



Department
of Health

The General Medical Council and the Professional Standards Authority for Health and Social Care Order 2014 – Consultation

This consultation document seeks comments and views on the draft Order “The General Medical Council (Fitness to Practise etc.) and the Professional Standards Authority for Health and Social Care (Referrals to Court) Order 2014”.

Please provide your details and contact information: (required)

Name of respondent, business or organisation (required)

Royal College of Physicians of Edinburgh
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Address of respondent, business or organisation (required)
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Consultation Questions

Question 1: Do you agree with the proposal that the MPTS should be set up as a statutory committee of the GMC to govern the adjudication of fitness to practise processes for doctors?
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Yes, the College agrees that it is appropriate for the MPTS to be established as a statutory committee of the GMC, with separation of the MPTS from the GMC's investigation arm protected in statute.

Question 2: Do you agree that the GMC should not have the power to intervene in the areas falling within MPTS responsibility?

Yes, this seems appropriate in order to maintain clear boundaries between the GMC and MPTS. The GMC will still have a right of appeal and as such the process will be transparent and open.

Question 3: Do you agree that the MPTS should keep a record of its members' private interests, and publish this record in the public domain?
Yes, this is vital to maintain transparency and is comparable with requirements for other public bodies.

Question 4: Do you agree that the MPTS should be required to publish an annual report and accounts, to provide a public record and demonstrate accountability?
Yes, again this will increase transparency and will improve public confidence, which the College welcomes.

Question 5: Do you agree with the proposal that the over-riding objective of rules relating to fitness to practise procedures should be to secure that cases are dealt with fairly and justly?
Yes, this is vital to ensure public confidence in the proceedings and is a tried and tested objective similar to that used in HM Courts and Tribunal Service.

Question 6: Do you agree that to enhance the pre-hearing case management arrangements, we should enable the MPTS to appoint case managers, including using the chair of a medical practitioner tribunal (where legally qualified) as case manager?
Yes, as this is to address non-compliance with pre-hearing case management and improve the efficiency and effective management of cases.

Question 7: Do you agree that the MPTS should have power to appoint legal assessors where it considers it appropriate to do so?
Yes, as the MPTS will be best placed to assess what appropriate support is needed.

Question 8: Do you agree with the proposal that the MPTS should have power to award costs, draw adverse inferences and refuse to admit evidence following a party's failure to comply with rules or directions or otherwise award costs for unreasonable behaviour?
Yes, as this will encourage compliance with the process and is comparable with processes followed by the General Pharmaceutical Council.

Question 9: Do you agree with the proposal to enable reviews to be held by the tribunal chair without the need for a panel hearing when the GMC and doctor are in agreement, subject to the ability of the chair to nevertheless convene a full hearing?
Yes, with the condition that this would only be possible with the agreement in writing of the doctor concerned and the GMC.

Question 10: In order to improve efficiency do you agree that the GMC should be able to provide notification of decisions by email rather than letter, when an email address has been provided for this reason?
Yes.

Question 11: Do you agree that the over-arching objective of the protection of the public, which involves the objectives of protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the profession and promoting and maintaining proper standards and conduct for members of that profession, should be the over-arching objective of the GMC and that medical practitioner tribunals and interim orders tribunals should have regard to it when making their decisions?

Yes.

Question 12: Do you agree that we should require registration appeals panels to have a duty to have regard to the over-arching objective in the same way that a medical practitioners tribunal should have to?

Yes, to maintain public confidence this is appropriate.

Question 13: Do you agree with the proposal that the GMC should have a right of appeal, corresponding to the PSA's power to refer cases, to the higher courts in order to challenge MPTS decisions?

The College would appreciate further clarification regarding the financial implications of this: would there be duplicate costs of legal appeal if the GMC is appealing against a decision of the MPTS that is also funded by the GMC?

Question 14: Do you agree that we should amend the grounds of the PSA's power to refer fitness to practise cases for consideration by the relevant court for all regulated healthcare professions and social workers in England in the manner described and also reflect those grounds in the GMC's new right of appeal?

Yes, to maintain public confidence.

Question 15: Do you agree that the GMC should be able to request, in writing, information or documents to assist with the investigation of allegations, and where such a request has been made the registrant fails to comply, the GMC should be able to refer the case to a medical practitioner tribunal?

Yes, this builds on the provisions in Good Medical Practice and encourages compliance with the process

Question 16: Do you agree that where a doctor fails to engage or comply with a direction to undergo a performance, health or language assessment, the GMC should be able to refer the case to a medical practitioner tribunal to consider a suspension order or conditional registration?

Yes, as again this would encourage compliance.

Question 17: Do you agree with the proposal to enable medical practitioners tribunals to require review of their directions before expiry?

Yes, review of MPTS directions should take place before expiry to ensure cases are appropriately handled and cases are not inadvertently overlooked.

Question 18: Do you agree that we should confirm expressly on the face of the Medical Act the powers to close cases at the initial consideration stage,

the power to review investigation stage decisions and the public interest test which applies where the matters giving rise to the allegation are more than five years old, but that we should remove the 'exceptional circumstances' element from that test?

Yes – the exceptional circumstances test is difficult to apply and replacing it with tests related to the (new) overall purpose of the GMC would be an improvement.

Question 19: Do you agree that we should specifically reflect the new arrangements of the GMC referring a case to the MPTS (rather than directly to a medical practitioner tribunal) by making express provision for their powers to continue investigating and the procedure for cancelling a referral?

Yes – this should prevent delay in referral and also provide information for future reference up to the point of a decision by a specific MPT.

Question 20: Do you agree that we should clarify that undertakings can be agreed between the doctor and the GMC at any point following a referral for a public hearing until a determination on impairment has been made and subsequently undertakings should only be agreed by the medical practitioner tribunal itself and subject to appeal/referral to the higher courts?

Undertakings should be capable of agreement up to the decision of an MPT, but it must be clear that undertakings cannot be used as a device to avoid referral to MPT for serious allegations if the overriding responsibility of the GMC is to be achieved in terms of protection of the public AND the reputation of the profession.

Question 21: Do you agree that we should close the regulatory gap where, in certain circumstances, an order might lapse during an appeal against a subsequent review order?

Yes, this should be addressed.

Question 22: Do you agree that the Registrar should be able to direct the form and content of professional performance assessments and whether it should be carried out by an individual assessor or an assessment team?

Yes, this would allow a proportionate response to be made.

Question 23: Do you agree that the GMC should have the described power in order to investigate the fitness to practise of a doctor who has been erased from the medical register but subsequently makes an application for restoration?

Yes, this is in the interests of transparency and public safety.

Question 24: Do you have any other comments on the proposals contained in the draft Order?

None.

Question 25: Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

- An increase;
- A decrease; or
- Stay the same

- Please explain your answer

No specific comment.

Question 26: Do you think that any of the proposals would help achieve any of the following aims:

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

No specific comment.

Thank you for participating in this consultation.

The Department of Health will only contact you should we seek further information about your response.

Responding to this consultation

Filing in the response form by downloading it at:
www.gov.uk/government/consultations

Emailing your response to:

HRDListening@dh.gsi.gov.uk

Posting your response to:

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