an impact on confidence in the system.

1.206. We would like to see the grounds for a revision clearly laid out on the face of the Order to ensure full transparency and public and professional confidence in the revision power. We note that the GMC's current Rule 12 power[27] along with Social Work England's Rule 12G[28] and the Nursing and Midwifery Council's Rule 7[29] powers are broadly similar and may provide a potential model for developing grounds which would be workable for all regulators.

1.207. We note that the revision power as drafted covers a range of decisions, not just fitness to practise, and therefore there would need to be consideration about whether grounds could be drafted specifically for FtP decisions covered by this power.

1.208. We recognise that all regulators are subject to the same overarching duty of public protection (which will be largely replicated within the GMC Order). However, we do not feel that by itself this provides assurance to alleviate concerns raised about the need to ensure appropriate consistency and confidence in the revision mechanism as a robust alternative to appeal powers for panel decisions. We think it is important that there is no perception from complainants of the case examiner route as a 'backdoor' option to avoid appropriate public protection safeguards.

1.209. Although there is no specific question asked on this, we support the proposal for the PSA to be able to use the regulator revision power to seek a change to a relevant case examiner fitness to practise decisions. Although this is a new power for the PSA, it is not an expansion of our jurisdiction as the cases which

[26] **Lord Mann review of antisemitism and other forms of racism in the NHS and healthcare regulatory system - GOV.UK**
[27] **dc20021-rule-12-faq_pdf-111000957.pdf**
[28] **Power to review case examiner decisions (rule 12G) - Social Work England**
[29] **Reviewing case examiner decisions - The Nursing and Midwifery Council**

will now be eligible for resolution by a case examiner would previously have gone to a panel and therefore would have fallen under our section 29 appeal powers. We would also like to see a requirement for the regulator to explain the reasons if they chose not to revise a decision following a PSA request.

1.210. However, without certainty that we would be able to request a revision on public protection grounds, the PSA's powers in this area may be limited and left to be determined by the regulators we oversee, the GMC in the first instance, in their rules. This would put the PSA in an anomalous position of having the scope of our jurisdiction effectively defined by the regulators we oversee rather than by Parliament.

Coverage of the revision power over appeal panel decisions

1.211. As it stands, appeal decisions made by the internal appeal panel will not be subject to any kind of process for appeal or revision. Although we recognise that caution will need to be exercised in allowing revision of appeal panel decisions and further criteria may be required, we do think it should be possible to request a revision of such decisions.

1.212. If this is not possible then this potentially creates a public protection loophole whereby effectively 'final' decisions made by an appeal panel will not be subject to any mechanism for appeal or review. This would also appear to be counter to the findings of the Lord Mann Review.

Notifications of reasons for decisions

1.213. Current drafting allows discretion over whether 'other interested parties' receive reasons for decisions as part of the notification of the outcome and any decision, at Articles 54, 55, 57 and 59 covering interim decisions, final fitness to practise decisions and reviews of decisions.

1.214. It is unclear whether 'other interested parties' is intended to include the PSA. This leaves a risk that different regulators will take different approaches to this definition, and the PSA may not be considered an 'other interested party'. We will require access to the full reasons for the decision to be able to assess whether or not to consider an appeal or to request a revision. Therefore, the order should explicitly require that the PSA is notified of relevant decisions and provided with full statements of reasons.

Publication of decisions and revisions

1.215. The PSA has noted inconsistencies in the draft Order around when decisions, revisions and appeal outcomes must be published, including tests based on whether publication is 'necessary for the protection of the public' (Articles 66 and 67). This creates a risk that revised decisions or appeal decisions may not be made public even where original decisions were published.

1.216. We think that publication requirements should be clearer and more consistent to support transparency and public confidence.

Appeals

Under the draft order, applicants for registration, registrants and former registrants of GMC will have rights of appeal against specific registration and fitness to practise decisions.

