

Independent quality assurance
of analysis of responses to a
public consultation on
publication and disclosure
policy

Final Report for

General Medical Council

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Executive Summary

Introduction and objectives

Frontline Consultants was commissioned by the General Medical Council (GMC) from July to December 2015 to undertake an independent quality assurance of analysis of responses to the public consultation on the GMC publication and disclosure policy. This report is the output from the quality assurance, and is structured around each proposal and the related nineteen consultation questions:

- Proposal 1 – **Introducing limits on the length of time** that sanctions will be published on the online medical register or disclosed
- Proposal 2 – **Transferring onto the online medical register historical data** about sanctions that were imposed during 1994-2005
- Proposal 3 – **Increasing transparency in the information we publish** when a doctor appeals a fitness to practise panel's decision
- Proposal 4 – **Clarifying our policy on the information that we publish** when a doctor appeals an interim orders panel's decision
- Proposal 5 – **Providing greater transparency and detail in cases** where we agree undertakings with a doctor without a fitness to practise panel hearing

A summary of the findings is detailed within this report.

The public consultation delivered a rich volume of views on GMC proposals, with the majority of responses received from doctors

The public consultation on the GMC publication and disclosure policy delivered during 1 July to 23 September 2015 produced views from 69 respondents incorporating a mixture of individual and organisational responses. The majority (70%, 48) were from individuals – mostly doctors (52%, 36), followed by members of the public (6%, 4) and other individuals. Organisational responses accounted for almost one-third of all responses (30%, 21) – these were categorised as bodies representing doctors (10%, 7), postgraduate medical institutions (10%, 7), bodies representing patients or public (3%, 2), one regulatory body and other organisations (6%, 4). The following tables provide a summary of respondent views against the public consultation proposals and questions.

Proposal 1	Introducing limits on the length of time
Q1	More than half (57%, 39) do not think that the proposed time limits provide the right balance between being transparent and open in the public interest and being fair to individual doctors. This was because respondents felt that the time limits were too long. Key themes in opposition of the proposal highlighted that 20 years specifically is too long; that time limits should be proportionate to the severity of sanction; or that sanctions should be erased when spent. Alternative time limits ranged from 3 to 15 years. Respondents were also concerned about the impact of the time limits on a doctor's career and the way in which health issues were treated. Respondents in support of the time limits also supported time limits proportionate to the severity of the sanction. Key themes focused on the accessibility of information being available to employers and regulatory bodies and information only being disclosed when there is a legitimate reason.

Q2	Just under half (42%, 27) disagreed with the proposal that, if time limits are introduced, information about sanctions should routinely be disclosed to prospective employers once the time limit has expired. Respondents mainly disagreed because they were concerned about the impact of disclosure on the doctor. Key themes focused on the negative impacts on a doctor's career and or on the doctor's health and wellbeing. Key themes in support of the proposal focused on the belief that disclosure of information was in the interests of the employer, and the interests of public and patients.
Q3	Extra comments provided by respondents for Q3 reflected many of the comments for Q1 and Q2. Key themes focused on the negative impacts of the time limits on the doctor with many claiming it was punitive and unfair. Greater transparency and the implication of legislation particularly the Data Protection Act and Human Right Act was also cited by respondents.
Q4	Almost all (90%, 57) agreed with the proposal to stop publication of fitness to practise information after a doctor has died unless there is a public interest in continued publication. Key themes focused on the fact that publication should cease after a doctor has died and that information should be disclosed on request. Key themes from respondents opposed to the proposal focused on having a consistent approach across the medical register and the importance of having access to information that maybe pertinent to an ongoing investigation.
Q5	Almost half (52%, 33) agreed that, the outcome of public fitness to practise hearings should continue to be published for a period of time after the end of the hearing, even if a doctor subsequently dies. Key themes focused on the specific time limits with respondents suggesting three to six months, or more than six months, as an appropriate time limit. Some respondents also commented that continued publication is in the public interest. Key themes from respondents opposed to the proposal focused on the belief that the proposal is unfair on the doctor and or the doctor's family.
Q6	The majority (67%, 26) agreed that six months from the end of the hearing is an appropriate length of time. Key themes in support of the proposal focused on the six month time limits being sufficient for those with legitimate enquires to obtain access. Key themes from respondents opposed to the proposal focused on the outcomes being published as long as the doctor remains on the register.
Q7	Just over half (52%, 32) agreed that, where a doctor has died, the GMC should continue to disclose fitness to practise information to enquirers after the point at which the GMC stops publication of the information (subject to overall publication time limits) to enable the GMC to deal transparently with queries where there is a public interest. The majority of respondents thought that information should only be made available when a legitimate reason can be demonstrated. Respondents opposed to the proposal also made similar suggestions that focused on information only being disclosed in exceptional circumstances where there is a legitimate reason.
Q8	Extra comments provided by respondents for Q8 varied and covered a range of themes. Key themes focused on the outcomes of hearings still being published even when a doctor has died, the need to disclose information only when there is a legitimate reason and the negative impact upon the doctor and or the doctors family

