

*To consider*

**Consultation on Proposed Amendments to the GMC Fitness to Practise Rules to support OHPA Transitional Arrangements**

**Issue**

1. Changes to the statutory framework for the fitness to practise procedures to enable the Office of the Health Professions Adjudicator (OHPA) to assume operational responsibility for the conduct of Fitness to Practise Panel hearings and Interim Orders Panel hearings, and the provisions setting out the transitional arrangements for those cases which have commenced under the GMC Fitness to Practise Rules 2004 but which will be heard by OHPA.

**Recommendations**

2.

a. To note the proposed approach that OHPA adopt the relevant aspects of the current GMC Fitness to Practise Rules and the provisions for cases which are referred for a Fitness to Practise Panel hearing prior to 1 April 2011 but are heard by OHPA (paragraphs 8 and 9).

b. To consider and approve the draft consultation paper amending the GMC Fitness to Practise Rules 2004 and other secondary legislation to enable OHPA to assume operational responsibility for the conduct of Fitness to Practise Panel hearings and Interim Orders Panel hearings, and to agree that the Chair of Council should approve the final version of the consultation paper once due diligence has been carried out on the draft amendments to the rules (paragraphs 10–12 and Annexes A and B).

c. To note the intention to consult on the amendments to the GMC Fitness to Practise Rules 2004 at the same time as OHPA consult on their initial rules and their ambitions for further change (paragraphs 13 and 14).

d. To consider and agree the proposed change to the Medical Act 1983 to ensure that it is OHPA's notification to a medical practitioner of a decision by an OHPA Fitness to Practise Panel to restrict their practice that triggers the 28 day appeal period (paragraphs 15-17).

### **Further information**

3. If you require further information about this paper, please contact us by email: [gmc@gmc-uk.org](mailto:gmc@gmc-uk.org) or tel. 0161 9236602.

## Background

4. The effective transition of the adjudication function to OHPA is central to Strategic Aim Two of the 2010 Business Plan: to give all our key interest groups confidence that doctors are fit to practise.
5. Schedule 7 of the Health and Social Care Act 2008, once commenced, will amend the Medical Act 1983 to provide for statutory responsibility for the conduct of Fitness to Practise Panels and Interim Orders Panels to pass to OHPA.
6. The Health and Social Care Act 2008 also requires OHPA to make rules about the procedure to be followed in connection with the making of referrals to OHPA and the rules of evidence to be observed in proceedings before OHPA's Fitness to Practise Panels. The previous government committed to having OHPA operational by April 2011. Consequently OHPA is preparing to consult on its new procedural rules between 4 August and 27 October 2010 with a view to laying them before Parliament in early 2011.
7. Our Fitness to Practise Rules 2004 and the other secondary legislation governing aspects of our fitness to practise procedure need to be amended to reflect the new arrangements within the same timeframe. Additionally, there is a provision in the Medical Act 1983 which we propose should be amended.

## Discussion

### *Approach to transition*

8. While OHPA have indicated that they intend to make a number of changes to the procedures in the long term, in order to ensure a smooth transition and minimise risk, their proposed approach in the first instance is to adopt the relevant sections of the GMC Fitness to Practise Rules 2004 with some adaptation on 1 April 2011. This will allow OHPA to continue to conduct hearings for new referrals with the minimum of disruption as adjudication staff, panellists and legal assessors will be familiar with the procedure.
9. For cases which are referred prior to 1 April 2011, DH(E) lawyers are drafting provisions which will enable these cases to be heard under OHPA's auspices but using the current GMC Fitness to Practise Rules and with panellists and chairs drawn from the current lists.

**Recommendation:** To note the proposed approach that OHPA adopt the relevant aspects of the current GMC Fitness to Practise Rules and the provisions for cases which are referred for a Fitness to Practise Panel hearing prior to 1 April 2011 but are heard by OHPA.

### *Approach to legislative change*

10. Given the approach to transition, the consequent amendments required to the GMC Fitness to Practise Rules 2004 and other relevant secondary legislation to enable OHPA's initial rules are therefore limited to:

- a. Amendments to omit those rules which relate to the conduct of Fitness to Practise Panel or Interim Orders Panel hearings and other functions that will be the responsibility of OHPA such as the appointment of specialist advisers and case management.
- b. Rules which will need to be retained with minor amendment to allow the Investigation Committee and Registration Appeals Panels to continue to function.
- c. Amendments to reflect the new relationship between the Regulator and the Adjudicator.

11. Attached at Annex A is a draft consultation paper which details the changes required to the GMC Fitness to Practise Rules 2004 and the other relevant secondary legislation.

12. We are in the process of undertaking due diligence on the draft amendments to the rules and are seeking agreement that the Chair of Council should approve the final version of the consultation paper once that due diligence has been carried out. The current GMC Fitness to Practise Rules 2004 are attached for reference at Annex B.

**Recommendation:** To consider and approve the draft consultation paper amending the GMC Fitness to Practise Rules 2004 and other secondary legislation to enable OHPA to assume operational responsibility for the conduct of Fitness to Practise Panel hearings and Interim Orders Panel hearings, and to agree that the Chair of Council should approve the final version of the consultation paper once due diligence has been carried out on the draft amendments to the rules.

#### *Approach to consultation*

13. OHPA propose to consult on their initial rules between 4 August and 27 October 2010. We propose to consult on the required changes to the GMC Fitness to Practise Rules and other secondary legislation within the same timeframe.

14. Additionally OHPA are aware of the tension between the need to ensure a smooth transition and the need to maintain confidence with the public and the profession that they are independent of the Regulator. To that end they intend to consult on their ambitions for the procedural rules in the longer term. OHPA are considering whether to consult on their ambitions at the same time as their initial rules and should they proceed we will formally respond to that consultation.

**Recommendation:** To note the intention to consult on the amendments to the GMC Fitness to Practise Rules 2004 at the same time as OHPA consult on their initial rules and their ambitions for further change.

## *Proposed change to the Medical Act 1983*

15. In discussion with OHPA it has become apparent that both OHPA and the GMC will have a statutory obligation to notify a doctor that action has been taken on their registration once a Fitness to Practise Panel or Interim Orders Panel has considered a case.

16. This arrangement will ensure that a doctor will receive full notice that a direction to restrict or remove registration has been issued by OHPA and that this direction has been implemented by the GMC. The Medical Act 1983 provides that a doctor may appeal any direction to restrict or remove registration within 28 days of receipt of the notification of the direction from the GMC, despite the fact that once OHPA is established it will be a decision made by an OHPA Fitness to Practise Panel that is being appealed. This is inconsistent and may introduce potential delay.

17. Consequently, we are proposing an amendment to the Medical Act 1983 to provide that a doctor may appeal a direction to restrict or remove registration made by an OHPA Fitness to Practise Panel within 28 days of receipt of OHPA's notification rather than the GMC's notification.

**Recommendation:** To consider and agree the proposed change to the Medical Act 1983 to ensure that it is OHPA's notification to a medical practitioner of a decision by an OHPA Fitness to Practise Panel to restrict their practice that triggers the 28 day appeal period.

### **Resource implications**

18. DH(E) has identified funds to cover OHPA's start-up costs which includes any unavoidable costs which we may incur. To access these funds we have submitted a statement of project costs to the Department of Health (England). This includes the costs associated with amending the secondary legislation (largely the cost of staff time).

### **Equality**

19. The immediate changes to the procedural rules do not present any equality issues.