37. Do you agree or disagree that the powers in the draft order provide individuals with sufficient and proportionate appeal rights? (Optional)

1.217. Agree

1.218. Neither agree nor disagree

1.219. Disagree

1.220. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.221. We have already outlined some concerns about the proposed internal appeal mechanism in our answer to question 15. The draft Order appears to provide ample opportunity for registrants to appeal decisions they are concerned with, but we do think it is important that the internal appeal mechanism, which is effectively the first option available to registrants in many cases, is sufficiently fair and transparent.

Under the draft order, as per a recommendation of the Mann Review, GMC will have a right of appeal against specific interim registration measure decisions and fitness to practise decisions made by a fitness to practise panel to the:

- *High Court of Justice in England and Wales*
- *Court of Session in Scotland*
- *High Court in Northern Ireland*

38. Do you agree or disagree that GMC should have a right of appeal to these courts against specific interim registration measure and fitness to practise decisions made by a fitness to practise panel? (Optional)

1.222. Agree

1.223. Neither agree nor disagree

1.224. Disagree

1.225. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.226. The PSA supported the recommendation to remove the GMC's right of appeal when the Williams review was published in 2018.[30] At the time, we expressed concerns about the lack of transparency in how the power had been exercised to date, and argued that a regulator lacked the necessary independence to exercise such a power – as is exemplified by the fact that the GMC is unable to appeal cases on grounds of under-prosecution. We also considered that it might unnecessarily duplicate the PSA's own right of appeal over final fitness to practise decisions, with negative impacts on registrants going through the process as well as on the overall perception of the regulator.

1.227. We recognise that the context has shifted since 2018, and the Lord Mann

[30] **Williams review into gross negligence manslaughter in healthcare - GOV.UK**

Review has recommended that the government should consult on the GMC retaining a right of appeal. We note that the GMC has made a number of changes to improve its processes since 2018 and introduce additional decision-makers.

1.228. The PSA has the power to join an appeal lodged by the GMC and since 2016 has joined 11 GMC appeals compared to the 17 GMC cases it has independently appealed in this time. It is important to note that the PSA does not join a GMC appeal of an MPTS decision unless it has additional points or grounds of concern that it thinks should be considered. This is to avoid unnecessary duplication and help keep resources focused on appealing cases where no other body is doing so. It is therefore not possible to undertake an exact 'like for like' comparison of the appeal rates of the PSA and GMC.

1.229. We see some potential risks of the GMC retaining its right of appeal, which should be mitigated where possible if this power is retained:

- Duplication: although we have developed ways of reducing duplication later in the process, the fact of both the GMC and the PSA having these powers requires both organisations to have their own triaging processes, which would appear still to be a duplication of effort.
- Proportionality: in line with the PSA's principles of Right-touch regulation, it should be considered whether both organisations having overlapping appeal rights represents the minimum regulatory effort to achieve the desired result of providing a safety net for panel decisions that are insufficient to protect the public.
- Impact on registrants: the existence of both rights of appeal is reported by registrant bodies to contribute to the fear of the regulator. It also adds additional time onto the process, because the registrant cannot be sure the panel decision is final until both the GMC and PSA windows for appealing have expired. It will be important for the GMC to consider how to mitigate any additional impacts on registrants in line with the wider duty to ensure the application of good practice on equality, diversity and inclusion across its functions.

1.230. Since the GMC's power of appeal was introduced in 2016, we recognise the number of appeals brought by the GMC and their success rate, especially following improvements made to their processes in 2018.

1.231. In line with our focus on prevention, we will continue to work closely with the GMC and all regulators through our performance review and encourage a robust approach to quality assurance to support regulators in getting it right first time. We will also continue to work closely with the GMC to ensure that their appeal powers, if retained, along with our own are exercised in support of public protection.

1.232. In relation to the proposals for the GMC powers to be expanded to cover interim registration measure decisions, a number of the same points apply. As this power is not yet in place we do not have any comments to make on how it has been exercised.

