

Agenda item:	6
Report title:	Proposed Amendment Orders to implement changes to the Medical Act 1983
Report by:	Anna Rowland , Assistant Director of Policy, Business Transformation and Safeguarding, Fitness to Practise arowland@gmc-uk.org , 020 7189 5077/Stephen Jones, Assistant Director – Office of the Chair and Chief Executive, sjones2@gmc-uk.org , 020 7189 5231
Considered by:	Strategy and Policy Board
Action:	To consider

Executive summary

The amended draft Rules to implement changes to the Medical Act to establish the Medical Practitioners Tribunal Service (MPTS) in law and modernise the investigation and adjudication of fitness to practise cases are attached for Council's consideration.

We are working with the Department of Health to finalise the draft Orders which amend our Rules and make new Rules. We expect any further changes to be of a minor or technical nature, and propose that the Chair of Council be delegated authority to approve the Orders. In the unlikely event of any changes that alter our policy position, we will advise Council.

A number of changes to governance arrangements required as a result of the changes to the Medical Act 1983 and Rules are set out for approval.

Recommendations

Council is asked to:

- a** Note the consultation outcome report and response at [Annex A](#) and the [equality analysis](#).
- b** Consider the draft Orders at [Annex B](#), and agree to delegate authority to the Chair of Council to approve the final Orders and affix the Corporate Seal.
- c** Approve the proposed governance changes and consequential amendments to the Governance Handbook at [Annex C](#).
- d** Approve the approach to the transitional arrangements for the membership of the MPTS Committee.

Fitness to practise legislative reform

- 1** In March 2015 Parliament approved changes to the Medical Act 1983^{*}. To bring the changes into effect, we consulted on the Orders amending our Rules and introducing new Rules[†]. As a result of the consultation we made a number of amendments to the Orders (including removing the change to provide for a doctor to be identified before hearing legal arguments at a hearing) and these are set out in [Annex B](#). Subject to Council's approval, the equality analysis will be updated to incorporate the comments made in response to the consultation and we have also reflected these issues in our response and recommendations.
- 2** Council considered and approved the response to the consultation outcome report and recommendations, on circulation in August. We have now agreed with the Department of Health (England) draft Orders ([Annex B](#)) to:
 - a** Amend the GMC's Fitness to Practise Rules.
 - b** Introduce new Rules to establish the MPTS as a statutory committee.
 - c** Revise the existing Rules relating to the constitution of MPTS panels and legal assessors.
- 3** These Orders also include transitional provisions and consequential amendments, e.g. changing the references to MPTS Fitness to Practise Panels to Medical Practitioners Tribunals in other Rules and Regulations.

Governance changes related to the Medical Practitioners Tribunal Service

- 4** In order to establish the MPTS as a statutory committee of Council we need to make a number of changes to the existing governance arrangements as set out in the Governance Handbook. For ease of reference a complete list of changes to the Handbook and their implementation date is detailed at [Annex C](#).

MPTS Committee Statement of Purpose

- 5** Under the current governance arrangements we have an overarching Statement of Purpose for the MPTS and a Statement of Purpose for the MPTS Advisory Committee.

^{*} Made by The General Medical Council (Fitness to Practise and Overarching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015

[†] The General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2015, The General Medical Council (Legal Assessor) Rules Order of Council 2015, The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015 and The General Medical Council (Constitution of the Medical Practitioners Tribunal Service) Rules Order of Council 2015.

We are seeking Council's approval for a new, single Statement of Purpose, at [page C38 of Annex C](#). This reflects its new statutory provisions as contained in the Medical Act and the Constitution of MPTS Committee Rules.

- 6 The Statement of Purpose includes the requirement for the MPTS Committee to report to Parliament on an annual basis. This will include information on the nature and volume of cases referred to the MPTS, on the exercise of MPTS functions including a description of the arrangements that the MPTS have put in place to ensure that they adhere to good practice in relation to equality and diversity, and on learning points identified and actions taken to address these.

GMC/MPTS Liaison Group Statement of Purpose

- 7 It is proposed that the Group's Statement of Purpose should be amended to include a provision relating to the MPTS Annual Report, so that it can be used as a forum for considering the issues included in the draft report prior to its submission to Parliament. The proposed amendments to the Group's Statement of Purpose are shown in tracked changes at [page C41 of Annex C](#).

MPTS Committee appointments

- 8 The transitional provisions which allow Council to appoint the Chair and members of the current MPTS Advisory Committee to the new MPTS statutory committee came into force on 3 August 2015. It is proposed that in order to ensure continuity during a time of major change for the MPTS that the current members of the MPTS Advisory Committee should become members of the MPTS Committee from 1 January 2016.
- 9 While Council is responsible for making appointments to the new MPTS Committee, the Remuneration Committee is responsible for determining the process for appointment of the MPTS Chair, and the remuneration, benefits and terms of service for the MPTS Chair and MPTS Committee members. We propose that the Committee should also determine the process for appointment and removal/suspension of members of the MPTS Committee. The proposed amendments to the Remuneration Committee's Statement of Purpose are shown in tracked changes at [page C37 of Annex C](#).
- 10 Subject to Council's agreement, the Remuneration Committee will consider a detailed paper on the arrangements for MPTS Committee appointments at its meeting on 4 November 2015. Following that meeting, Council will be asked to approve, by email circulation between meetings, the individual appointments and terms of office so that contracts can be issued in late November 2015.

*Schedule of Authority***11** The Schedule of Authority has been reviewed to incorporate:

- a** Amendments to the glossary section to update references to legislation. In addition to these amendments, it is proposed that the detail in the definition column relating to the year of the relevant legislation will be updated as and when any of the Rules or Regulations change. Council is asked to approve that these can be updated automatically going forward without the need to seek Council approval for each change, as is our current practice.
- b** Amendments arising from the establishment of the MPTS as a statutory committee of Council, including proposed amendments relating to existing functions and powers of the GMC, arrangements for appointments, and the addition of a section relating to the new functions and powers of the MPTS, and the proposed delegations.
- c** Amendments to reflect the provisions of the S60 Order and Rules, including renaming Interim Orders Panels and Fitness to Practise Panels to Medical Practitioners Tribunals and Interim Orders Tribunals, the GMC's right of appeal against a decision of a MPT; non-compliance hearings and assessment of costs, and the proposed delegations.

M6 – Annex A

Consultation report: Reforming our fitness to practise investigation and adjudication processes

Section 1: Introduction

From 25 March to 20 May 2015 we consulted on changes to the rules we follow when investigating complaints and making decisions at hearings about doctors (known as adjudication).

The focus of the consultation was to complete a reform programme to improve and modernise how we carry out investigations and adjudication. This builds on changes the UK Government made to the *Medical Act 1983* in March 2015.

This document sets out a summary of the responses to our consultation.

Background

We started a reform programme in 2011 to clearly separate our investigation and adjudication functions. This was after the Government decided not to establish an independent adjudication body – the Office of Health Professions Adjudicator. As an alternative, we consulted on and received widespread support to establish the Medical Practitioners Tribunal Service (the MPTS). Within the same reform programme, we included other improvements to our investigation and adjudication processes.

In 2013, we consulted on and introduced improvements that did not require any changes to the *Medical Act 1983*. Between July and September 2014, the Department of Health (England) consulted on the remainder of the improvements that required change to primary legislation. Parliament approved the order making amendments to the *Medical Act 1983* in March this year. These included:

- revising the GMC's statutory objective
- the introduction of a new right of appeal for the GMC, in its capacity as a party to fitness to practise proceedings
- removing the exceptional circumstances element of the five year rule so that, once the change is implemented, the GMC will consider cases that are older than five years if it is in the public interest to do so.

Our consultation

Our consultation aimed to give a complete picture of all the changes we are making to our rules. This included those made to reflect amendments to the *Medical Act 1983*, in relation to which we did not ask a question.

It covered six different areas:

Formally separating our investigation and adjudication functions

We included the draft rules for establishing the MPTS as a statutory committee and issues relating to operational separation such as the separation of notice of allegation from the notice of hearing.

Streamlining and modernising our hearing process

We clarified our use of undertakings, proposed changes to rule 17, which sets out the process to be followed at a panel hearing, and the case manager's powers to adjourn hearings.

Making case management more effective

This included the circumstances in which a case management decision will not be binding and how we will award and assess the costs regime introduced through change to the *Medical Act 1983*.

Removing the need for parties to attend review hearings

This section referred to our revisions to reflect changes to the *Medical Act 1983* allowing for a chair or full panel to review an outcome agreed between the parties, after considering all the relevant evidence in writing. We did not ask a question in this section.

Making our investigation processes simpler and more effective

We proposed removing the requirement to tell employers about complaints against a doctor until we have determined whether it raises a question about their fitness to practise.

Improving compliance and making assessments more effective

This covered proposals to address a doctor's failure to comply with an investigation and increasing the flexibility of how we assess clinical performance.

The consultation document was supported by a range of annexes. Annex 1 showed how our existing rules will look if all the proposed changes are made. Annexes 2 – 4 set out the changes to our Fitness to Practise Rules, the revised Panel Rules and Legal Assessors' Rules and the new rules to govern the MPTS as a statutory committee.

We also asked whether any of our proposals might adversely affect people from groups with protected characteristics.

Methodology

We asked 19 questions about the proposed changes to our rules. Respondents were asked whether they agreed or disagreed with each question, and had the option of stating that they were not sure. They were then asked to provide any additional comments.

Respondents were able to reply to our consultation online using our e-consult website, by email or in writing. We provided a consultation response form for those who preferred to reply by email or in writing. We also published a Welsh language version of both the consultation document and response form.

Section 2 of this report sets out a summary of responses received and Appendix A includes the detailed analysis of responses to each question.

Where respondents did not state whether they agreed, disagreed or were not sure about the proposal and made a comment, we have included these in the dataset and the analysis. Respondents who did not check any of the yes/no/not sure boxes and did not leave a comment do not appear in the dataset or analysis for the question concerned.

Out of scope comments

Respondents made a number of comments that were outside the scope of the consultation questions. Some related to changes that the Department of Health consulted on and have included in the Section 60 Order approved by Parliament in March this year. Others were comments that did not relate to the question asked. We have included a summary of these comments at Appendix B and will consider these as part of our ongoing review of our processes.

Equality and Diversity

Question 20 asked whether respondents thought the proposals would have an adverse impact on people from groups with protected characteristics. In addition, a small number of respondents made comments about protected characteristics in response to some of the specific proposals.

We have reported comments about health, including reference to self harm and suicide, but not stress, as within the protected characteristic of disability. We also included comments about unrepresented doctors as some of these doctors are from groups with protected characteristics.

Percentages

Percentages shown have been rounded up or down and, in some instances, the totals do not equal 100.

Breakdown of responses

We received 109 responses to our questionnaire: 71 were completed on our e-consult website; and 38 sent or emailed the consultation form to us for uploading to the e-consult site. The latter included an email response we received with comments in relation to one question only.

The table below provides a breakdown of the types of respondents. Appendix C provides a list of organisations that responded to our consultation.

Organisations	
Body representing doctors	10
Government department	1
Independent healthcare provider	1
Postgraduate medical institution	5

NHS/HSC organisation	2
Regulatory body	3
Other	2
Total organisations	24
Individuals	
Doctor	76
Medical educator (teaching, delivering or administering)	3
Member of the public	1
Responsible Officer	1
Other	3
Total individuals	84
Unknown	
Blank	1
Total unknown	1
Overall total	109

Summary of findings

Formally separating our investigation and adjudication functions

The majority of respondents were in favour of the proposals saying they were logical given the operational separation of the GMC's investigation and adjudication functions. Respondents also welcomed the increased transparency provided by publishing criteria for the appointment of legally qualified chairs, provisions about these chairs giving legal advice and separating out the notice allegation and hearing.

The minority of respondents who disagreed with the proposals raised concerns about the hearing process being a quasi-judicial process, wanting more professional involvement. Respondents also made suggestions for refining our proposals, including comments on the legal drafting which we will consider when developing the recommendations in response to the consultation outcome.

Streamlining and modernising our hearing process

The majority of respondents supported all our proposals for streamlining our process, in particular identifying a doctor at a hearing before any preliminary legal argument, clarifying responsibilities for recording hearings and the use of terminology, such as use of the term 'witness', and adjourning hearings that are part heard.

Comments from the minority of respondents who did not agree referred to delay in the process and the detrimental impact this has on doctors, particularly those who are unwell. Specific suggestions were also made in relation to the drafting of the rules and we will consider these when developing our recommendations.

Making case management more effective

The majority of respondents agreed with panels reconsidering a case management decision if in the interests of justice to do so. Many of the comments we received focussed powers of our panels in primary legislation or elsewhere in our rules but not currently under review or part of this consultation. For this reason we have not included these here but will reflect on them as part of our ongoing review of our processes.

39 respondents agreed with the proposal for awarding and assessing costs. 25 respondents were against the proposal and 16 were not sure. Suggestions were made in relation to the draft rules which we will consider when developing our recommendations.

Making our investigation processes simpler and more effective

The large majority of respondents welcomed the proposal to remove the requirement to inform a doctor's employer about provisional enquiries. Many of those in favour welcomed the change as avoiding reputational damage and reducing stress for doctors. Those opposed were concerned that not telling employers could put patients at risk.

Improving compliance and making assessments more effective

The large majority of respondents were in favour of the proposal for a new type of non-compliance hearing commenting that it was the duty of doctors to comply with an investigation. Those against thought the measures were draconian.

Appendix A: Proposal analysis

We received 109 responses to our consultation in total. It was not compulsory to respond to every proposal, or to provide additional comments and we have identified how many responses we received to each proposal in the introduction to the analysis of each question.

In this appendix we have set out each proposal, followed by the statistical breakdown of responses and a summary of all of the themes that arose from the comments provided by respondents.

Formally separating our investigation and adjudication functions

Question 1 – We have drafted new rules for the MPTS committee. Do you agree with the arrangements for the MPTS committee as set out in these rules?

Responses:

Option	Response number	Percentage%	Number of comments
Yes	63	59	12
No	20	19	10
Not sure	18	17	7
Comment only	5	5	5
TOTAL	106	100	34

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	8	1	0	1	10
	Government department	0	0	0	1	1
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	3	1	1	0	5

	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	0	1	0	2	3
	Other	2	0	0	0	2
Individuals	Doctor	42	16	14	1	73
	Medical educator	2	1	0	0	3
	Member of the public	0	0	1	0	1
	Responsible Officer	0	0	1	0	1
	Other	3	0	0	0	3
Unknown	Blank	0	0	1	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 106 answered this question. 63 of these respondents (59%) supported the proposed rules required to establish the MPTS committee, including the BMA, the MDU, the MDDUS and more than half of the individual doctors who responded. 20 (19%) were opposed, including the PSA, the MPS and the Royal College of Psychiatrists. 18 (17%) were unsure about the proposal. Five respondents, including the Chief Nursing Officer's Directorate of the Scottish Government, did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

General comments

A small number of respondents made general comments in response. One respondent thought that establishing the MPTS as a statutory committee, therefore requiring Parliamentary approval for any future changes, would make the reform process very slow. The BMA felt that if the MPTS were to fulfil an entirely judicial role and the GMC could appeal its decisions, consideration should be given to funding it from a Government grant.

Comments in support of our proposal

Those in favour of the proposal said it was logical, pragmatic and appropriate. The clear benefits to operational separation were an increase in public confidence, fairness and objectivity.

Comments opposed to our proposal

Respondents opposed to our proposals commented on committee membership, criteria for disqualification and the change in terminology.

Seven respondents commented either that the committee had too many lay members or that there should be a medical majority. Two opposed (and one in favour) suggested that there should be a GP member, and another suggested the membership include a GP, a specialist, a legal member and two lay members. One respondent thought it was not necessary to have committee members who are legally qualified. One respondent thought (mistakenly) that the proposal would result in an increase in committee members and that this would result in an increase in costs.

The PSA disagreed with the proposal on the basis that the rules did not exclude current and former GMC employees from the MPTS committee.

In relation to the disqualification criteria, respondents made a range of comments about the criteria for disqualification of doctors from MPTS committee membership including opposing disqualification on the grounds of:

- a history of administrative or voluntary erasure (two respondents)
- conditions on their practice (two respondents)
- interim conditions on their practice (one respondent)
- being barred by the Disclosure and Barring Service, undertakings or being subject to an investigation and membership would undermine public confidence in the profession (one respondent).

Comment only responses

The Chief Nursing Officer's Directorate of the Scottish Government said that the MPTS should be responsible for appointing both the MPTS Chair and Deputy Chair.

Suggestions to refine our proposal

One respondent in favour suggested the rules should make clear who would have a casting vote where the committee was sitting with 4 members and votes were equally split.

One respondent suggested that committee members be trained so they could treat doctors in the process in the same way that doctors were trained to meet the needs of patients.

Impact on groups with protected characteristics

One respondent commented that the changes proposed would not address issues of subconscious racial bias in panel decisions.

Question 2 – We propose making provision in the rules for the MPTS to be responsible for setting and publishing the criteria for appointing panellists and panel chairs. Do you agree?

