

*To consider*

## **Fitness to Practise at the Point of Full Registration**

### **Issue**

1. Whether, in the light of experience gained since October 2007, we should seek to modify, for provisionally registered doctors, how we are able to operate the test of fitness practise at the point of full registration.

### **Recommendations**

2.

a. To agree to seek legislative change to enable the Registrar to grant full registration, to doctors with provisional registration, without prejudice to any extant fitness to practise investigation, hearing or determination (paragraphs 10-19).

b. To invite the Registration Reference Group to undertake further work on the test of fitness to practise at the point of full registration, and to report with recommendations (paragraphs 20-21).

### **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 923 6602

## **Background**

4. This proposal relates to Key Aims six and seven of the 2009 Business Plan - to safeguard patients by ensuring the integrity and accessibility of the List of Registered Medical Practitioners; and to enhance patient safety by dealing fairly and effectively with doctors whose fitness to practise may be impaired.
5. Until November 2004, the Medical Act 1983 provided no power to refuse, or qualify through conditions, a grant of provisional registration to graduates of UK medical schools who held a UK primary medical qualification. There was, in effect, an absolute entitlement to provisional registration.
6. The 1983 Act was amended, with commencement from November 2004, to provide the Registrar with a power to refuse registration where doctors had been convicted of a criminal offence or had been subject to a determination by another regulatory body that their fitness to practise was impaired. The power did not extend to other circumstances that suggested the doctor's fitness to practise might be impaired.
7. In October 2007, we introduced the New Registration Framework that, among other things, abolished limited registration for international medical graduates and removed unnecessary differences that had previously been a function of the place of qualification – within the UK, within the EU and outside the EU.
8. The associated amendments to the 1983 Act included the requirement that applicants for registration must satisfy the Registrar that their fitness to practise is not impaired. This is much broader than the provisions introduced in November 2004. The Registrar's authority is derived from Schedule 3 to the 1983 Act, which sets out the information and evidence that must be provided to the Registrar.
9. Since June 2008 we have received 5951 applications for full registration from provisionally registered doctors, of which 21 applications were from provisionally registered doctors who, at the time of application, had open fitness to enquiries or were subject to undertakings or conditions.

## **Discussion**

10. The October 2007 provisions provided:
  - a. Enhanced patient safety and greater integrity of the Register.
  - b. Greater fairness across all routes to registration, consistent with our commitment to processes and procedures that are fair, objective, transparent and free from discrimination.
  - c. Improved coherence across the registration procedures and fitness to practise procedures.

11. The requirement that applicants must demonstrate their fitness to practise before registration has generally proved very effective. However, a particular issue can arise when a doctor with provisional registration applies for full registration in circumstances that suggest there is an issue about fitness to practise that requires further investigation.
12. In considering an application for registration, the Registrar may decide:
  - a. That he is satisfied in relation to the applicant's fitness to practise and grant registration.
  - b. That he is not satisfied in relation to the applicant's fitness to practise and refuse to grant registration.
13. A doctor with provisional registration, who applies for full registration but has an open fitness to practise case, or whose application reveals fitness to practise issues, cannot satisfy the Registrar that their fitness to practise is not impaired.
14. Similarly, a doctor applying for full registration, who has undertakings or conditions on their provisional registration, cannot satisfy the Registrar that their fitness to practise is not impaired.
15. Alternatively, if the Registrar granted full registration, as the 1983 Act stands, this would end any open fitness to practise procedures or nullify any undertakings or conditions. Fitness to practise cannot be 'not impaired' for one purpose and, on the same facts, be 'impaired' for another.
16. When the Registrar refuses to grant full registration, or delays a decision, the doctor cannot take up their second year of Foundation Training.
17. We have concluded that, for some doctors, the consequences are disproportionate and do not strike an appropriate balance between protecting patient safety and dealing fairly but firmly with doctors whose fitness to practise may be impaired.
18. The key is to enable the Registrar, in selective cases, to grant full registration without prejudice to any extant fitness to practise issues.
19. Such an approach would allow the Registrar discretion to:
  - a. Grant registration without prejudice to any open fitness to practise enquiries.
  - b. Grant registration and carry forward any undertakings or conditions (whether in full or in part) that applied under provisional registration.
  - c. Grant registration and refer to fitness to practise where new issues have arisen during the course of the application.
  - d. Refuse registration where it is appropriate and proportionate to do so.

**Recommendation:** To agree to seek legislative change to enable the Registrar to grant full registration, to doctors with provisional registration, without prejudice to any extant fitness to practise investigation, hearing or determination.

20. We believe the following key principles should apply:

a. Broad principles, not detail. Where possible the provisions of the Act should focus on the broad framework for our registration processes and procedures, with the detail of the process provided for in rules or supporting guidance.

b. Ensuring flexibility, fairness and proportionality. Any changes proposed will be for the purposes of addressing what we view as unduly restrictive provisions in the current framework and the disproportionate treatment of some doctors applying for registration.

c. Avoiding uncertainty and ensuring consistency. We wish to ensure that the legal framework, within which registration decisions are made, does not impede or impinge on other provisions including those that apply under our fitness to practise procedures.

21. It will require further detailed work to explore the implications of the proposed change, to provide appropriate guidance to the Registrar in exercising his discretion and to develop the basis for any engagement and consultation with key interests that may be required. The aim would be to bring formal proposals to Council for approval, together with the results of engagement and consultation

**Recommendation:** To invite the Registration Reference Group to undertake further work on the test of fitness to practise at the point of full registration, and to report with recommendations.

### **Resource implications**

22. The costs of the further work on the proposed change, including engagement and consultation, will be identified in developing the proposal.

### **Equality**

23. It will be important to ensure that any discretion is exercised fairly. An equality impact assessment will be completed and kept under review as the proposal develops.