1.233. Should the proposal to retain the GMC right of appeal be taken forward post consultation, an addition will be required to the order to replicate the current

power under s.40B of the Medical Act, which allows the PSA to join a GMC appeal of a decision. This may also require the relevant consequential amendments to the PSA's own legislation to refer to the new section within the GMC Order.

1.234. If the GMC appeal power for interim registration measure decisions is taken forward post-consultation, we recommend that the order and the PSA's legislation is also amended to allow the PSA to join a GMC appeal of these decisions.

Under the draft order, a consequential amendment will be made to the National Health Service Reform and Health Care Professions Act 2002 to allow PSA to appeal specific fitness to practise and interim registration measure decisions made by a fitness to practise panel to the:

- *High Court of Justice in England and Wales*
- *Court of Session in Scotland*
- *High Court in Northern Ireland*

39. Do you agree or disagree that PSA should be able to appeal specific fitness to practise decisions and interim registration measure decisions made by a fitness to practise panel to these courts? (Optional)

1.235. Agree

1.236. Neither agree nor disagree

1.237. Disagree

1.238. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

Retention of section 29 appeal powers over final decisions

1.239. The PSA strongly agrees with the Government's proposal that our existing powers under section 29 of the National Health Service Reform and Health Care Professions Act 2002 to appeal fitness to practise decisions made by a panel to the Court should be retained. These powers allow us to appeal any final fitness to practise decision made by a panel where we consider it is 'not sufficient for the protection of the public'. [31]

1.240. The PSA's section 29 appeal power is valuable because it:

- Acts as an independent system-wide safeguard for public protection – the power acts as a safety net ensuring the decisions that do not protect the public can be challenged and changed if necessary
- Ensures consistency and accountability across all health and care regulators – as the PSA scrutinises decisions across all regulators under our oversight it helps to ensure consistency and coherence
- Anchors fitness to practise outcomes firmly to statutory public interest tests – the PSA appeal power provides a counterbalance to the appeal

[31] **National Health Service Reform and Health Care Professions Act 2002**

power registrants are allowed to access, ensuring that panels keep the public interest in mind when making their decisions

- Provides judicial scrutiny that strengthens confidence in regulation – the oversight by the Courts supports reasoned, defensible decision-making by panels, knowing that outcomes may be tested against statutory objectives and legal standards ensuring that decisions remain within the range of reasonable responses
- Is exercised proportionately, enhancing legitimacy and trust – the PSA has appealed 26 of a possible 413 GMC decisions since 2012 of which 22 were successful, one is awaiting an outcome and three were withdrawn. This demonstrates that appeals are reserved for cases involving serious public protection or public confidence concerns
- Drives learning and long-term improvement in regulatory decision-making – the PSA's Section 29 power functions as a continuous improvement mechanism, strengthening future fitness to practise decisions across the system. This includes helping to:
  - Clarify legal principles and set legal precedent
  - Highlight recurring weaknesses in panel reasoning
  - Enable the PSA to share learning and guidance with regulators.

1.241. We recognise that there is the potential for our appeal power to impact on registrants. As outlined in our last annual report, we have carried out an internal audit of our powers to appeal under Section 29 processes to identify any potential biases in processes and are committed to ongoing monitoring of equality, diversity and inclusion impacts and action where required across our functions.[32]

1.242. In a change to the AAPAO, the PSA will no longer be able to appeal, under section 29, reviews of conditions and suspension decisions, where the original decision was made by a panel. We will instead be able to request a revision of such decisions under the regulator revision mechanism. We recognise the rationale for consistency of appeal/revision routes based on the route the case ultimately goes. However, we think this underlines the case for the revision mechanism to act as a robust alternative to section 29 for case examiner decisions and reinforces our suggestions to strengthen and provide greater transparency over the revision power.