Responses:

Option	Response number	Percentage %	Number of comments
Yes	65	65	17
No	12	12	6
Not sure	19	19	13
Comment only	4	4	4
TOTAL	100	100	40

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	7	1	1	1	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	4	0	1	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	44	10	13	2	69
	Medical educator	1	0	1	0	2
	Member of the public	0	0	1	0	1
	Responsible Officer	0	0	1	0	1

	Other	1	1	1	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents, 100 responded to this question. 65 of these respondents (65%) were in favour of the proposal to allow the MPTS to be responsible for setting and publishing the criteria for appointing panellist and panel chairs. There was support from a number of organisations including the MDDUS, the MDU and the NMC. Three respondents did not say whether they were in support, opposed or unsure but made comments.

The BMA opposed the proposal, sharing concerns, also raised by two doctors in their responses to this question and another doctor in their response to question 3, that hearing concerns about doctors will become a quasi-judicial process lacking professional input.

Comments in support of our proposal

Those in favour of the proposal said that full transparency in the appointment of panellists and panel chairs would improve trust and public confidence in the hearing process. Two respondents also noted that the legal experience and knowledge of legally qualified chairs was important for the process and would ensure fairness for doctors.

Four respondents in favour of the proposals felt that it was important for a panellist to have the appropriate skills and knowledge for each case. Less time would be required at the hearing to explain complex medical and legal issues. Two respondents (one in favour of and one who was not sure about the proposal) said respect, empathy and conscientiousness were concepts necessary for judging fitness to practise issues.

Two respondents said the criteria should be published.

Comments opposed to our proposals

Three respondents who opposed the proposal said that the MPTS alone should decide the criteria (so, in fact, appear to agree with the proposal). Two suggested that the GMC should also be involved and one said an independent body should decide the criteria.

Two doctors responded that they would like to see the criteria in order to comment. One responsible officer asked how the criteria is going to be decided.

Impact on groups with protected characteristics

Two respondents raised concerns about the impact of fitness to practise hearings on doctors. One respondent raised a specific concern that legally qualified chairs may be more pointed in how they express themselves and that, 'given the suicide rate amongst practitioners under investigation, it is vital that the MPTS's committee behaviour is always exemplary'.

Question 3 – We propose that where legally qualified chairs advise the panel on a question of law they will do so either in the presence of the parties or, where the parties are not present, they will include their advice in their decision. Do you agree?

Responses:

Option	Response number	Percentage%	Number of comments
Yes	77	79	14
No	13	14	10
Not sure	5	5	3
Comment only	2	2	2
TOTAL	97	100	30

Responses by category of respondent:

		Yes	No	Not sure	Blank	TOTAL
Organisations	Body representing doctors	7	2	0	1	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	4	1	0	0	5
	NHS/HSC organisation	1	0	1	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	53	9	4	0	66
	Medical educator	2	0	0	0	2

	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	2	1	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents, 97 responded to this question. 77 (79%) of these respondents were in favour of our proposal for legally qualified chairs giving legal advice to the panel, including the NMC, the MDDUS, the MDU, various Royal Colleges, the Independent Doctors Federation, and 53 of the 66 individual doctors who responded. Those opposed included the Law Society of Scotland, the Royal College of Psychiatrists and the Medical Protection Society.

Two respondents did not say whether they were in support, opposed or unsure but made comments.

Comments in support of our proposal

Eight respondents who commented agreed with the proposal with three saying it would lead to greater openness and was good practice. Two respondents commented that chairs would require appropriate skills and training, with another saying that a specialist legal opinion should always be sought where necessary.

Comments opposed to our proposals

Two respondents who disagreed, one doctor and one panellist, thought a legally qualified chair should not give legal advice at all. The Medical Protection Society said that there should be a legal assessor in each hearing and an individual doctor said the legal assessor role was very important for unrepresented doctors and in assisting the flow of the case. The same respondent also said the independence of the panel would be lost as the level of interaction required between the legally qualified chair and the parties would lead to questions being asked about the chair's independence.

Three respondents opposed to our proposals (and one in favour) said that the legally qualified chair should not give any legal advice to the panel in private. The MDU (who were in favour of the proposal) commented that where a legal assessor is not appointed, the current provision for legal assessors repeating advice given to the panel in camera to every party should apply to legally qualified chairs. The BMA were concerned that in hearings without a legal assessor the repetition of advice to all parties would be lost.

The Law Society of Scotland thought any advice given, whether in the presence of the parties or in camera, should be set out in writing and one respondent thought the determination including advice given in camera should also include the reasons for the advice.

Four respondents opposed to the proposal (and two in favour) said there should be an opportunity for parties to challenge legal advice given by the legally qualified chair. Without this, Radcliffes Le Brasseur (a law firm representing doctors) the hearing would be 'fundamentally unfair'.

Suggestions to refine proposal

The Royal College of Physicians, Edinburgh, commented that it should be made clear to parties that the lay chair includes a legally qualified chair.

One respondent noted that rule 6 should be amended to cover the situation where the registrant is not present at the time the advice is given but arrives after deliberation begins, and where the advice precedes the Tribunal beginning to deliberate. They suggested that this advice should be included in the written decision. We consider the current drafting provides for this scenario.

Question 4 – We propose that the MPTS should send the notice of hearing and the GMC should send the notice of allegation. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	82	85	16
No	6	6	6
Not Sure	5	5	2
Comment only	3	3	3
TOTAL	96	99	27

Response by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	10	0	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare	1	0	0	0	1

	provider					
	Postgraduate medical institution	3	1	1	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	1	0	0	2	3
	Other	2	0	0	0	2
Individuals	Doctor	56	5	3	1	65
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	2	0	1	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 96 answered this question. 82 (85%) of these respondents supported our proposal that the MPTS send the notice of hearing and the GMC send the notice of allegation with only 6 (6%) of respondents opposed and 5 (5%) who were not sure.

56 out of 65 of the doctors who responded agreed, together with eight bodies representing doctors, including the BMA.

Three respondents did not say whether they were in support, opposed or unsure but made comments.

Comments in support of our proposals

Five respondents who commented supported separation of the notices, with one who said this was important for transparency. One respondent said it was key for the doctor to receive the notice of allegation first and another that this should be received as early as possible to make sure the process was fair.

One respondent in favour of the proposal also suggested the notice be drafted in plain English removing reference to various statutes and that the GMC and MPTS be fined if they miss the deadlines for serving notices.

Another who agreed suggested that the GMC provide administrative support in order to save costs.

Comments opposed to our proposal

Four respondents who commented said there would be duplication as a result of the proposal and cause stress for the doctor. Similarly, one respondent in favour said that the process should be as simple as possible and minimise points of contact.

Two respondents said the notice of allegations should be sent by the GMC and then again, by the MPTS, with the notice of hearing.

One respondent highlighted the importance of timeliness, giving an example of delay by the GMC in informing a doctor of the deadline for submission of evidence.

Comments from those who were unsure

One respondent who was unsure about the proposal said that the change should also apply to interim order hearings.

The response from the Royal College of Anaesthetists was split between the clinical members who agreed with the separation of function and the lay members who thought one statutory body should be responsible for serving the notices.

Impact on groups with protected characteristics

One respondent who agreed with the proposal said the GMC process appears punitive, with adverse impacts on a doctor's health, including risk of suicide.

Question 5 – Do you agree that we should change our rules to reflect our current practice of giving doctors at least 28 days' notice of all matters relating to the hearing (including time and venue)?

Responses:

Option	Response number	Percentage	Number of comments
Yes	80	83	26
No	7	7	4
Not sure	7	7	6
Comment only	2	2	2
TOTAL	96	99	38

Response by category of respondent:

		Yes	No	Not sure	Blank	TOTAL
Organisations	Body representing doctors	9	0	0	1	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	1	1	0	0	2
	Regulatory body	2	0	0	1	3
	Other	1	0	1	0	2
Individuals	Doctor	55	5	5	0	65
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	1	1	1	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 96 responded to this question. 80 (83%) of these respondents supported changing our rules to give doctors at least 28 days' notice of all matters relating to a hearing, including 55 out of 65 of the individual doctors who responded. The BMA, the MDDUS, the Nursing and Midwifery Council and the Law Society of Scotland were among those organisations in support. Only 7 (7%) of respondents opposed the proposal with 7 (7%) unsure.

Two respondents did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

Comments in support of our proposal

Out of those respondents in favour who commented on the proposal, four respondents said the current provision in the rules of no less than seven day's notice of the precise time and venue of the hearing was too short. Three said 28 days should be the minimum, whilst one respondent thought 28 days was excessive if the hearing was subsequently rescheduled to a later date. One said notice should be given as soon as the date was known (if earlier than 28 days before the hearing).

Three respondents thought the notice period should be brought in line with the six week notice period required of doctors when requesting a leave of absence. This would avoid experts and the doctor concerned being unable to attend the hearing.

Four agreed with our proposal on the basis that the change would allow the doctor more time to prepare for the hearing.

The NMC pointed out that the proposal mirrored their own rules which provided for a 28 day notice period.

Comments opposed to our proposal

Three respondents (including one in favour) suggested longer notice periods of 8 weeks and under 3 months.

Comments from those who were unsure

One respondent thought the proposal defeated the aim of speeding up adjudication and two thought doctors should be able to consent to a shorter notice period and a faster process.

The Faculty of Public Health noted that a longer notice period would give a doctor longer to prepare but a short notice period allowed for quick listings if hearings were cancelled.

One asked for clarification of 'all matters' where reference, in the consultation document, is made to giving notice of all matters relating to the hearing.

Suggestions to refine proposal

One respondent who was unsure suggested giving a range of dates and then 7 days before the hearing giving a firm date for the hearing.

Another suggested a cut-off point by when the notice of the date of hearing must be given.

Radcliffes Le Brasseur (a law firm) suggested retaining the current provision to serve the notice of allegation as soon as reasonably practicable after referral.

The MDU made two suggestions:

- to retain the current provision in rule 15(4) that allows the Registrar to give a shorter period of notice where it is reasonable in the public interest and additionally where it is in the exceptional circumstances of the case. In their response to question 4, the

MPS made a similar suggestion including giving a shorter notice period where the practitioner consents.

- To allow for only the MPTS to decide whether shorter notice should be given in the public interest (rule 15(2)).

Question 6 – We propose to remove the rule that provides that the MPTS should tell the GMC when an interim order is due to expire. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	64	69	12
No	9	10	6
Not Sure	18	19	9
Comment only	2	2	2
TOTAL	93	100	29

Response by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	10	0	0	0	10
	Government department	0	0	0	1	1
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	3	0	2	0	5
	NHS/HSC organisation	1	1	0	0	2
	Regulatory body	2	0	0	1	3

	Other	2	0	0	0	2
Individuals	Doctor	41	7	14	0	62
	Medical educator	0	0	1	0	1
	Member of the public	0	1	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	2	0	1	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 93 responded to this question. 64 (69%) of these respondents supported removing the rule that provides that the MPTS should tell the GMC when an interim order is due to expire. 41 out of 62 doctors who responded agreed together with the BMA, the MDDUS, the MDU, the Medical Protection Society, and the Royal Colleges of Radiologists and of Physicians and Surgeons of Glasgow among others.

18 (19%) were unsure with only 9 (10%) opposed. Two respondents, including the Chief Nursing Officer's Directorate of the Scottish Government, did not say whether they were in support, opposed or unsure but made comments.

Comments in support of our proposal

Three respondents who commented agreed that this proposal was reasonable. Two respondents thought it was for the GMC to monitor the expiry of an interim order, with one also noting that it confirmed the independence of the MPTS.

One respondent who agreed said they did not understand the proposal and there should be clarity for all parties concerned over the expiry of an interim order.

Two respondents, including the PSA, agreed provided the process still worked well.

Comments from those who were unsure about the proposal

Two respondents said the change would make no difference, one calling it cosmetic and the other a virtual measure that would not achieve separation.

Comments opposed to our proposal

One respondent disagreed on the basis that the MPTS and GMC should be in continual communication with each other.

Six respondents (three opposed and three who were unsure) said there was a risk that an interim order would lapse by accident and a reminder from the MPTS of the expiry would be sensible. Another respondent referred to the rule as a safeguard against an order lapsing.

Comment only responses

The Chief Nursing Officer's Directorate of the Scottish Government said the GMC needs to be informed of the decisions of the panel irrespective of when undertakings might expire.

Suggestions to refine proposal

The Royal College of Physicians, Edinburgh suggested that as the original order was made by the MPTS, they should retain responsibility for reviewing it every 6 months and requesting any proposed extension.

Question 7 – We propose clarifying the circumstances in which we can refer a doctor with panel undertakings for a review where the doctor does not agree to changes we want to make to their undertakings. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	72	81	11
No	4	4	2
Not Sure	11	12	1
Comment only	2	2	2
TOTAL	89	99	16

Responses by category of respondent:

	Yes	No	Not	Blank	TOTAL

				Sure		
Organisations	Body representing doctors	10	0	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	1	0	0	2	3
	Other	2	0	0	0	2
Individuals	Doctor	44	4	10	0	58
	Medical educator	2	0	0	0	0
	Member of the public	0	0	1	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 89 answered this question. 72 (81%) of these respondents agreed with clarifying the circumstances in which we can refer a doctor with panel undertakings for a review. These included 44 of the individual doctors who responded and various organisations, including various defence organisations (the MDDUS, the MDU and the MPS), and doctor's representative bodies (the BMA and the Independent Doctors Federation).

4 (4)% of respondents were against the proposal and 11 (12%) were unsure. Two respondents did not say whether they were in support, opposed or unsure but made comments, including the PSA.

Comments in support of our proposal

Four of the respondents who agreed with the proposal said that this would strengthen the process and allow for a change in the doctor's circumstances. One felt it would also allow for doctors who are cooperative to demonstrate their insight.

Two respondents said that any changes to panel undertakings would have to be endorsed by the panel.

One respondent in favour agreed with the PSA, who said that the circumstances for referral should be clarified. The PSA also commented that it was unclear whether the panel undertakings being referred to would be those under the existing process or under the process once the new rules are agreed and in force.

Comments opposed to our proposals

Two respondents (both doctors) were concerned that this change would introduce 'double jeopardy' and felt it would be more appropriate for the GMC to appeal a decision if it was not content with the undertakings agreed.

Suggestions to refine proposal

One respondent who opposed the proposal suggested that referrals should only be made where there had been a change in circumstances or on the basis of new evidence.

Question 8 – We propose making clear that a doctor with undertakings whose language skills either deteriorate or otherwise give rise to further concerns can be referred to a panel. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	72	81	11
No	6	7	2
Not Sure	9	10	4
Comment only	2	2	2
TOTAL	89	100	19

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	8	1	1	0	10

	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	1	0	0	2	3
	Other	2	0	0	0	2
Individuals	Doctor	45	5	8	0	58
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 89 responded to this question. 72 (81%) of these respondents were in favour of the proposal to make clear that doctors with undertakings whose language skills either deteriorate or otherwise give rise to further concerns can be referred to a panel. These respondents included 45 out of the 58 doctors who responded and a number of organisations, including various Royal Colleges, medical defence organisations (the MDDUS, the MDU and the MPS) and the Independent Doctors Federation.

6 (7)% of respondents were against the proposal and 9 (10%) were unsure. Two respondents did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

Comments in support of our proposal

Two respondents, the Royal College of Anaesthetists and the Faculty of Public Health, said that an adequate knowledge of English language was fundamental to patient safety and the failure to communicate effectively compromises medical care.

The MDU noted that the introduction of knowledge of English as a category of impairment was relatively recent and, though they agreed in principle, they had no experience of how this may operate in practice.

Comments opposed to our proposals

Three respondents (including one who was in favour) noted that the criteria for referral including who would make the referral decision and the basis on which the decision would be made must be transparent.

Two respondents, one of whom was unsure, asked how deterioration in English language would be evidenced.

Comments from those who were unsure

An individual doctor who was not sure about the proposal wanted to know the reason behind the change.

Suggestions to refine proposal

BLM (a law firm specialising in risk and insurance) suggested that, where there were further concerns caused by language difficulties, they should be treated as a new referral and investigated.

Impact on groups with protected characteristics

The BMA commented that criteria, including the evidence required to show deterioration, was necessary to mitigate against the risk of discrimination on the grounds of race and disability.

Question 9 – We propose giving our hearings a more logical order, identifying a doctor at a hearing before hearing any legal argument. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	65	76	14
No	5	6	1
Not Sure	15	17	5
Comment only	1	1	1
TOTAL	86	100	21

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	9	1	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	4	0	1	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	1	0	1	1	3
	Other	2	0	0	0	2
Individuals	Doctor	40	4	11	0	55
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	0	0	1	0	1
	Other	2	0	1	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents who responded to the consultation, 86 responded to this question. 65 (76%) of these respondents supported identifying the doctor before hearing any preliminary legal argument. 40 out of 55 doctors who responded were in favour as well as various organisations, including the BMA, the Medical Protection Society, the MDDUS, and the MDU. 15 (17%) were unsure and 5 (6%) were opposed.