Proposal to extend PSA appeal powers to cover interim registration measure decisions

1.243. We recognise that the Lord Mann Review identified a gap in relation to interim order decisions where decisions can only be changed where new information arises and not on public protection grounds. The Review was clear that there should be 'appropriate, timely and proportionate appeals routes at every stage of the fitness to practise process'.[33] We therefore support the proposal to extend our appeal powers to allow us to bring forward an appeal of an interim order decision on public protection grounds and to allow us to request a revision of

[32] **Professional Standards Authority Annual Report and Accounts 2024/25 | PSA**
[33] **Lord Mann review of antisemitism and other forms of racism in the NHS and healthcare regulatory system - GOV.UK**

interim order review decisions. We refer to the comments we have made intended to strengthen the regulator revision power under question 36.

1.244. There are a number of operational considerations when seeking to put in place a system for appealing (or requesting a revision of) interim order decisions, not least that such decisions are necessarily made early and based on limited information ahead of a full investigation. Some specific considerations may include:

- **Volume and triage**: interim order determinations are high volume and significantly outnumber final decisions, which may have implications for resourcing and/or the creation of new dedicated capacity.
- **Information available to review**: interim measures are based on an assessment of risk rather than fact, and panel decisions are typically brief. The PSA would need to consider what information would be available within the appeal window and what minimum decision material would be required to support a sound, evidence-based decision to appeal.
- **Process and timing:** interim measures are subject to regular review and may be reviewed early if new information arises during an ongoing investigation. There is the potential that, by the time an appeal is listed and determined, the interim measure decision under appeal will have been superseded by a subsequent review decision, rendering the appeal academic. Where a reviewing panel (or case examiner) maintains the same order, the PSA would still need to reassess the merits in light of the fresh decision and updated information.
- **High Court extensions:** it is our understanding that it is not intended for the PSA to become involved in High Court applications to extend interim measures. However, where the PSA is already involved in an interim measure appeal and the order is approaching expiry (so that an extension can only be imposed by the Court), there may be circumstances where, to avoid a public protection gap, the PSA may feel obliged to participate.
- **Fairness and status of interim decisions:** there is the potential for additional challenge and scrutiny of appeals of interim measures on fairness grounds because these decisions are made before facts have been found proved, unlike final decisions. This is likely to apply to the exercise of any interim measures appeal powers by both the GMC and the PSA.
- **Interaction with GMC powers:** there are likely to be operational questions about how parallel GMC and PSA interim measure appeal powers would interact in practice and whether any extension of similar powers to other regulators is envisaged as further legislation is reformed during this Parliament. We have suggested in our answer to the previous question that should the appeal powers over interim orders for the GMC and PSA be taken forward post consultation it would be appropriate to allow the PSA to join a GMC appeal as it can currently for appeals of final decisions to support an efficient and streamlined approach.
- **Funding:** creation of a new oversight power that would apply to a subset of regulators raises a question about how our exercise of this power would be funded, since as our fee model is predicated on the PSA having broadly equivalent powers across all the regulators.

1.245. We will continue to liaise with DHSC officials to work through these questions and help to ensure that the policy intent to address a public protection gap in this area can be realised. We recognise that there will be views regarding this additional power proposed for the PSA (and the GMC). Should these proposals be taken forward in the final version of the legislation post-consultation, we will work closely with the GMC, DHSC and wider stakeholders to ensure this power is exercised appropriately and proportionately.

Under the draft order, GMC will be permitted to administer its own internal appeals function. Applicants for registration, registrants and former registrants will be able to appeal specific registration and fitness to practise decisions to an appeal panel of GMC.

40. Do you agree or disagree that the draft order provides GMC with sufficient and proportionate powers and duties to administer its appeals function? (Optional)

1.246. Agree

1.247. Neither agree nor disagree

1.248. Disagree

1.249. Don't know

Please explain your answer. Do not include any personal information in your response. (Optional)

1.250. No further comments.