One respondent did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

Comments in support of our proposal

Six respondents said that this proposal was logical or straightforward and three respondents agreed it would streamline our process.

Two respondents asked questions: would the complainant also be identified?; and was there more to the change than naming the doctor?

Comments from those who were unsure

Two respondents who were unsure asked for the rationale behind the change, with one also saying it seemed sensible.

Another said the change would make no difference, not saving time and naming doctors who would already be known to the press.

Comments opposed to our proposals

Three respondents (including one in favour and one who was unsure) questioned the legal implications of what appeared to be the formal opening of the hearing. Currently, the registrant can apply for a stay of proceedings and if successful, is entitled to say they had not appeared before their regulator. This entitlement would be lost if the proposed change is implemented.

Suggestions to refine proposal

The MPS response suggests the Rules should acknowledge the instances that exist where pre-hearing publicity does not currently identify the registrant. They suggested the new rules should enable anonymity to be maintained prior to the commencement of a hearing.

Question 10– We propose allowing both parties to make submissions on the facts before the panel decides which facts are true. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	80	92	9
No	3	3	1
Not Sure	3	3	0
Comment only	1	1	1
TOTAL	87	99	10

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	10	0	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	50	3	3	0	56
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents to the consultation, 87 answered this question. 80 (92%) of these supported allowing both parties to make submissions on the facts before the panel decides which are true. 50 out of 56 doctors who responded were in favour as well as various organisations including the BMA, the MDDUS, the MDU, the Royal College of Physicians of Edinburgh, and the Royal College of Physicians and Surgeons of Glasgow.

3 (3%) of respondents opposed the proposal and 3 (3%) were unsure. One respondent did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

Comments in support of our proposal

One respondent thought the proposal fair and another logical. Three respondents commented that this change will allow the doctor the opportunity to test the case against them. Three said it would assist the panel in understanding complex issues.

The Royal College of Anaesthetists said this brought our process in line with similar processes.

Three in favour (and one against the change) said this already happens at hearings with submissions at both the misconduct and impairment stage of the hearing.

Comments opposed to our proposals

One respondent noted that facts are subjective.

Question 11 – We propose removing the need to refer to transcripts of previous hearings in review and restoration hearings unless this is necessary. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	54	63	8
No	16	19	10
Not Sure	15	17	5
Comment only	1	1	1
TOTAL	86	100	24

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	7	2	0	1	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1

	Postgraduate medical institution	3	0	2	0	5
	NHS/HSC organisation	1	1	0	0	2
	Regulatory body	2	1	0	0	3
	Other	2	0	0	0	2
Individuals	Doctor	33	9	13	0	55
	Medical educator	1	1	0	0	2
	Member of the public	0	1	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	2	1	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents to the consultation, 86 answered this question. 54 (63%) of these were in favour of removing the need to refer to transcripts of previous hearings in review and restoration hearings unless necessary. The majority of individual doctors supported the approach, with 33 out of the 55 who responded in favour. The BMA, the MDDUS, the British Orthopaedic Association, the Scottish Medical and Scientific Advisory Committee, the Royal College of Anaesthetists and the Royal College of Physicians and Surgeons of Glasgow supported the proposals.

16 (19%) opposed the proposal and 15 (17%) were unsure. One respondent did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

Comments in support of our proposal

Five respondents (including one who was unsure) commented that this was an appropriate step or that the proposals would streamline the process.

Four respondents said that the transcript should still be available when required.

One respondent noted that there may be legal argument about what is 'necessary'.

Comments opposed to our proposals

Five respondents said a transcript was needed to have a thorough hearing. This would allow the panel to consider all the facts, uncover any irregularities and appreciate any

nuance. One respondent who was unsure said the transcripts allowed for a panel 'audit' of the evidence at each stage of the process.

Three respondents (including one who was unsure) said the panel should have the right to access transcripts as well as the parties and one suggested the panel should be able to consider them where relevant. Two respondents suggested that reference to the transcripts should be unnecessary only where both parties agreed to this.

Five respondents (including three who were unsure and the MPS who did not say whether they supported or opposed the proposal) thought there should be guidance about what was considered necessary and who decides on what is necessary.

The MPS also set out a number of reasons why a transcript was important:

- there may be matters relevant to the hearing that are not included in the panel determination
- the panel hearing the review or restoration may not have heard evidence from the previous hearing
- the transcript would include oral evidence given by the practitioner at the previous hearing which may assist the panel on review or restoration to assess whether the doctor has shown insight.

They added that requesting the transcript during a hearing may waste time.

Comments from those who were not sure

One respondent who was unsure said the transcripts should be available on request and another said it may change the way the panel write their determinations in future, so they include more about the evidence heard.

Suggestions to refine proposal

BLM (a law firm) suggested two refinements. The first, a change to drafting so that the rule would read the MPTS/Registrar *shall* (as opposed to can) give a written record on request. The second, that the MPTS follow the coroner's practice of releasing digitally recorded discs of a hearing for a fee.

Impact on groups with protected characteristics

In addition to their comments above, the MPS highlighted the proposal may be unfair for an unrepresented doctor who may not appreciate the importance of a transcript to their review hearing.

Question 12 – We propose clarifying that the MPTS arranges recordings of panel hearings and the registrar arranges recordings of Investigation Committee hearings and that, on request, the MPTS or registrar (as the case may be) can provide a written record. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	76	87	15
No	4	5	2
Not Sure	6	7	1
Comment only	1	1	1
TOTAL	87	100	19

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	10	0	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	47	4	5	0	56
	Medical educator	2	0	0	0	2
	Member of the public	0	0	1	0	1
	Responsible Officer	1	0	0	0	1

	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents to the consultation, 87 answered this question. 76 (87%) of these strongly supported clarifying the arrangements for recording the proceedings of MPTS hearings and Investigation Committee hearings. 47 out of 56 doctors were in favour of the approach. The BMA, the MDDUS, the MDU, British Orthopaedic Association, Royal College of Physicians of Edinburgh, Scottish Medical and Scientific Advisory Committee and the Royal College of Physicians and Surgeons of Glasgow were also in favour of the proposal.

4 (5%) were opposed and 6 (7%) were unsure. One respondent did not say whether they were in support, opposed or unsure but made comments (recorded as comment only).

Comments in support of our proposal

The BMA supported this proposal, but noted the importance of assuring doctors and the public that the GMC has the technology available to support the process.

The Royal College of Physicians of Edinburgh were in favour of the proposal but highlighted the need for clear and detailed guidance on the circumstances a request for a written record would be granted or denied and, where denied, whether or not there would be an opportunity to appeal that decision.

The MDU requested assurance that parties would, on request, receive a written transcript and one respondent considered written records should be "made available free of charge".

The Faculty of Public Health agreed that transcripts, available on request, would be helpful, particularly for those where English is not their first language. The faculty indicated this would be helpful in supporting parties to absorb the information and legal arguments put before the panel.

Comments opposed to our proposal

Two doctors opposed to this proposal indicated the need for an audio/visual recording to be made available to parties. One doctor stated that:

"the written word fails to capture the tone or strength of witnesses and advocate evidence or argument and is reliant on the good faith of the transcriber and his or her fidelity to the audio-recording".

Question 13 – We propose clarifying the terminology we use, in particular what we mean by 'witness'. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	72	85	11
No	7	8	6
Not Sure	4	5	1
Comment only	2	2	2
TOTAL	85	100	20

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	6	3	0	1	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	47	3	4	0	54
	Medical educator	2	0	0	0	2
	Member of the public	0	1	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3

Unknown	Blank	1	0	0	0	1
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Introduction

Out of the 109 respondents to the consultation, 85 answered this question. 72 (85%) of these supported the proposal to clarify the terminology we use. 7 (8%) of respondents opposed the proposal and 4 (5%) were not sure.

Two respondents did not say whether they were in support, opposed or unsure but made comments.

There was support from the BMA, MDU, Nursing and Midwifery Council, British Orthopaedic Association, Royal College of Physicians of Edinburgh, Royal College of Physicians of Edinburgh, the Scottish Medical and Scientific Advisory Committee and Royal College of Physicians and Surgeons of Glasgow.

The MDDUS opposed the proposal.

Comments in support of our proposal

The Royal College of Anaesthetists supported this proposal as they believed it would provide consistency with other “similar legal processes”. The Faculty of Public Health also welcomed the clarification.

One doctor who supported the proposal raised concern that greater weight was given to statements provided by the “investigation body (for example a hospital trust)” compared with those statements provided by witnesses.

Another doctor stated that witnesses should be appropriately qualified to ensure credibility although witnesses play a broader role in our proceedings beyond providing expert evidence.

The Royal College of Physicians, although supportive of the proposal, thought it would be helpful to have provided a clearer explanation of this proposal within the consultation document.

Comments opposed to our proposal

A number of respondents raised concern that a doctor’s role in proceedings is wider than that of a witness. The MDDUS stated that the role of a witness of fact or expert “is to assist the panel on matters within their knowledge of expertise. A party has rights and protections at law which require different definition.” Similarly, BLM argued that Rule 34(11) relates to a witness of fact, not the doctor, and stated that the definition of a witness needed “further refinement”. RadcliffesLeBrasseur agreed with this and argued that the distinction should be reflected in the Rules.

One doctor stated that this was not analogous to criminal proceedings and was therefore inappropriate. It is worth noting that MPTS hearings are civil proceedings.

Comments from those who were unsure

One doctor requested further clarification on the meaning of 'legal representative'.

Suggestions to refine proposal

One respondent suggested that doctors should be required to take an oath when they provide evidence to the panel, in the same way as a witness would.

Impact on groups with protected characteristics

One respondent commented on the impact this proposal might have on unrepresented doctors some of whom may be from groups with protected characteristics.

Question 14 – We propose allowing case managers and Investigation Committee members to adjourn hearings that are part heard when either party requests this. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	67	80	12
No	8	9	7
Not sure	8	9	3
Comment only	3	3	3
TOTAL	86	101	25

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	7	1	1	1	10
	Government department	0	0	0	1	1
	Independent healthcare provider	1	0	0	0	1

	Postgraduate medical institution	5	0	0	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	41	6	7	0	54
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	0	1	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents to the consultation, 86 answered this question. 67 (80%) agreed with allowing case manager and Investigation Committee members to adjourn hearings that are part heard when either party requests this. 41 out of 76 doctors were in favour of the approach. The Nursing and Midwifery Council, the MDU, the British Orthopaedic Association, the Royal College of Physicians of Edinburgh, the Royal College of Physicians and Surgeons of Glasgow and the Law Society of Scotland were in favour.

8 (9%) opposed the proposal including the BMA and 8 (9%) were unsure. Three respondents, including the Chief Nursing Officer's Directorate of the Scottish Government, did not say whether they were in support, opposed or unsure but made comments.

Comments in support of the proposal

Three respondents said this proposal was practical and would contribute to streamlining our process.

Six respondents (three in favour, two against and one who was unsure) said care would need to be taken to avoid unnecessary delay as a result of adjournments. Those opposed said delays were detrimental to the doctor and would also have an impact on experts attending the hearing who had requested leave from work. One respondent noted that the long adjudication process could remove a good doctor from clinical practice resulting in the need for re-training.

Comments opposed to the proposal

Eight respondents (five opposed and two in favour) thought the adjournment should only be allowed where both parties agree. The BMA gave specific suggestions set out below and were concerned that the doctor should not lose their right to make oral representations on adjournment to the panel. Two respondents (one who was unsure) from this group of eight suggested that where the parties did not agree the panel should decide.

One respondent (who was unsure) said there should be good evidence for the need for an adjournment. Two respondents said the panel should decide instead of the case manager.

Comment only responses

The Chief Nursing Officer's Directorate commented that there was no process to deal with the situation where one party agrees with the adjournment and the other party doesn't.

Suggested refinements

The BMA suggested that adjournments should be allowed where: both parties agree, and where they do, provide an alternative date; and where parties agree to the case manager making a decision on adjournment in writing.

Question 15 – We propose that, to protect the public, when the panel has adjourned a review hearing before it has made a finding of impairment, a panel should be allowed to extend a sanction until the panel can reconvene to consider impairment. Do you agree?

Responses:

Option	Response number	Percentage	Number of comments
Yes	58	67	13
No	15	17	9
Not Sure	13	15	8
Comment only	1	1	1
TOTAL	87	100	31

Responses by category of respondent:

	Yes	No	Not	Blank	TOTAL

				Sure		
Organisations	Body representing doctors	7	3	0	0	10
	Government department	0	0	0	1	1
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	3	0	2	0	5
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	3	0	0	0	3
	Other	2	0	0	0	2
Individuals	Doctor	33	12	10	0	55
	Medical educator	1	0	1	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 responses to the consultation, 87 responded to this question. 58 (67%) supported a panel extending sanctions in the event that a review hearing is adjourned before it has made findings of impairment. Various organisations were in favour including the MDDUS, the MDU, the PSA and the Royal College of Physicians and Surgeons of Glasgow.

15 (17%) of respondents opposed the proposal including the BMA, MPS and Faculty of Pain Medicine of the Royal College of Anaesthetists. 13 (15%) were unsure. The Chief Nursing Officer's Directorate of the Scottish Government did not say whether they supported, opposed or were unsure about the proposal but made a comment.

Comments in support of the proposal

Five respondents said this change would protect the public. One thought it was a logical step and another pointed to the fact it happens already in some circumstances.

One noted that this should only be used where the doctor presented a risk and another that the sanction imposed should be proportionate to the risk.

One doctor said this should only be used where both parties consented.

One respondent said that this should only be used in exceptional circumstances.

Comments opposed to the proposal

Ten respondents, including four who were unsure and the Chief Nursing Officer's Directorate, said this change would be detrimental to the doctor. The Chief Nursing Officer's Directorate also questioned whether the change was compliant with the Human Rights Act. One doctor referred to guidelines that prevent an employing Trust from excluding a doctor for more than 3 months without board level involvement on the basis that those absent from clinical practice for more than 3 months find it more difficult to return to work.

Seven respondents, including three respondents in favour and one who was unsure, said a time limit on the extended sanction was necessary to prevent the case continuing for months.

Two respondents suggested that review hearings be listed before the end of the review period to allow for another hearing if necessary before the sanction expired. Similarly, one respondent in favour, commented that the adjourned review hearing should be expedited to reduce the stress on the doctor.

Comments from those who were unsure

One respondent commented that the use of the power would depend on the charge and the reasons for delay. Another said the proposal was unfair as in most cases the GMC caused delay.

One respondent also suggested that both parties should be able to make submissions about any order made.

Suggestions to refine proposal

To avoid the necessity of extending sanctions before a finding of impairment is made, the BMA made the following suggestions:

- adequate case management for IOP review hearings
- listing of hearings appropriate to their complexity
- holding the review hearing in good time to allow for a further hearing if necessary.

Impact on groups with protected characteristics

Three doctors highlighted that this proposal could have a disproportionate impact on a doctor's health, with one noting this would be the case, in particular where there were concerns about self harm or suicide.

Question 16 – Do you agree with the circumstances we have set out in the draft rules for when case management decisions will not be treated as binding?

Responses:

Option	Response number	Percentage	Number of comments
Yes	54	64	6
No	9	11	5
Not Sure	20	24	6
Comment only	1	1	1
TOTAL	84	100	18

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	6	4	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	3	0	2	0	5
	NHS/HSC organisation	1	0	1	0	2
	Regulatory body	2	0	0	1	3
	Other	2	0	0	0	2
Individuals	Doctor	33	4	16	0	53
	Medical educator	2	0	0	0	2
	Member of the public	0	1	0	0	1

	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	0	0	1	0	1

Introduction

Out of the 109 respondents to the consultation, 84 answered this question. 54 (64%) agreed with the circumstances we have set out in the draft rules for when case management decisions will not be treated as binding.

9 (11%) respondents opposed the proposal, including the MDDUS, the MDU and the BMA. 20 (24%) were unsure.

One respondent did not answer yes, no or not sure but did make a comment.

General comments

This question asked for a response relating to the criteria to be applied in determining if a direction should be considered as binding and in particular the two suggested exceptions to the rule that a direction should be considered not binding.

No respondent had concerns in principle about case manager's directions being binding and nor did any respondent suggest that either of the proposed exceptions were inappropriate. One respondent (who opposed) noted:

'Care must be taken that the case management regime does not become unduly burdensome'.

Comments in support of our proposal

One doctor said "Case management decisions must be binding, with a cost sanction, if they are to be obeyed, and the current prevarication and delay avoided".

Comments opposed to the proposal

The BMA did not agree with our proposals although they recognised that there is presently an issue that parties criticise one another for failing to adhere to case management directions. They felt that the proposed rules would not go far enough in holding the GMC to account and that:

"it would be appropriate to provide that the MPT has the power to strike out the case, or specific charges, where a doctor's ability fairly to respond to the charges has been undermined in consequence of the GMC's non-compliance".

Noting that a party can request a further case review to be held, the BMA suggested that the rules should explicitly state whether a case manager is bound by earlier case

management decisions. They suggested that there should be a clear mechanism to review case managers' directions, and that at present there is no procedure set out as to how to challenge an unfavourable direction. The concern about how to challenge a case management decision was shared by another respondent (who was not sure about the proposal).

Comments from those who were not sure

A number of respondents dealt with the question of how the proposal might impact upon the efficiency of the hearing process. One respondent commented that at present case management hearings do not achieve the objective of ensuring that a case proceeds efficiently. Another stated that it was essential that case management decisions could not be circumvented. Another commented that it was important to prioritise the correct outcome over speed.

One respondent commented that directions were not always realistic in terms of timing.

The Royal College of Surgeons of Edinburgh noted:

'The circumstances are defined as "material change in circumstances" or "not in the interests of justice" – however they are not expanded on and it is not clear who would make a judgment about this".

Suggestions to refine proposal

BLM, who agreed with the proposals suggested that in order to save the panel time, decisions pursuant to 16(7)A could be made by a case manager in advance of the hearing, or agreed by the parties.

Another body representing doctors, who disagreed, also suggested that there should be an exception where the parties agree a variation of a direction.

One respondent who disagreed suggested the addition of a third category of case where a direction issued by a case manager would not be binding, namely if the Tribunal considered that it would assist them to classify the direction as non-binding.

Impact on groups with protected characteristics

In addition to comments set out above, the BMA also said the binding nature of the directions should be made plain to unrepresented doctors.

Question 17 – Do you agree with our proposals for awarding and assessing costs, as outlined in the draft rules?

Responses:

Option	Response number	Percentage	Number of comments

Yes	38	46	10
No	25	30	16
Not Sure	16	19	8
Comment only	4	5	4
TOTAL	83	100	38

Response by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	2	6	1	1	10
	Government department	0	0	0	1	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	2	0	2	0	4
	NHS/HSC organisation	2	0	0	0	2
	Regulatory body	0	1	0	2	3
	Other	2	0	0	0	2
Individuals	Doctor	24	12	16	0	52
	Medical educator	2	0	0	0	2
	Member of the public	0	0	1	0	1
	Responsible Officer	0	1	0	0	1
	Other	2	0	1	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents to the consultation, 83 responded to this question. 38 (46%) of respondents agreed with our proposals for awarding and assessing costs as outlined in the draft rules, including bodies representing doctors and a post graduate medical institution.

25 (30%) of respondents opposed our proposals, including the BMA, the MDDUS, the MDU, other bodies representing doctors and the Law Society of Scotland.

16 (19%) respondents were not sure. Four respondents, including the Chief Nursing Officer's Directorate of the Scottish Government, did not answer yes, no or not sure but made comments.

Comments in support of our proposal

Three respondents commented that they welcomed this measure, on the basis that it would increase efficiency and reduce delays. Another respondent who agreed felt that financial sanctions may be needed in order to ensure that case management decisions are enforced, and commented

'These sanctions must be effective at preventing delays as they will otherwise be useless'.

One respondent who agreed suggested that there should be a fixed tariff of contributions to costs, rather than an order made for actual costs incurred. A respondent who was not sure stated "the scale of costs should be very clear", and not punitive.

One doctor who agreed warned that care must be taken to ensure that it does not become the case that a disproportionate amount of time is spent on arguing about/appealing costs (these concerns were also voiced by a respondent who disagreed, who gave the example of the civil courts where "parties become misdirected into procedural detail")

One respondent who agreed said that costs needed to take into account the cost of paying GP witnesses a reasonable amount towards locum cover.

Two respondents queried how costs would be enforced.

One doctor suggested that an order for costs should also be made when charges against a doctor are found proved.

Comments opposed to our proposal

Three respondents (including the Chief Nursing Officer's Directorate) sought clarification as to the meaning of the term "unreasonable". One respondent who disagreed felt that "unreasonable" was very wide. Another who disagreed stated "the proposed rule changes are unclear as to precisely the circumstances in which the power to make a costs order would be triggered" and a second noted a "wider scope to order costs set out in the draft rule than in the consultation paper". A party who was not sure commented that the draft

rules are unclear “as they appear to suggest that costs could be awarded in cases where there has either been a failure to comply with a direction or there has been unreasonable behaviour”. The Chief Nursing Officer’s Directorate also asked who would make the decision about unreasonable behaviour and whether this could be challenged (including in Scottish courts).

Seven respondents (including two who agreed and two who were not sure) raised the question of ability to pay, particularly where a doctor has been unable to earn whilst under investigation. One suggested that the costs to be paid should be proportionate to a doctor’s wages, rather than to a lawyer’s.

Four respondents (one who agreed and two who disagreed) raised the question of whether such decisions would be appealable. Three who disagreed queried whether it was right for the case manager to have these powers. One respondent who disagreed was concerned about “lay individuals” making decisions on costs. A respondent who was not sure felt that tribunals would need clear guidance and training.

One respondent took the view that the proposed changes would penalise doctors without the support of a defence organisation and four stated that the costs would simply be passed on to other registrants.

Two doctors who disagreed felt that in some cases the doctor should be entitled to costs and compensation.

Two respondents stated that there was no evidence of any need for costs sanctions, one suggesting that other avenues for improving efficiency should be explored before the costs regime is imposed.

A respondent who was not sure, and two bodies representing doctors who disagreed, raised a concern about a dispute as to whether costs should be paid by a doctor or by his representatives, and issues of legal professional privilege. One suggested that the test for whether a legal representative should have to pay costs should be the same as that applied in other jurisdictions.

One respondent who disagreed, felt that the proposed changes were unfair, first because “there seems to be no liability on the MPTS to pay costs where it is the cause of delays” and secondly that “ability to pay is more likely to be a factor when assessing the cost liability of a complainant, as opposed to a doctor who holds indemnity cover”. This respondent had related concerns about indemnity cover becoming unaffordable.

One respondent who did not agree noted that there was no legal aid available to doctors, that the regime would lead to “inequality of arms”, and that a human rights issue arose under Article 6 of the European Convention of Human Rights (ie the right to a fair trial).

A respondent who disagreed queried whether non-payment of costs would itself be regarded as a regulatory matter.

Comments from those who were unsure

A body representing doctors felt that the power could be appropriate, in some circumstances, but that they had “wide-ranging concerns”. They invited the GMC to launch a separate consultation on costs, to deal with a number of “foreseeable practical implications”, noting that the suggested 28 day period for disclosure of a schedule of costs and a written response to it with evidence of means, would place extra pressure on a doctor who may be considering and preparing an appeal, making arrangements for patient care following sanction, and/or meeting the cost of his defence (if he was privately represented before a panel).

A body representing doctors noted that in some circumstances there can be practical difficulties in abiding by directions.

One respondent who was not sure felt that it was not possible to give a substantive response before the GMC guidelines were published, but queried whether there would be set fees, what evidence would be needed and whether the panel could raise the issue of costs of their own volition.

Suggestions to refine proposal

A respondent who was not sure suggested that parties should be required to give a notice of an intention to seek an order for costs.

Impact on groups with protected characteristics

One respondent noted the suicide rate amongst doctors facing proceedings at the GMC in the context of additional pressure a doctor would face in relation to a costs order.

Five respondents thought special care would be needed in the case of an unrepresented doctor, one of whom felt that it was essential that unrepresented doctors be given lots of information and suggested that a dedicated website be set up to give impartial advice.

Question 18 – When we make provisional enquiries to decide if we need to carry out an investigation, we propose removing the need to tell a doctor’s employer. Do you agree?

General analysis table:

Option	Response number	Percentage%	Number of comments
Yes	71	84	21
No	11	13	8
Not Sure	3	4	1
Comment only	0	0	0

TOTAL	85	101	30
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Category analysis table:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	9	1	0	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	2	2	1	0	5
	NHS/HSC organisation	1	1	0	0	2
	Regulatory body	3	0	0	0	3
	Other	1	1	0	0	2
Individuals	Doctor	48	5	1	0	54
	Medical educator	1	0	1	0	2
	Member of the public	0	1	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents, 85 answered this question. 71 (84%) agreed with the proposal to remove the requirement to disclose preliminary enquiries to a doctor's employer, including 48 out of 54 doctors and seven bodies representing doctors.

11(13%) respondents opposed the proposal, including five doctors, and 3 (4%) were unsure.

Comments in support of the proposal

Six respondents said this was fair for doctors, including the MDU and the NMC. Eight respondents (including one who opposed the proposal) including the Royal College of Surgeons, Edinburgh, felt this would protect doctors from reputational damage, particularly where a complaint was vexatious, and so save them distress. One doctor commented that “mud sticks” and any hint of a fitness to practise issue can adversely affect the employer-employee relationship.

Four respondents, including the PSA, said there was risk to patient safety in not telling the employer, the preliminary enquiry process should be time-limited and there should be clear guidance for GMC staff about when it would be necessary for public protection to alert an employer at this stage.

One doctor commented on the process for sending letters of good standing that is outside the scope of this consultation but we will reflect on the comment as part of our ongoing review of our processes and procedures.

The Medical Protection Society asked whether this proposal would also apply to the Secretary of State and associated offices (to whom the GMC has a duty to disclose an investigation under section 35B(1) of the *Medical Act 1983*).

Comments opposed to the proposal

Seven respondents said that the GMC must tell the employer or RO. Respondents identified a number of reasons why this was important including: allowing the employer to make an informed decision about how they respond to the complaint locally; so they can support the doctor; and they can give the GMC any relevant information.

The Royal College of Physicians and Surgeons of Glasgow said it was not clear why informing the employer could not happen in parallel with an investigation and the circumstances in which the GMC would disclose preliminary enquiries to a doctor.

Suggestions to refine proposal

Two of the respondents in favour of the proposals pointed out this proposal conflicts with Trust policies that require a doctor to inform their employers of any investigative action. The BMA recommended that doctors be explicitly advised that there is no regulatory requirement for them to inform their employers of fitness to practise issues and Good Medical Practice be amended accordingly.

Another doctor suggested employers are not told about investigations that result in no further action being taken.

One respondent pointed out that public health doctors may need to be treated differently as their employer is not their designated body. They fear that only informing an employer ‘could put PHEs RO in a difficult position’.

Impact on groups with protected characteristics

One doctor said referrals for health problems should be deferred or rejected where a doctor is receiving treatment.

Question 19 – We propose introducing a process for a new type of non-compliance hearing to deal with substantive non-compliance with assessments or requests for information required in order to enable us to investigate concerns. Do you agree with that process?

Responses:

Option	Response number	Percentage%	Number of comments
Yes	63	75	11
No	9	11	7
Not Sure	11	13	5
Comment only	1	1	1
TOTAL	84	100	24

Responses by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	5	4	1	0	10
	Government department	0	0	0	0	0
	Independent healthcare provider	1	0	0	0	1
	Postgraduate medical institution	4	0	1	0	5
	NHS/HSC organisation	1	1	0	0	2
	Regulatory body	2	0	0	1	3

	Other	2	0	0	0	2
Individuals	Doctor	40	4	9	0	53
	Medical educator	2	0	0	0	2
	Member of the public	1	0	0	0	1
	Responsible Officer	1	0	0	0	1
	Other	3	0	0	0	3
Unknown	Blank	1	0	0	0	1

Introduction

Out of the 109 respondents to the consultation, 84 answered this question. 63 (75%) were in favour of introducing a new type of non-compliance hearing, including the PSA, the NMC, the MDU, the Faculty of Public Health, the Royal College of Anaesthetists, and the Law Society of Scotland.

9 (11%) were opposed, including the MDDUS, the MPS, Radcliffes Le Brasseur and 11 (13%) were unsure, including the BMA and the Royal College of Radiologists.

One respondent did not answer yes, no or not sure but made a comment.

Comments in support of our proposal

Three respondents, including the Faculty of Public Health, said that doctors have a duty to comply with their regulator in order to protect patient safety. The Royal College of Anaesthetists also approved of the proposal on the grounds that it would avoid time-wasting. One respondent suggested these powers already exist.

One doctor noted that employers may need to be advised that the doctor required time off work in order to comply.

The MDU response was favourable but made comments about the clarity of the eventual internal guidance on non-compliance referrals.

The PSA agreed, assuming that the reason for the change was to avoid convening an interim orders panel hearing for non-compliance. They noted that:

- non-compliance in itself may be serious enough to constitute misconduct
- there was no explanation of how concerns arising out of non-compliance, separate to those giving rise to the original assessment or investigation would be dealt with
- it was likely that non-compliance with an assessment over a long period would constitute impairment and warrant striking off

- repeated non-compliance should result in a referral to a fitness to practise panel
- it was unclear whether the panel could order a review
- it was unclear what the purpose would be of a referral to the PSA under section 29 as this only applied to fitness to practise hearings.

Comments for those who were unsure

One doctor questioned the propriety of forcing a doctor to comply, arguing that a doctor may already be sure of a negative outcome (potentially erasure) and may have chosen not to comply to save some additional stress.

Comments opposed to our proposal

Four doctors and the MDDUS made comments against the proposal. They expressed the concern that the changes were 'draconian' and failed to allow for actions of doctor's under the stress of an investigation. In particular, the MDDUS thought the proposal was not specific enough, highlighting that many different circumstances could apply to a request for information.

The Royal College for Anaesthetists expressed concern that the new power would give the GMC 'quasi-legal- powers that are 'incongruent with usual legal processes'.

The MPS disagreed on the grounds that the process would place the burden of proof on to the practitioner, a reversal of the current system, and suggested that this may be inconsistent with Article 6 of the European Convention of Human Rights (ie the right to a fair trial).

One respondent said it would be very difficult for a panel to make a decision about the reasonableness of a request without examining the merits of the underlying allegation.

Suggestions to refine proposal

The BMA suggested Rule 28 should explicitly state that complying with a GMC request for information or assessment would be a reason to cancel a hearing. They say this would be in line with our stated commitment to make it 'clear in our rules that a referral made to the MPTS in relation to a non-compliance hearing could be cancelled if the doctor subsequently complied'.

The MDU suggested that the power to refer a doctor for a non-compliance hearing where the GMC has asked for factual information be exercised 'reasonably so that the failure would have to be serious enough to justify the doctor being brought before a tribunal'.

Impact on groups with protected characteristics

The Royal College of Anaesthetists suggested that the GMC make every effort to find out if there were legitimate reasons for non-compliance, such as illness (mental or physical).

Some respondents commented that sick doctors may be adversely affected by the non-compliance process.

Question 20 – Do you think that any of our proposals will adversely affect people from groups with protected characteristics? This could include doctors, patients and members of the public.

Responses:

Option	Response number	Percentage	Number of comments
Yes	13	15	9
No	48	57	4
Not Sure	21	25	7
Comment only	2	2	2
TOTAL	84	99	22

Response by category of respondent:

		Yes	No	Not Sure	Blank	TOTAL
Organisations	Body representing doctors	1	4	2	1	9
	Government department	0	0	1	0	1
	Independent healthcare provider	0	1	0	0	1
	Postgraduate medical institution	0	3	2	0	5
	NHS/HSC organisation	0	2	0	0	2
	Regulatory body	0	2	0	1	3
	Other	0	1	1	0	2
Individuals	Doctor	12	27	14	0	61
	Medical educator	0	2	0	0	2

	Member of the public	0	1	0	0	1
	Responsible Officer	0	1	0	0	1
	Other	0	3	0	0	3
Unknown	Blank	0	1	0	0	1

Introduction

Out of 109 respondents to the consultation, 84 answered this question. 48 (57%) thought the proposals would *not* adversely affect people from groups with protected characteristics.

13 (15%) respondents, , thought the proposals would adversely affect those with protected characteristics. There was a notable concern amongst this group about the overrepresentation of BME doctors in GMC fitness to practise processes. 21 (25%) were unsure as to whether there would be adverse effects.

Comments that proposals would have no adverse effects

The Law Society of Scotland noted the proposals would apply to everyone.

One panellist questioned how the new processes will take account of criminal offences that are different in Scotland and England, giving two examples of drink driving and motoring offences.

Comments that proposals would have adverse impact

Five respondents commented that BME and International Medical Graduate (IMG) doctors are over-represented in the fitness to practise process, with a sense that sufficient action is not being taken to redress this balance. One of these respondents also noted that older males were also over-represented in the process.

The BMA expressed concerns that changes in respect of language assessments were likely to adversely affect BME doctors who do not speak English as a first language and the Royal College of Radiologists who were unsure of the impact were also concerned about language assessments.

One doctor expressed concern about the potential for adverse effects on those with a chronic health problem that meets the definition of disabled and pregnant women (who, for instance, could not attend a hearing when in labour).

One doctor said doctors needed to be treated as equal to the public and one doctor suggested the GMC should be sanctioned for its transgressions more harshly than doctors due to the disproportionate resources at their disposal.

Comments from those who were unsure

The Royal College of Physicians of Edinburgh has suggested that the process is fairly legalistic and may disadvantage doctors with health concerns or unrepresented doctors.

Suggestions to refine proposal

Two respondents said that Equality and Diversity training for GMC staff was key.

Two respondents said the consultation should have included an equality impact assessment.

Appendix B

Comments outside the scope of this consultation

General comments

- 1 MENCAP responded to the consultation making a number of general comments about our processes, particularly in relation to a lack of understanding of the needs of patients with learning disabilities and delay.

Changes in terminology

- 2 In response to question 1, two respondents raised concerns about the change in terminology from panels to tribunals. One thought the change was not sufficient to support operational separation and the MPTS would always be seen as part of the GMC. The other thought the use of the word 'tribunal' would cause confusion with the Tribunal Service. The change in terminology was introduced in the Section 60 Order and was not part of this consultation.

Legally qualified chairs

- 3 A number of respondents opposed the introduction of legally qualified chairs in their responses to both questions 2 and 3. Among them, the BMA said that the power dynamic of the panel would be skewed in favour of the legally qualified chair with the other two panel members unable to challenge the chair's legal advice and the lack of a legal assessor would lead to delay. Another respondent cautioned against the MPTS becoming a quasi-judicial body with decisions being made by single chairs. We asked about the introduction of legally qualified chairs in our consultation *Reform of the fitness to practise procedures at the GMC* in 2011 and consider these comments outside the scope of the current consultation.

28 days' notice period of hearing

- 4 In response to question 5, two respondents comments on notice periods for Interim Orders hearings, not included in this consultation, one commenting that this change should also apply to IOP hearings as the short notice period for these hearings was unfair for doctors, whilst the other said interim order panels should be excluded from the change as, on occasion, they have to be held on no notice.
- 5 Two respondents commented on changes to the Medical Act allowing for service of notices of hearings and allegation by email to the effect that a read receipt will not be sufficient as proof of service. This change was consulted on by the Department of Health and introduced in the Section 60 Order. We have not included these comments in our analysis.

Removing the need for the MPTS to tell the GMC when an interim order is due to expire.

- 6 One respondent commented on the impact on BME doctors of lengthy investigations and recent cases in which judges have criticised the GMC for delay.

Section 2: Consensual disposal

- 7 The PSA made a number of comments about consensual disposal that were outside the scope of the consultation. They disagreed with allowing case examiner undertakings to be available when there is a realistic prospect of a panel imposing a suspension and that undertakings are available at a hearing.
- 8 The PSA noted that there were no rules to implement the power for the GMC to agree undertakings with a doctor after a case has been referred to a hearing. The introduction on this power has already been the subject of the public consultation by the Department of Health (England). Given this, we drafted rules 17(2)(n), 17(3), (4) and (5) to implement this power and did not ask a question about the changes.
- 9 Specifically, the PSA questioned who has the authority to agree undertakings, at what stage and through what process. We consider this remark referred to the General Council agreeing undertakings post-impairment. These provisions were included in the Section 60 Order and were not a subject of this consultation.

Clarifying that the GMC is responsible for recording Investigation Committee hearings

- 10 In response to question 12, RadcliffesLeBrasseur questioned why the Investigation Committee sits within the remit of the GMC and has not transferred to the MPTS. This would require changes to our primary legislation and as such, is outside the scope of this consultation.

Case management

- 11 A number of comments made by respondents in response to question 16 did not address the question but commented on issues which would arise from a party failing to comply with a direction ie drawing adverse inferences and excluding evidence. These powers exist in our current rules and are outside the scope of this consultation.
- 12 A body representing doctors raised a concern about the deletion of Rule 16(5) – requiring case managers to act independently of the parties stating “This is an important requirement to avoid both bias and the perception of bias”. This comment did not directly relate to the question asked and we have not included it in our analysis.

Section 5: the five year rule

- 13 The PSA and MPS both commented on changes to the five year rule. This change was the subject of the public consultation by the Department of Health (England) dealing with changes to our primary legislation. Given this, we have not included these comments in our analysis.

Equality and Diversity

- 14 The Chief Nursing Officer’s Directorate referred to changes made to our rules to reflect amendments to the Medical Act allowing the Registrar to direct a performance

assessment where it is proportionate to do so. They asked how proportionate will be defined and highlighted the importance of this being understood by all sides.

Appendix C

List of Organisations (*those who were happy to disclose their participation):

BLM

British Medical Association

British Orthopaedic Association

Chief Nursing Officer's Directorate, Scottish Government

Faculty of Pain Medicine of the Royal College of Anaesthetists

Faculty of Public Health

General Healthcare Group (BMI Healthcare)

Independent Doctors Federation

Medical Defence Union

Medical Protection Society

National Clinical Assessment Service

Nursing and Midwifery Council

Professional Standards Authority for Health and Social Care

RadcliffesLeBrasseur

Royal College of Anaesthetists

Royal College of Ophthalmologists

Royal College of Physicians and Surgeons of Glasgow

Royal College of Physicians of Edinburgh

Royal College of Psychiatrists

Royal College of Radiologists

Royal College of Surgeons of Edinburgh

Scottish Medical and Scientific Advisory Committee

The Law Society of Scotland

The Medical Defence Union of Scotland (MDDUS)

6 – Proposed Amendment Orders to implement changes to the Medical Act 1983

M6 – Annex B

Response to comments made during the consultation about orders to amend our fitness to practise Rules¹ and create new rules for the MPTS statutory committee

Order amending our Fitness to Practise Rules

- 1 We made a number of revisions to the order amending our Fitness to Practise Rules in response to the consultation outcome as follows:
 - a Moving the defined term 'witness' in order to distinguish the doctor from others giving evidence at hearings.
 - b Including a discretion for a case manager to refer an adjournment application in a part-heard case to be determined by a panel.
 - c Drafting the costs rule so that it is clear that costs will be awarded where there is *both* non-compliance with a rule or case management decision *and* unreasonable conduct in proceedings.
 - d Confirming when costs become payable, but allowing the case manager a discretion to extend this date e.g. where the doctor appeals a tribunal decision.
 - e Having considered concerns raised about whether the proposal to identify a doctor before preliminary legal arguments are heard will have the effect of commencing the hearing at that stage (and impact on doctors making preliminary submissions that a hearing should not proceed) we have decided not to take this proposal forward.

¹ The General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2015

Order introducing new rules for the MPTS statutory committee

- 2 We considered comments made in response to the consultation about new rules for the MPTS statutory committee as follows:
 - a We explored whether to include a casting vote for meetings of the committee on the face of the rules and decided it would be appropriate to include this in the Statement of Purpose of the Medical Practitioners Tribunal Service.
 - b PSA suggested that current and former employees of the GMC be excluded from appointment as members of the MPTS Committee. We don't consider there is a legal or policy justification for this. Under the statutory committee model, the MPTS is part of the GMC and its members are officers of the Council. However, we acknowledge the importance of addressing any potential conflict when appointing committee members and will address this in the appointment criteria set by Council under rule 3(3) of the MPTS Constitution Rules.

6 – Proposed Amendment Orders to implement changes to the Medical Act 1983

M6 – Annex C

Changes to the Governance Handbook

This annex includes excerpts from the Governance Handbook only where proposed changes have been made. Paragraph numbering is taken from the Governance Handbook, and therefore some numbering may appear out of sequence where unchanged text has been excluded.

Contents

Page	Chapter/Annex	Implementation date
C5	<p>Chapter 1: Role of GMC and relevant legislation</p> <ul style="list-style-type: none"> ■ Changing name of 'fitness to practise panels' to 'medical practitioners tribunals'. ■ Adding reference to the MPTS as a statutory committee of the GMC. ■ Amending reference to standing orders in relation to MPTS 	31 December 2015 (tbc)
C6-C7	<p>Chapter 4: Role of each component of the governance framework</p> <ul style="list-style-type: none"> ■ Amending the description of the MPTS to refer to its status as a statutory committee of Council. ■ Adding a reference to the requirement for a MPTS annual report to Parliament. ■ Changing name of 'panellists' to 'tribunal members'. ■ Changing title of the 'MPTS Tribunal Clerk' to 'XXXX' (to follow - pending agreement). ■ Changing references to the 'MPTS Advisory Committee' to the 'MPTS Committee'. 	31 December 2015 (tbc)

Page	Chapter/Annex	Implementation date
	<ul style="list-style-type: none"> ■ New version of Governance Model diagram. 	
C8-C9	<p>Chapter 5: Role of the Chair of Council</p> <ul style="list-style-type: none"> ■ Adding references to the Chair's role in the appointments and re-appointments process for Council members including making recommendations to the Privy Council ■ Adding references to the Chair's role in the appointments process for members of the MPTS Committee. ■ Adding reference to the Chair's role in the appraisal of the Chair of the MPTS. ■ Adding reference to the Chair's role in handling complaints about members of the MPTS Committee. ■ Adding reference to the Chair's working relationship with the Chair of the MPTS. ■ Amending approval route for decision to remove member of the MPTS Committee from office ■ Changing references to the 'MPTS Advisory Committee' to the 'MPTS Committee'. 	<p>1 October 2015</p> <p>31 December 2015 (tbc)</p> <p>1 October 2015</p> <p>31 December 2015 (tbc)</p> <p>1 October 2015</p> <p>31 December 2015 (tbc)</p> <p>31 December 2015 (tbc)</p>
C10	<p>Chapter 7: Members' code of conduct</p> <ul style="list-style-type: none"> ■ Administrative update to accurately reflect reference to the Charities Act 2011 	1 October 2015
C11	<p>Chapter 8: The role of the executive</p> <ul style="list-style-type: none"> ■ Changing title of the 'MPTS Tribunal Clerk' to 'XXXX' (to follow - pending agreement). 	31 December 2015 (tbc)
C12-C33	<p>Chapter 9: Schedule of authority</p> <ul style="list-style-type: none"> ■ Changes to update legislative references. ■ Changes to reflect new and amended arrangements following the establishment of the MPTS Committee and the operation of delegated authorities. ■ Changes to reflect the provisions of the Section 60 Order and new Rules. 	31 December 2015
C34	<p>Chapter 10: GMC financial regulations</p> <ul style="list-style-type: none"> ■ Changing references to the 'MPTS Advisory Committee' to the 'MPTS Committee'. 	31 December 2015 (tbc)

Page	Chapter/Annex	Implementation date
	<ul style="list-style-type: none"> Adding reference to the role of the Remuneration Committee in determining the appointment and suspension/removal process for the Chair of the MPTS and members of the MPTS Committee. 	31 December 2015 (tbc)
C35	Chapter 11: Decision making framework <ul style="list-style-type: none"> Adding reference to the over-arching objective. 	1 October 2015
C36	Annex B1: Arrangements for the appointment of Council members to Committees <ul style="list-style-type: none"> Changing title of Annex B1 to be 'Arrangements for the appointment of Council and external members to Committees'. Amending reference to review of committee membership to exclude MPTS Committee. 	31 December 2015 (tbc) 31 December 2015 (tbc)
C37	Annex B4b: Statement of purpose of the Remuneration Committee <ul style="list-style-type: none"> Adding reference to the role of the Remuneration Committee in determining the appointment and suspension/removal process for the Chair of the MPTS and members of the MPTS Committee. Changing references to the 'MPTS Advisory Committee' to the 'MPTS Committee', and amending reference to Chair to clarify it relates to MPTS Chair. Deleting reference to the role of the Committee in conducting recruitment and appointment processes. 	1 October 2015
Section not included	Annex B4d: Statement of purpose of the Medical Practitioners Tribunal Service <ul style="list-style-type: none"> Removal of annex from the Governance Handbook 	31 December 2015 (tbc)
C38-C40	Annex B4d: Statement of purpose of the Medical Practitioners Tribunal Service Committee <ul style="list-style-type: none"> New Statement of Purpose 	31 December 2015 (tbc)
C41	Annex B4e: Statement of purpose of the GMC/MPTS Liaison Group <ul style="list-style-type: none"> Adding reference to the MPTS annual report 	31 December 2015 (tbc)

Page	Chapter/Annex	Implementation date
	<p>to Parliament.</p> <ul style="list-style-type: none"> ■ Changing title of the 'MPTS Tribunal Clerk' to 'XXXX' (to follow - pending agreement). ■ Changing references to the 'MPTS Advisory Committee' to the 'MPTS Committee'. 	
Section not included	<p>Annex B4f: Statement of purpose of the MPTS Advisory Committee</p> <ul style="list-style-type: none"> ■ Removal of annex from the Governance Handbook as only a single Statement of Purpose for the MPTS Committee will be required. 	31 December 2015 (tbc)
C42	<p>Annex C6: Education and Training of MPTS Committee members</p> <ul style="list-style-type: none"> ■ Addition of new annex to the Governance Handbook. 	31 December 2015 (tbc)

Chapter 1: Role of GMC and relevant legislation

UK primary legislation

- 1** The Medical Act 1983 (as amended) covers our statutory purpose, our governance, and our responsibilities in relation to the medical education and registration of doctors and to guidance to doctors on professional conduct, performance and ethics. The Act sets out our powers and responsibilities for dealing with doctors whose fitness to practise is or may be impaired.
- 2** Some detail is set out in statutory rules and regulations. This includes rules governing the fitness to practise procedures, how ~~fitness to practise panels~~ medical practitioners tribunals are constituted, how the registration fees regime operates, and how appeals against registration decisions are handled.
- 3** We have a Chief Executive who is accountable to Council for the operation of the GMC. The Chief Executive is also the Registrar, in which role s/he has various functions specifically assigned in legislation.

Governance

- 11** The 1983 Act sets out our basic governance framework. This includes:
 - a** the way in which we are accountable to Parliament and our duty to report on the work that we undertake and are planning to undertake
 - b** the composition of Council
 - c** the arrangements for the appointment of members
 - d** the registration of members' interests
 - e** information about and the powers, duties and proceedings of Council and the different committees through which Council carries out much of its work
 - f** information about the powers and duties of the Medical Practitioners Tribunal Service as a statutory committee of the GMC.

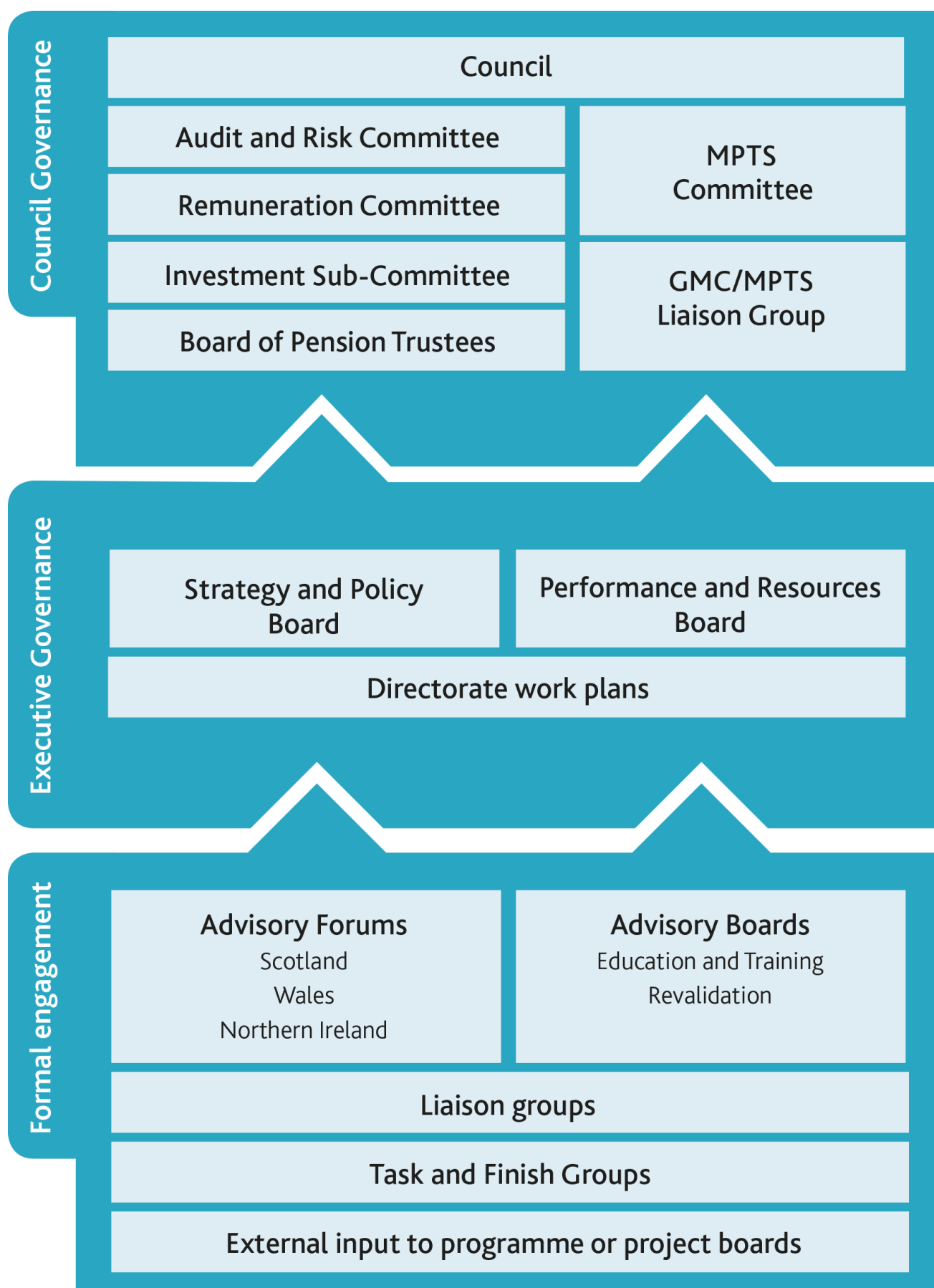
Standing Orders and Schedule of authority

- 12** The 1983 Act provides that Council may make provision by standing orders for meetings and proceedings and the discharge of functions by Council and any committees, and for the functions of officers of Council. In respect of the MPTS Committee, Council may only make provision by standing orders regarding the requirements relating to the financial affairs of the MPTS and education and training of members of the MPTS Committee.

Chapter 4: Role of each component of the governance framework

Medical Practitioners Tribunal Service

- 5** The Medical Practitioners Tribunal Service (MPTS) is a statutory committee of Council. The MPTS has responsibility for the ~~day-to-day~~ delivery of the adjudication function including the ~~Adjudication~~ Operations Section and ~~Panel Tribunal Development Team~~ Section. The MPTS is led by the Chair of the MPTS who is a member of the MPTS Committee, together with ~~is supported by the MPTS Advisory Committee which includes~~ four other appointed Committee members, two medical and two lay.
- 6** The MPTS has been established to provide an efficient and effective hearings service to all parties to hearings which is clearly separate from the investigatory and case presentation roles of the Fitness to Practise Directorate within the GMC.
- 7** The MPTS is also responsible for managing ~~panel~~ tribunal decision-makers which includes the recruitment, training, and performance management of tribunal members, ~~panelists~~ case managers and legal assessors.
- 8** The MPTS will be required to submit an annual report to Parliament which meets the requirements of Section 52B of the Medical Act 1983 as amended.
- 9** The GMC/MPTS Liaison Group is chaired by the Chair of Council and is made up of the Chair and Clerk of the MPTS [DN: new title to be confirmed], the Chief Executive and Chief Operating Officer and other Directors of the GMC as required. A member or members of the MPTS ~~Advisory~~ Committee may be invited to attend a meeting of the Liaison Group at the discretion of the MPTS Chair, as required. It acts to oversee the working relationship between the MPTS and the functions of the GMC with which it interacts. The Group supports the delivery of the hearings service provided by the MPTS, ensuring that working arrangements are established and operate effectively.



Chapter 5: Role of the Chair of Council

Leadership

4 The Chair's role is to:

- a** provide strong non-executive leadership
- b** ensure that Council's strategic direction is set
- c** encourage openness, transparency and accountability in all that Council does
- d** ensure that Council works collectively, and that each member puts the interests of the GMC above their own
- e** Chair Council meetings effectively, ensuring that required decisions are taken, and ensuring an annual programme of Council meetings with agendas appropriate to the business of Council
- f** make proposals to Council for chairs and members of Boards and Committees
- g** participate in the appointments process for membership of Council by sitting on the selection panel that makes recommendations on suitable candidates to the Privy Council, except for where the appointment is for a new chair of Council
- h** make recommendations to the Privy Council for the re-appointment of Council members, except in relation to the re-appointment of the Chair of Council
- i** participate in the appointments process for membership of the MPTS Committee by sitting on the selection panel that makes recommendations on suitable candidates to Council
- j** communicate effectively with Council members between meetings to ensure that business is taken forward, and effective contributions made by members
- k** provide feedback and guidance to Council members and the Chair of the MPTS as part of the process for signing off their appraisals
- l** play the part required of him/her in handling any complaints or concerns about Council members and members of the MPTS Committee in line with agreed procedures
- m** establish and maintains a close working relationship with the Chief Executive, to provide overall leadership for the GMC
- n** hold the Chief Executive responsible for all aspects of the GMC's performance

- o establish good working relationships with the Chief Operating Officer, directors and other staff, as appropriate.
- p establish a good working relationship with the Chair of the MPTS, and hold him/her responsible for the leadership of the MPTS.

Internal relationships

7 The Chair's role is to:

- a act as an internal ambassador for Council within the GMC, ~~to staff and to GMC associates~~
- b work closely with the Chief Executive, Chief Operating Officer, and directors; and provide a sounding board for discussion of emerging issues
- c manage the performance of the Chief Executive and advise the Remuneration Committee on this ~~levels and forms of remuneration for the Chief Executive~~
- d manage the performance of the Chair of the Medical Practitioners Tribunal Service (MPTS) and advise the Remuneration Committee on this
- e handle appropriately any appeals against a decision by Council ~~the Chair of the MPTS~~ to remove a member of the MPTS Advisory Committee from office. The Chair of Council will review the matter based on the papers. The decision of the Chair of Council will be final.

Chapter 7: Members' code of conduct

Duties of individuals

- 8** Members have a duty to make themselves available for service on the Council and those of its Boards and Committees to which they may be appointed.
- 9** Members have a duty to ensure that they have a clear understanding of their responsibilities as trustees of a registered charity and that they meet the legal requirements for eligibility to serve as a charity trustee as specified in section ~~72~~ 178 of the Charities Act ~~1993~~ 2011.

Chapter 8: The role of the executive

[DN: to be updated to include new title of MPTS Tribunal Clerk – to follow – pending agreement]

Chapter 9: Schedule of authority

Purpose

- 1** The purpose of this document is to set out in an accessible format the principal functions and powers of the GMC in a Schedule of authority ('the Schedule'), including:
 - a** authorities assigned to and retained by Council under the ~~a~~ Act, regulations or rules
 - b** authorities assigned to Council and delegated (and if delegated, to whom)
 - c** authorities assigned to, and retained by, the Registrar under the ~~a~~ Act, regulations or rules
 - d** authorities assigned to the Registrar and delegated (and if delegated, to whom)
 - e** authorities assigned to the MPTS and retained by the MPTS under the Act, regulations or rules
 - f** authorities assigned to the MPTS and delegated (and if delegated, to whom)
 - g** authorities not referred to in legislation (e.g. relating to the ordinary operation of the organisation), and to whom these are delegated.
- 2** Because the legislation specifically uses the term 'Registrar', it has been used in this Schedule where the corresponding legislation does so, in relation to matters identified under 1(a)-(d) above. In relation to matters identified under 1(~~d~~) (~~e~~), the term 'Chief Executive' is used. Powers assigned or delegated to the Registrar / Chief Executive may be further delegated to staff within the GMC.
- 3** Powers assigned to the MPTS, which are referred to in this Schedule as being delegated to the 'Assistant Registrar (MPTS)', shall be delegated to such Deputy/Assistant Registrars as are appointed and authorised [by the Registrar] to act for the MPTS in relation to those powers.

Scope

- 4** The key provisions of the Act, regulations or rules applicable to each function and power are identified in the Schedule and shown in italics. As the Schedule endeavours to set out the functions and powers in an accessible format, it does not describe the complexities of the Act, regulations and rules in detail. If such detail is required, the Schedule must be read in conjunction with the detailed provisions of the Act, regulations or rules (as applicable).

Glossary

- 5** Unless expressly stated otherwise statutory provisions referred to in the Schedule are those set out in the Act and are denoted as, for example, "s1" for Section 1 and "Sch 1" for Schedule 1;
- 6** The following defined terms are used throughout the Schedule of authority.

Term	Definition
AGPSR Regs 2010	General Medical Council (Applications for General Practice and Specialist Registration) Regulations 2010 (as amended)
Award of Certificate Rules 2010	General Medical Council (Award of Certificate) Rules 2010
Certification Fees Regs 2011	General Medical Council Certification Fees Regulations 2011 2015
Constitution of Panels Rules 2004	General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules 2004 2015 (as amended)
Constitution of MPTS Rules	General Medical Council (Constitution of the Medical Practitioners Tribunal Service) Rules 2015
Disqualifying Regs 2004	General Medical Council (Fitness to Practise) (Disqualifying Decisions and Determinations by Regulatory Bodies) Procedure Rules 2004 (as amended)
FCR Regs 2010	General Medical Council (Form and Content of the Registers) Regulations No 2 2010
FTPP-MPT	Fitness to Practise Panel Medical Practitioners Tribunal
GMCC Order 2008	General Medical Council (Constitution) Order 2008 (as amended)
IOPI	Interim Orders Panel Tribunal
LA Regs 2004 Rules	General Medical Council (Legal Assessors) Rules 2004 2015 (as amended)
LTP Regs 2012	General Medical Council (Licence to Practise and Revalidation) Regulations Order 2012
MGPR Regs 2010	General Medical Council (Marking of the GP Register) Regulations 2010
MPTS Committee	Medical Practitioners Tribunal Service Committee (which is established as a statutory committee of the General Medical Council)
2002 Act	National Health Service Reform and Health Care Professions Act 2002
Qualifications	Directive 2005/36/EC of the European Parliament and

Term	Definition
Directive	Council on the recognition of professional qualifications (<u>as amended</u>)
RAE Regs 2004	General Medical Council (Restoration following Administrative Erasure) Regulations 2004 (as amended)
RAP Rules 2010	General Medical Council (Registration Appeals Panels Procedure) Rules 2010 <u>2011</u>
Registration Fees Regs 2012	General Medical Council Registration Fees Regulations 2012 <u>2015</u>

Schedule of authority

Function	Description of Function	Function assigned to?	Function delegated to?
GOVERNANCE FUNCTIONS			
Standing Orders	To make standing orders re: meetings, proceedings, and the discharge of the functions of Council and its committees; the composition of its committees and the functions of its officers; the appointment of a Treasurer; and the provisional suspension of members of <u>Council</u> from office pending decisions on suspension/removal by the Privy Council; <u>and the requirements with regard to the financial affairs of the MPTS and education and training of members of the MPTS Committee</u>	Council – <i>Sch 1 Pt 1 paras 15 and 16(1A) <u>and rule [5]</u></i> <u><i>Constitution of MPTS Rules</i></u>	Not applicable other than in relation to provisional suspension of members from office which is delegated to the Chair of the Remuneration Committee or Chair of the Audit and Risk Committee in the event of a complaint against the Chair of the Remuneration Committee or against the Chair of Council
Appointment of Registrar and deputy/assistant registrars and delegation of functions	a. To appoint (i) a Registrar and direct/delegate functions to him/her; and (ii) deputy/assistant registrars b. To authorise deputy/assistant registrars to act	<u>Council</u> <i>a.(i) Sch 1 Pt 1 paras 16(3) and (4)</i> <i>b.(i). Sch 1 Pt 1 para <u>16(3)</u></i> <i>(ii). Sch 1 Pt 1 para <u>16(3A)</u></i>	a.(ii) and b. <u>(i) and (ii)</u> Registrar

Function	Description of Function	Function assigned to?	Function delegated to?
	<p><u>i. for the Registrar in any matter</u></p> <p><u>ii. for the MPTS in any matter</u></p>		
<u>Delegation of MPTS functions</u>	<p><u>a. To direct the MPTS Committee to delegate to the Chair of the MPTS, or to such other officer as the Council determine, such functions of the MPTS as the Council determine;</u></p> <p><u>b. To delegate the functions of the MPTS as directed by the Council.</u></p>	<p><u>a. Council - Sch 1 Pt 1 para 19F(7) and Rule [11] Constitution of MPTS Rules</u></p> <p><u>b. MPTS Committee – Sch 1 Pt 1 para 19F(7) and Rule [11] Constitution of MPTS Rules</u></p>	
Remuneration and expenses	<p>a. To decide remuneration, terms of service and expenses policy for Council members;</p> <p>b. To decide remuneration, benefits and terms of service for the Chair of the MPTS and members of the MPTS Advisory Committee;</p> <p>c. To decide remuneration and expenses policy for other non member appointments.</p>	<p>Council –</p> <p><u>a. Sch 1 Pt 1 – paras 17 and 25(5)</u></p> <p><u>b. Council - Sch 1 Pt 1 – para 25(5)</u></p>	<p>a. Not applicable. The Remuneration Committee advises Council;</p> <p>b. Remuneration Committee;</p> <p>c. Chief Executive. The Performance and Resources Board provides advice to the Chief Executive on the associates expenses policy</p>
<u>MPTS remuneration and expenses</u>	<p><u>a. To decide remuneration for the Chair of the MPTS and members of the MPTS;</u></p> <p><u>b. To decide benefits and terms of service for the Chair of the MPTS and members of the MPTS Committee.</u></p> <p><u>c. To decide expenses policy for Chair of the MPTS and members of the MPTS Committee</u></p>	<p><u>a.&c Council - Sch 1 Pt 1 – para 25(5)</u></p> <p><u>b. Remuneration Committee</u></p>	<p><u>a. Remuneration Committee;</u></p> <p><u>b. Not applicable. c. Chief Executive. The Performance and Resources Board provides advice to the Chief Executive on the staff/associates expenses policy.</u></p>

Function	Description of Function	Function assigned to?	Function delegated to?
Sanctions	Decisions on the representations before a fitness to practise panel on <u>Medical Practitioners Tribunal on</u> sanction	Chief Executive	
Professional Standards Authority referrals to the High Court under section 29 <u>(of the 2002 Act)</u>	To decide on the instructions to be given to solicitors for any case relating to a fitness to practise panel <u>Medical Practitioners Tribunal</u> direction which is referred by the PSA <u>Professional Standards Authority</u>	Chief Executive	
<u>Appeals by the General Medical Council under section 40A of the Act</u>	<u>To appeal against a decision of a MPT</u>	<u>Council – section 40A(3)</u>	<u>Registrar</u>
Education and training	To make provision in standing orders for the education and training of members of Council <u>and members of the MPTS Committee</u>	Council – <i>Art 4 GMCC Order 2008</i> <u>and rule [5] Constitution of MPTS Rules</u>	Not applicable
Termination of appointment of Chair of the Council	To remove the Chair of the Council from holding that position by majority vote.	Council – <i>Art 8 GMCC Order 2008</i>	Not applicable (other than the Privy Council's power to remove from office as a member under Art 6)
Appointment and removal of the Chair of the MPTS	To decide on the appointment/ <u>re-appointment</u> , terms of office, <u>suspension</u> service and removal of the Chair of the MPTS	Appointment and removal process, and terms of service determined by the Remuneration Committee. <u>Council - rule [9] Constitution of MPTS Rules</u>	<u>Appointment and suspension/removal process determined by the Remuneration Committee.</u> <u>Appointment and term of office: Council on recommendation of Chair of Council, in</u>

Function	Description of Function	Function assigned to?	Function delegated to?
			<p>conjunction with a panel, the composition of which is determined by the Remuneration Committee.</p> <p><u>Re-appointment: on the recommendation of the Chair of Council.</u></p> <p><u>Suspension/ Removal: Chair of Retained by Council.</u></p> <p>Appeal against <u>suspension/removal: Chair of Remuneration Committee Council.</u></p>
Appointment and removal of the members of the MPTS Advisory Committee	To decide on the appointment/ <u>re-appointment</u> , terms of <u>office, suspension service</u> and removal of the members of the MPTS Advisory Committee, <u>including issue of possible removal from office due to non-attendance at meetings.</u>	<p>Appointment and removal: Chair of the MPTS. Terms of service: Remuneration Committee</p> <p>Council</p> <p><u>rules [3, 4, 6, 7 and 8] Constitution of MPTS Rules</u></p>	<p>Appeal against removal: Chair of Council.</p> <p><u>Appointment and suspension/removal process determined by the Remuneration Committee.</u></p> <p><u>Appointment and term of office: Council on the recommendation of the Chair of Council, in conjunction with a panel the composition of which will include the Chair of the MPTS, and which will be determined by the Remuneration Committee.</u></p>

Function	Description of Function	Function assigned to?	Function delegated to?
			<u>Re-appointment:</u> <u>Council on the recommendation of the Chair of Council</u> <u>Suspension/removal:</u> <u>Council</u> Appeal against <u>suspension/removal:</u> Chair of Council
<u>Deputising arrangements in respect of the Chair of the MPTS Committee</u>	<u>To decide on the deputising arrangements in the absence of the Chair of the MPTS Committee from meetings of the MPTS Committee and if unavailable to perform duties</u>	<u>Council – rule 10 Constitution of MPTS Rules</u>	<u>Chair of Council</u>
REGISTRATION AND CERTIFICATION FUNCTIONS			
To keep and maintain the Registers	To: i. maintain and amend the Registers, including charging and collection of fees; ii. amend the register to reflect decisions taken by the FPP <u>MPT</u> .	Registrar <i>i. s30 and 30A, Sch 3 paragraph 6 and 7, FCR Regs 2010, MGPR Regs 2010, Registration Fees Regs 2012, Certification Fees Regs 2011</i> <i>ii. Sch 4 para 12</i>	
Erasure of names from the Register	To erase the name of a RMP from the Register: i. for non payment of the ARF; ii. for failing to respond to an Address Inquiry; iii. on receipt of an application from a RMP for VE; iv. where an entry has	Registrar <i>i. Reg 8(4) Registration Fees Regs 2012</i> <i>ii. s30(5)</i> <i>iii. VE Regs 2004</i> <i>iv. S39</i> <i>v. S44(3) (save where referred to a pursuant</i>	

Function	Description of Function	Function assigned to?	Function delegated to?
	<p>been fraudulently procured or incorrectly made;</p> <p>v. where a RMP was subject to a disqualifying decision at the time of registration which remains in force;</p> <p>vi. where it is shown that the RMP's FTP was impaired on the grounds of physical or mental health at the time of registration and he had not informed the registrar;</p>	<p><i>to the Disqualifying Regs 2004</i></p> <p><i>vi. S44B(1)</i></p>	
	To determine applications for VE where FTP concerns arise or where the applicant is an Investigated RMP.	CEs - <i>VE Regs 2004</i>	
	To determine applications for VE where FTP concerns arise or where the applicant is an Investigated RMP and CEs fail to agree as to the disposal of that application.	IC – <i>VE Regs 2004</i>	
Restoration of names to the medical register	To restore to the Register RMPs who:	Registrar	
	<p>i. failed to pay the ARF;</p> <p>ii. failed to respond to an Address Inquiry;</p> <p>iii. voluntarily removed their name from the Register.</p>	<p><i>i. RAE Regs 2004</i></p> <p><i>ii. RAE Regs 2004</i></p> <p><i>iii. VE Regs 2004</i></p>	
	To determine applications for restoration following VE where FTP concerns arise.	CEs - <i>VE Regs 2004</i>	
	To determine applications	IC – <i>VE Regs 2004</i>	

Function	Description of Function	Function assigned to?	Function delegated to?
	for VE where FTP concerns arise and CEs fail to agree as to the disposal of that application.		
Registration and Training Appeals	To hear appeals of appealable registration and training decisions.	RAP - <i>s34B(1), Sch 3A, RAP Rules 2010</i>	Not applicable
Admission and removal of names from the GP and Specialist Registers	To: <ul style="list-style-type: none"> consider, grant or refuse applications for admission to the GP or Specialist Register; provide applicants with statements of eligibility or ineligibility; require information or advice while considering an application; notify applicants of a determination to grant or refuse an application. 	Registrar – <i>AGPSR Regs 2010</i>	
	To: <ul style="list-style-type: none"> consider, grant or refuse applications for recognition of acquired rights to practise as a GP; require information or advice while considering an application; notify applicants of a determination to grant or refuse an application. 	Registrar – <i>Award of Certificate Rules 2010</i>	
Award and withdrawal of CCT	To: <ul style="list-style-type: none"> consider, grant or refuse applications for a CCT; require information or advice while considering an 	Registrar – <i>Award of Certificate Rules 2010</i>	

Function	Description of Function	Function assigned to?	Function delegated to?
	application; <ul style="list-style-type: none"> notify applicants of a determination to grant or refuse an application; award CCTs. 		
LICENSING AND REVALIDATION FUNCTIONS			
Grant, refusal, withdrawal and restoration of a licence to practise	To grant a licence to a medical practitioner: <ul style="list-style-type: none"> who held registration at the time the LTP Regs 2009 came into force; who is registered pursuant to s18 (visiting practitioners from relevant European States), s18A (temporary emergency registration) or s27B (special purpose registration); whose registration is restored or suspension comes to an end, unless the practitioner requests otherwise. 	Registrar – Reg 3(1) LTP Regs 2012	
	To consider and to grant or refuse applications for a licence and to carry out investigations relevant to the consideration of an application.	Registrar – Regs 3(5) and 3(8) LTP Regs 2012	
	To withdraw a licence to practise: <ol style="list-style-type: none"> at the request of the relevant RMP; where a licence has been fraudulently procured or incorrectly granted; where the RMP fails to comply with any requirement made of 	Registrar Reg 4(1) LTP Regs 2012 Reg 4(1) LTP Regs 2012 Reg 4(3) LTP Regs 2012 Reg 4(2) LTP Regs 2012	

Function	Description of Function	Function assigned to?	Function delegated to?
	him/her under the LTP Regs 2009. iv. where a RMP's name is erased or suspended from the Register or where his/her temporary or special purpose registration is revoked or expires.		
	To consider and grant or refuse applications for restoration of a licence and to carry out investigations relevant to the consideration of an application.	Registrar – <i>Reg 4(5) and 4(7) LTP Regs 2012</i>	
Licensing Appeals	To hear appeals of appealable licensing authority decisions.	RAP – <i>s29F(1), Sch 3B, RAP Rules 2010</i>	
FITNESS TO PRACTISE FUNCTIONS			
Establishing a framework for investigation of FTP concerns	To investigate allegations of impaired FTP and decide whether: <ul style="list-style-type: none"> the allegations should be considered by a FTPP MPT; a warning should be imposed; a referral to an IOP IOT is appropriate. 	IC – <i>S35C</i>	Registrar The FTP Rules (made by Council pursuant to the function considered below) effectively delegate these functions to the Registrar. The FTP Rules do, however, assign certain functions to the IC and these are considered below.
	To make Rules: <ul style="list-style-type: none"> regarding the reference of cases to the IC, IOP IOT and FTPP MPT; the procedure to be followed and rules of evidence to be observed. 	Council – <i>S43 and Sch 4 paragraph 1 (subject to approval of the Privy Council)</i>	Not applicable

Function	Description of Function	Function assigned to?	Function delegated to?
	<p>To makes rules relating to:</p> <p>a. the procedure to be followed:</p> <p>i. in proceedings before a MPT or IOT;</p> <p>ii. by the IC when deciding whether to give a warning; and</p> <p>b. the constitution of the MPTS and its panels/tribunals which give effect to the overriding objective to secure that cases are dealt with fairly and justly.</p>	<p>Council –</p> <p><i>a. Sch 4, paragraph 1(1A)</i></p> <p><i>b. Sch 1, paragraph 23D</i></p>	Not applicable
	<p>To make rules:</p> <p>a. authorising the giving of directions by the IC, <u>MPT</u> FTPP and such other specified persons requiring an assessment of the standard of a RMP's professional performance, <u>health or knowledge of English language</u></p> <ul style="list-style-type: none"> specifying circumstances in which a <u>performance, health or knowledge of English language</u> assessment may be carried out; <p>b. <u>To give directions as to:</u></p> <ul style="list-style-type: none"> <u>whether a performance assessment is to be carried out by an Assessment Team or by an individual assessor;</u> <u>the form or content of a performance assessment</u> regarding the constitution and procedure of the Assessment Team. 	<p><u>a.</u> Council – Sch 4 paragraph 5A <u>and 5C</u></p> <p><u>b.</u> Registrar – Sch 4, paragraph 5A</p>	Not applicable

Function	Description of Function	Function assigned to?	Function delegated to?
Investigating FTP concerns	<p>To:</p> <p>i. triage allegations to assess whether they amount to FTP concerns under s35C(2);</p> <p>ii. consider referral to an IOP <u>IOT</u>;</p> <p>iii. carry out investigations;</p> <p>iv. direct assessments of an Investigated RMP's performance or health <u>or knowledge of English</u>;</p> <p>v. consider failure to submit to or comply with an assessment <u>or request for information and refer to MPTS for non-compliance hearing as required</u>.</p>	<p>Registrar</p> <p><i>i. FTP Rule 4</i></p> <p><i>ii. FTP Rule 6</i></p> <p><i>iii. FTP Rules 4, 7 and 13A</i></p> <p><i>iv. FTP Rules 7, 13A and Sch 1 and 2</i></p> <p><i>v. FTP Rule 7 <u>Registrar – Sch 4, paragraph 5A and section 35A</u></i></p>	
	<p>To consider and dispose of allegations as they see fit by:</p> <p>i. no further action</p> <p>ii. issuing a warning</p> <p>iii. referral to IC (where requested by an RMP or if CEs consider it appropriate)</p> <p>iv. referral to a <u>MPT</u> FTP panel</p> <p>v. agreeing undertakings</p>	<p>CEs</p> <p><i>i. FTP Rule 8</i></p> <p><i>ii. FTP Rule 8 and 11</i></p> <p><i>iii. FTP Rule 8 and 11(3)</i></p> <p><i>iv. FTP Rule 8</i></p> <p><i>v. FTP Rule 8 and 10</i></p>	Not applicable
	Where the CEs fail to agree on the disposal of the case the IC may consider and dispose of allegation as they see fit by:	IC – FTP Rule 9	Not applicable

Function	Description of Function	Function assigned to?	Function delegated to?
	<ul style="list-style-type: none"> no further action; issuing a warning; refer for an oral hearing; referral to a MPT FTP panel; agreeing undertakings. 		
	To consider an allegation at an oral hearing and : <ul style="list-style-type: none"> take no further action; issue a warning; refer to a MPT FTTP. 	IC – <i>FTP Rule 11(6)</i>	Not applicable
	On receipt of a restoration application, to carry out investigations and obtain information and/or direct the applicant to undergo a performance, or health <u>or knowledge of English</u> assessment.	Registrar – <i>FTP Rule 23</i>	
	To consider applications for: <ul style="list-style-type: none"> i. cancellation of a <u>an IC, MPT or IOT</u> hearing ii. postponement or adjournment prior to the commencement of <u>an IC the hearing, or further adjournment in a part-heard IC hearing</u> iii. <u>postponement prior to the commencement of a MPT hearing, or further adjournment in a part-heard MPT hearing.</u> 	IC – <ul style="list-style-type: none"> i. <u>Sch 4, paragraph 1(2ZA) and FTP Rule 28</u> ii. <u>FTP Rule 29 (1) and (2A)</u> iii. <u>FTP Rule 29(2) and (2B)</u> 	<u>i. and ii.</u> Case examiners <u>iii.</u> Case manager
Interim Orders	To:		
	i. consider whether an IO is necessary for protection of the public, in the public interest or in the	i. IOT IOP and MPT FTTP – <i>s41A</i>	Not applicable

Function	Description of Function	Function assigned to?	Function delegated to?
	interests of the RMP;		
	ii. impose, review and/or revoke an order of conditions or suspension as they see fit;	ii. IOT IOP and MPT FFTP – s41A	Not applicable
	iii. apply to the relevant court for an extension of an IO.	iii. Council – s41A	iii. Registrar
<u>Non-compliance hearing</u>	<u>To hear non-compliance cases and make non-compliance orders</u>	<u>MPT</u> – Sch 4, paragraphs 5A and 5C and section 35A and FTP Rules 17ZA and 22A	<u>Not applicable</u>
Determining Fitness to Practise	To make findings in relation to an Investigated RMP's FTP at new and review hearings and, if the FTPP MPT think fit, to impose an appropriate sanction (including, in new cases, an immediate sanction).	<u>FTPP</u> – S35D and S38, <u>Sch 4, paragraph (1)2C and rule 17 FTP Rules</u>	Not applicable
	<u>To agree undertakings with the doctor where the MPT has found the doctor's fitness to practise impaired</u>	<u>Council</u> - <u>Sch 4, para 1(2C), FTP Rule [17(3) and 22(2)]</u>	<u>Registrar</u>
	To have regard to the overarching objective in deciding on an appropriate sanction.	<u>MPT</u> – S35E (3A) <u>and Sch 4 - paras 5A(3H) and 5C(4A)</u>	
	To consider whether to order an assessment of an RMP's health, or professional performance <u>or knowledge of English language</u> .	FTPP – FTP Rule 17(4) <u>MPT</u> – FTP Rule <u>[17(7)]</u>	Not applicable
	To consider whether to restore a former RMP's name to the Register in circumstances where that person's name was erased for FTP reasons.	<u>MPT</u> FTPP – S41	Not applicable

Function	Description of Function	Function assigned to?	Function delegated to?
	To consider applications for VE made in the course of a hearing before the FTPP <u>MPT</u> .	FTPP – <i>VE Regs 2004</i>	Not applicable
	To determine applications for restoration following VE where the matter is referred to a FTPP <u>MPT</u> by CEs or the IC.	IC – <i>VE Regs 2004</i>	Not applicable
Post Determination	To consider directions made by a FTPP <u>MPT</u> and to: <ul style="list-style-type: none"> • obtain such reports as are required; • invite the RMP to undergo an assessment of their performance, or health <u>or knowledge of English language</u>. 	Registrar – <i>FTP Rule 19</i>	
	To refer a case for early review by a FTPP <u>MPT</u> .	Registrar – <i>FTP Rule 21</i>	
	In cases where undertakings were agreed by a FTPP <u>MPT</u> : <ul style="list-style-type: none"> • to carry out investigations and obtain reports or direct an assessment of the RMP's performance or health; • to consider whether undertakings should be varied or cease to apply; to refer the case to a FTPP <u>MPT</u> for a review.	Registrar – <u>Sch 4, paragraph 1(2C) to (2E) and FTP Rule 37A</u>	
<u>Reviews on papers</u>	<u>Agree with doctor to the terms of a review taking place on the papers (MPT and IOT)</u>	Council – <u>s35D(13) and (14) (MPT) and 41A(3A) and (3B) (IOT)</u>	<u>Registrar</u>
	<u>To consider MPT and IOT review cases on the papers</u>	MPT or Chair of MPT – <u>S35D(13) and (14) and FTP Rule [21B]</u>	

Function	Description of Function	Function assigned to?	Function delegated to?
		<u>IOT or Chair of IOT</u> <u>– S41A(3A) and (3B)</u> <u>and FTP Rule [26A]</u>	
<u>Directing reviews</u>	<u>Direct that an order made by a MPT is to be reviewed</u>	<u>MPT and Registrar – s35D(4A), (4B), (11A) and (11B)</u>	
<u>Assessment of costs</u>	<u>In MPT cases where a costs award was made, receiving schedules of costs and assessing amount of costs</u>	<u>Case manager - Rule 16A</u>	
Procedure	Service of notification of decisions of the a. IC, b. FTPP <u>MPT</u> and IOP <u>IOT</u> .	<u>a. Registrar - S35C(5), (7), (8), and 35E(1), s39(2), 41(10) and 41A(5)</u> <u>b. MPTS – S35E(1) to (1B), S41(10), S41A(5) and Sch 4, paragraph 5A(3F) and 5C(5A)</u>	<u>a. Not applicable;</u> <u>b. Assistant Registrar (MPTS)</u>
	To consider applications to extend the time for bringing a s40 appeal in relation to a: i. decision of the FTPP <u>MPT</u> under s35E(1); ii. decision to erase a person's name for fraud or error under s39(2).	<u>Registrar – Sch 4 paragraph 9</u>	
<u>GMC appeals</u>	<u>Notification to the PSA and court of a GMC appeal or exercise of powers in a PSA referral.</u>	<u>Council – S40B, and S29B of the 2002 Act</u>	<u>Registrar</u>
Disclosure and publication of information	To require: i. disclosure of information from third parties <u>and the doctor;</u> ii. employers details from the Investigated RMP; iii. to obtain court orders to require disclosure of information from	i. <u>Persons authorised by Council – s35A(1) and (1A)</u> ii. <u>Council - S35A(2)</u> iii. <u>Council – S35A(6A)</u>	i. <u>Registrar</u> ii. <u>Registrar</u> iii. <u>Registrar</u>

Function	Description of Function	Function assigned to?	Function delegated to?
	third parties <u>and the doctor</u> .		
	To publish specified decisions of the FTPP <u>MPT</u> and IOP <u>IOT</u> , warnings imposed by the FTPP <u>MPT</u> and IC and undertakings agreed by the IC <u>and MPT</u> (confidential health information may be excluded).	Council – <i>s35B(4)</i>	Registrar
Panels, assessors, advisers and case managers	To appoint panels of: <ul style="list-style-type: none"> • medical and lay performance assessors for the purpose of carrying out performance assessments; • medical examiners for the purpose of carrying out health assessments; • specialist health advisers to advise on issues relating to an RMP's health; • specialist performance advisers to advise on issues relating to an RMP's performance. 	Registrar – <i>FTP Rules 3 and 14</i>	
	To: <ul style="list-style-type: none"> • carry out assessments of an RMP's professional performance; • require the production of any records arising out of or relating to the RMP's practice. 	The Assessment Team – <i>Sch 4 Para 5A and <u>Schedule 1 of FTP Rules</u></i>	Not applicable
	<u>To:</u> <u>Carry out assessments of an RMP's health</u>	<u>Medical examiners – Sch 4, paragraph 5A and FTP Rules Schedule 2</u>	

Function	Description of Function	Function assigned to?	Function delegated to?
	<p>To:</p> <p>i. appoint and pay legal assessors for the purposes of advising the IC, <u>or RAP and set criteria for appointment;</u></p> <p>ii. <u>appoint legal assessors for the purposes of advising the IOT or MPT, FTPP or RAP and set criteria for appointment;</u></p> <p>iii. <u>pay legal assessors for the purposes of advising the IOT or MPT IOP, FTPP or RAP;</u></p> <p>iv. make Rules as to the function of legal assessors.</p>	<p>Council</p> <p>i. <i>Sch 4 paragraph 7, Sch 3A para 4(7)</i></p> <p>MPTS Committee</p> <p>ii. <i>Sch 4 paragraph 7</i></p> <p>Council</p> <p>iii. <i>Sch. 4 para 7(5)</i></p> <p>Council</p> <p>iv. <i>Sch 4 paragraph 7 (subject to approval of the Privy Council); GMC (LA) Rules 2004</i></p>	<p>i. <u>Registrar</u></p> <p>ii. <u>appointment: Assistant Registrar (MPTS), setting criteria: retained by MPTS Committee.</u></p> <p>iii. <u>Registrar</u></p> <p>MPTS for the IOP and FTPP</p> <p>Registrar for the IC and RAP</p> <p>iv. Not applicable</p>
	<p>To make rules constituting:</p> <p>i. IOPs <u>IOTs</u>;</p> <p>ii. RPs;</p> <p>iii. RAPs;</p> <p>iv. ICs;</p> <p>v. FTPPs <u>MPTs</u>.</p>	<p>Council (<i>subject to approval of the Privy Council</i>)</p> <p>i. <i>Sch 1 para 19AG</i></p> <p>ii. <i>Sch 1 para 19B</i></p> <p>iii. <i>Sch 1 para 19C</i></p> <p>iv. <i>Sch 1 para 19D</i></p> <p>v. <i>Sch 1 para 19EG</i></p>	Not applicable
	<p><u>a.</u> To appoint and maintain a list of panellists and chairmen for IOPs, RPs, RAPs <u>and</u> ICs <u>and</u> FTPPs. Also responsibility for dealing with concerns that arise, including panellists' eligibility or suitability to continue to sit on panels, and termination of appointment.</p> <p><u>b.</u> To appoint and maintain a list of panellists and chairmen for IOTs and MPTs. Also responsibility</p>	<p><u>a.</u> Council – i. <i>Constitution of Panels Rules</i></p> <p><u>b.</u> MPTS Committee</p>	<p>MPTS</p> <p><u>a. Registrar</u></p> <p><u>b. MPTS Committee retains the power to decide on the process and eligibility criteria for appointment. Appointment and maintenance of list and dealing with concerns (including termination of appointment):</u></p>

Function	Description of Function	Function assigned to?	Function delegated to?
	<u>for chair and tribunal members' eligibility or suitability to sit on tribunals, and dealing with concerns that may arise, including termination of appointment.</u>		<u>Assistant Registrar (MPTS)</u>
	<u>i. To appoint case managers to perform case management functions in MPT proceedings.</u> <u>ii. To pay case managers.</u>	Registrar – FTP Rule 16 <u>i. MPTS Committee – Sch 4, paragraph 7A</u> <u>ii. Council</u>	<u>i. Assistant Registrar (MPTS)</u> <u>ii. Registrar</u>

Function	Description of Function	Function assigned to?	Function delegated to?
<u>MEDICAL PRACTITIONERS TRIBUNAL SERVICE</u>			
<u>GOVERNANCE FUNCTIONS</u>			
<u>Register of members' interests</u>	<u>To maintain a system for the declaration, registration and publication of MPTS Committee members' private interests</u>	<u>MPTS Committee - Sch 1, paragraph 19F(10)</u>	<u>Assistant Registrar (MPTS)</u>
<u>Minutes of MPTS Committee meetings</u>	<u>To approve minutes of MPTS Committee meetings</u>	<u>MPTS Committee</u>	<u>Not applicable</u>
<u>MPTS Annual Report</u>	<u>a. To publish the MPTS Annual Report and submit copies to the Privy Council.</u> <u>b. To approve the MPTS Annual Report</u>	<u>a. MPTS Committee – S52B</u> <u>b. MPTS Committee</u>	<u>a. Assistant Registrar (MPTS)</u> <u>b. Not applicable</u>
<u>Notification to GMC of members' non attendance and issue of possible</u>	<u>a. To notify Council where they are of the view that Council may need to remove a MPTS Committee member.</u>	<u>a. Any member of the MPTS Committee or employee of the GMC – Rule [7(3)] Constitution of MPTS</u>	<u>Not applicable</u>

Function	Description of Function	Function assigned to?	Function delegated to?
<u>removal from office by Council</u>	<u>b. To notify Council if they are aware that there are grounds for a MPTS Committee member's removal and that member has not notified Council.</u>	<u>Rules</u> <u>b. Chair of the MPTS Committee -</u> <u>Rule [7(4)]</u> <u>Constitution of MPTS Rules</u>	
<u>FITNESS TO PRACTISE</u>			
<u>Tribunals, legal assessors and case managers</u>	<u>a. To decide on the appointment process, including eligibility criteria for appointment and training requirements, of Tribunal members and chairmen for IOTs and MPTs.</u> <u>b. To appoint and maintain lists of Tribunal members and chairmen for IOTs and MPTs,</u> <u>c. Deal with concerns that may arise, including suspension and termination of appointment.</u>	<u>MPTS Committee</u> <u>a. Sch 1, paragraph 19G(7), Rule 4(b) Constitution of Panel Rules</u> <u>b. Sch 1, paragraph 19G(2), Rule 4 Constitution of Panel Rules</u> <u>c. Sch 1, paragraph 19G(2)(b) Rule 4(1)(d) Constitution of Panel Rules</u>	<u>a. Retained by MPTS Committee</u> <u>b. Assistant Registrar (MPTS)</u> <u>c. Assistant Registrar (MPTS)</u>
	<u>a. To decide on the eligibility criteria for appointment of case managers to perform case management functions;</u> <u>b. To appoint case managers.</u>	<u>MPTS Committee</u> <u>a. Sch 4, paragraph 7A(2)</u> <u>b. Sch 4, paragraph 7A(3)</u>	<u>a. retained by MPTS Committee</u> <u>b. Assistant Registrar (MPTS)</u>
	<u>a. To decide on the eligibility criteria for appointment of legal assessors;</u> <u>b. To appoint legal assessors.</u>	<u>MPTS Committee</u> <u>a. Sch 4, paragraph 7(1C)</u> <u>b. Sch 4, paragraph 7(1B)</u>	<u>a. retained by MPTS Committee</u> <u>b. Assistant Registrar (MPTS)</u>

Function	Description of Function	Function assigned to?	Function delegated to?
<u>Determining Fitness to Practise</u>	<u>To arrange for cases to be considered by a MPT or IOT where:</u> <u>i. The Registrar refers a matter to the MPTS, including non-compliance and restoration;</u> <u>ii. The Registrar or Tribunal directs that a MPT direction is to be reviewed;</u> <u>iii. The matter is remitted to the MPTS following an appeal.</u>	<u>MPTS Committee</u> <u>i. S35D(1), 41A(A1), Sch 4, paragraphs 5A(3B) and 5C(3B)</u> <u>ii. S35D(4A), (4B), (8), (9A), (11A) and (11B)</u> <u>iii. S40(7A) and section 40A(6)(d)</u>	<u>Assistant Registrar (MPTS)</u>
<u>Disclosure and publication of information</u>	<u>To notify the practitioner, Registrar and Professional Standards Authority of decisions of MPTs and IOTs</u>	<u>MPTS - S35E(1A), S41A(5), Sch 4, paragraphs 5A(3F) and 5C(5A)</u>	<u>Assistant Registrar (MPTS)</u>

Chapter 10: GMC financial regulations

Remuneration

- 41** The Remuneration Committee is responsible for advising Council on the remuneration, terms of service and the expenses policy for Council members including the Chair; and for determining the appointment and suspension/removal process, remuneration, benefits and terms of service for the Chair of the MPTS and members of the MPTS Advisory Committee. The Remuneration Committee is also responsible for setting the remuneration, benefits and terms of service for the Chief Executive, Chief Operating Officer/Deputy Chief Executive, Directors and Senior Medical Adviser/Responsible Officer.

Chapter 11: Decision making framework

The Framework

- 6** Any decision made by the GMC must be made in the performance of its statutory functions, such as but not limited to, registration, education, standards and fitness to practice under the Act.
- 7** In exercising its functions the GMC must have regard to its ~~main statutory~~ over-arching objective, which is ~~the to protect~~ ion of the public, which involves the pursuit of the following objectives:
 - a** ~~the promote and maintain the health, and safety~~ and well-being of the public
 - b** public confidence in the professions; and
 - c** proper standards and conduct for doctors.
- 8** Decisions made by, or on behalf of, the GMC must further one or more of these objectives.

Annex B1: Arrangements for the appointment of Council and external members to Committees

- 1** Members are asked to express interest in becoming members and/or chairs of Committees. Having taken account of these expressions of preference, the Chair of Council makes proposals for chair and members which are circulated in advance for approval at a meeting of Council.
- 2** The Chair of Council is *ex officio* a member of each Committee, except the Audit and Risk Committee, and if present forms one of the quorum.
- 3** Membership, including chairpersonship, of ~~all of~~ the Committees is reviewed twice in each four year term of office, at the beginning and at the mid-way point. Members are asked to express their preferences for bodies they wish to join or leave, and whether they wish to be a chair. The Chair of Council uses this information to inform proposals about chairs and membership which are presented as proposals to Council for approval.
- 4** The appointment of members following any casual vacancies that may occur is undertaken in line with the procedure outlined in paragraph 1.

Annex B4b: Statement of purpose of the Remuneration Committee

Purpose

- 1** The Remuneration Committee advises Council on remuneration, terms of service, and the expenses policy for Council members including the Chair.
- 2** The Remuneration Committee will determine:
 - a** The appointment process for the Chief Executive.
 - b** Remuneration, benefits, and terms of service for the Chief Executive, Chief Operating Officer/Deputy Chief Executive, Directors, and the Senior Medical Adviser/GMC Responsible Officer.
 - c** The appointment and suspension/removal process for the Chair of the Medical Practitioners Tribunal Service (MPTS) and members of the MPTS Committee.
 - d** Remuneration, benefits and terms of service for the Chair of the MPTS and members of the MPTS ~~Advisory~~ Committee.

Duties and activities

- 3** The Committee is responsible for reviewing and advising Council on the remuneration arrangements and levels (including expenses policy) for Council members, including the Chair.
- 4** The Committee sets all aspects of salary or honoraria, the provision of any other benefits, and any other arrangements or contractual terms and offers advice in respect of the following roles:
 - a** The Chief Executive.
 - b** The Chief Operating Officer/Deputy Chief Executive.
 - c** Directors and the Senior Medical Adviser/GMC Responsible Officer.
 - d** The Chair of the MPTS and members of the MPTS ~~Advisory~~ Committee.
 - e** Any other such staff and posts as may be required.
- 5** In respect of the appointments of the Chief Executive and the Chair of the MPTS and members of the MPTS Committee, the Committee is responsible for designing the recruitment/appointment processes ~~and for conducting them~~ in accordance with Council's agreed delegation.

Annex B4d: Statement of purpose of the Medical Practitioners Tribunal Service Committee

Purpose

- 1** The Medical Practitioners Tribunal Service (MPTS) is a statutory committee of the General Medical Council established under Section 1 (3) (g) of the Medical Act 1983 (as amended) and constituted in accordance with the MPTS Rules¹.
- 2** The MPTS is responsible for providing a hearings service to the GMC that is efficient, effective and clearly separate from the investigatory role of the Fitness to Practise Directorate within the General Medical Council.

Duties and activities

- 3** The MPTS Committee is responsible for ensuring:
 - a** The delivery of a hearings service that demonstrates efficiency and effectiveness.
 - b** The appointment of Medical Practitioners and Interim Orders Tribunal members (including chairs) and that appropriate systems for the appointment, training, assessment and, where required, the removal of tribunal members are in place.
 - c** The appointment of legal assessors and case managers and that appropriate systems for the appointment, training, assessment and, where required, the removal of case managers are in place.
 - d** Maintenance of a system for declaration and registration and publication of Committee members' private interests.
 - e** Consideration of matters by a Medical Practitioners Tribunal/Interim Orders Tribunal.
 - f** High quality standards of decision-making by Medical Practitioners Tribunals and Interim Orders Tribunals are maintained.
 - g** High quality standards of case management by case managers are maintained.
 - h** The setting and maintenance of guidance for the MPTS tribunals, case managers, and legal assessors, as required.
 - i** That the MPTS applies the equality and diversity strategy and policies of the GMC.

¹ The General Medical Council (Constitution of the Medical Practitioners Tribunal Service) Rules Order of Council 2015.

- j** Notification of Medical Practitioners Tribunal and Interim Orders Tribunal decisions as required by the Medical Act.
- k** Effective liaison with all users of the hearings service provided by the MPTS.
- l** An annual report which meets the requirements of Section 52B of the Medical Act 1983 as amended.

Delegations

- 4** The delivery of the operational requirements of the MPTS may be delegated by the GMC Council to the Chair of the MPTS or to such other officer of the General Council as specified in Council's Schedule of Authority. Responsibility for the day-to-day operational management of the MPTS rests with the Tribunal Clerk.

Membership

- 5** The membership of the MPTS Committee, as constituted in accordance with the MPTS Rules, is the Chair of the MPTS and four other MPTS members, two medical and two lay. The MPTS is chaired by the Chair of the MPTS.
- 6** One medical and one lay member will be currently sitting MPTS Tribunal Members. One medical and one lay member will be demitted MPTS Tribunal Members.
- 7** The MPTS Tribunal Clerk will attend Committee meetings but is not a member of the Committee.
- 8** The Committee may invite other members of MPTS or GMC staff, or external parties to attend or present at individual meetings so as to progress its business.
- 9** The quorum for meetings of the MPTS Committee is three.

Working Arrangements

- 10** The MPTS Committee meets at least four times a year. At the discretion of the Chair of the MPTS, additional meetings can be convened, if required. Formal decision-making is supported by papers setting out options and recommendations.
- 11** Papers for each meeting will normally be sent electronically, and in hard copy on request, to MPTS Committee members at least seven days in advance of meetings. Work may be progressed electronically outside of the meetings, including the use of teleconference and videoconference facilities, at the discretion of the Chair.
- 12** In discussion of agenda items the intention is to reach agreement by consensus. Voting occurs only when consensual agreement cannot be reached and is by show of hands. If the votes are equal the person who chairs the meeting has a casting vote in addition to his/her vote as a member of the Committee.

- 13** The MPTS Committee Secretary minutes each meeting and aims to circulate the minutes, as cleared by the Chair of the MPTS, to members for comments within two weeks of the meeting. The MPTS Committee approves minutes at the next Committee meeting. Minutes record the conclusions of the MPTS Committee on the issues considered.
- 14** Where matters are being discussed outside a face-to-face meeting, for example by exchange of emails or teleconference calls or videoconferences, the MPTS Committee Secretary will liaise with the Chair of the MPTS to agree the most appropriate mechanism for seeking views depending on the issue. In such instance the conclusions of the MPTS Committee will be reported at the next Committee meeting and recorded in the minutes.
- 15** The MPTS Committee agenda, minutes and papers will be published on the MPTS website. Papers relating to a decision being made will be published in accordance with our publication scheme.

Accountability and reporting

- 16** The Chair of the MPTS is accountable to the General Medical Council through the Chair of the GMC's Council, and will report to Council on its work to fulfil the statutory duties for which it is accountable to the Privy Council on a twice-yearly basis. The report will summarise the performance of the MPTS during the previous reporting period, and the work of the MPTS Committee.
- 17** In addition, the MPTS will report annually to Parliament (via the Privy Council). This report will be coordinated for submission with the GMC trustees' annual report and accounts.

Annex B4e: Statement of purpose of the GMC/MPTS Liaison Group*Duties and activities*

- 2** To provide assurance to Council that the MPTS is delivering against its objectives through the report from the Chair of the MPTS to Council and its annual report to Parliament.
- 3** To work collaboratively to manage corporate risks and issues.
- 4** To resolve any policy or operational issues that may arise.
- 5** To provide an effective feedback mechanism between the GMC and the MPTS.
- 6** To have regard to the annual operational plan and budget for the MPTS.
- 7** To have regard to the MPTS annual report to Parliament.
- 9** A member or members of the MPTS ~~Advisory~~ Committee may be invited to attend a meeting of the Liaison Group at the discretion of the MPTS Chair, as required.

Meetings and attendance

- 13** The Liaison Group meets on a biannual basis or as necessary for the transaction of its business, according to a schedule agreed by the Liaison Group, but also as may be required as set out in paragraph ~~13~~ 14.
- 14** A special meeting may be called at the request of either the Chair of Council and/or the Chair of the MPTS.

New Annex to be added to the Governance Handbook

Annex C6: Education and Training of MPTS Committee members

- 1** Members of the MPTS Committee will undertake a comprehensive induction programme tailored to individual needs. On-going induction will be provided as appropriate.
- 2** In addition to individual learning/training needs identified during the induction or appraisal process, arrangements are made for members to receive briefing and training that may be required to assist them undertake their role. Members may also ask for specific training if they think they require it in order to fulfil their responsibilities as members of the MPTS Committee effectively.