Proposal 2	Transferring onto the online medical register historical data
Q9	<p>More than half (59%, 36) agreed that, in the interests of transparency, the GMC should transfer information on to the medical register about sanctions imposed on a doctor's registration between 1994 and 2005, where that doctor is currently registered. Key themes in support of the proposal include: consistency in the treatment of doctors regarding their fitness to practise history; interests of transparency and information should be transferred to the medical register. Key themes in opposition of the proposal included the view that Proposal 2 was disproportionate, legislative implications of the proposal, referencing the Data Protection Act (DPA), the Equality Act 2010 and the European Convention on Human Rights (ECHR); publication of information should only occur if sanctions and restrictions still exist for the doctors involved; impacts of Proposal 2 on the career and health of the doctor; and the negative consequences of making published information more accessible.</p>

Proposal 3	Increasing transparency in the information we publish
Q10	<p>The majority (75%, 44) agreed with the proposal in relation to appeals that are unsuccessful in scenario A. Key themes in support of the proposal included the amount and detail of information to be published, with calls for more information to be published regarding the basis and grounds of the appeal. Key themes in opposition to the proposal also discussed the level of information to be published, including reflection on the MPTS page.</p>
Q11	<p>The majority (62%, 36) agreed with the proposal in relation to appeals that are successful in scenario B. Key themes in support of the proposal included fairness in information to be published; publishing an apology from the GMC, no reference if a doctor is not found to be impaired; the need for greater transparency and clarification. Key themes in opposition to the proposal included: no reference if doctor not found to be impaired; maintaining the status quo; and the impact on a doctor's reputation.</p>
Q12	<p>The majority (81%, 47) agreed with the proposal in relation to appeals that are partly successful and sent back to the GMC for a new hearing in scenario C. Themes for Q12 reflected those as presented in Q10 and Q11.</p>
Q13	<p>The majority (78%, 46) agreed with the proposal in relation to appeals that are part successful and the original outcome is changed by the appeal court in scenario D. Key themes for Q13 reflected those as presented in Q10 and Q11.</p>
Q14	<p>The majority (77%, 44) agreed with the proposal in relation to appeals that are withdrawn in scenario E. Key themes for Q14 reflected those as presented in Q10 and Q11.</p>
Q15	<p>The majority (85%, 50) agreed with the proposal in relation to cases where no appeal is made in scenario F. Key themes for Q15 reflected those as presented in Q10 and Q11.</p>
Q16	<p>The majority (71%, 42) agreed with the GMC's proposed general approach to situations where a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning, is overturned on judicial review. Key themes from those in support of the proposal focused on fairness and transparency. Key themes from those opposed to the proposal focused on the removal of all information from a doctor's record</p>

Proposal 4	Clarifying our policy on the information we publish
Q17	This question asked for comments only. The majority of comments received were in favour of the proposed approach to publishing information about appeals in interim orders cases. Key themes in support of the proposal focused on increased transparency which respondents believed would be in the interest of both patients and the public. Key themes from respondents opposed to the approach focused on the removal of information from a doctor's record.

Proposal 5	Providing greater transparency and detail in cases
Q18	The majority (64%, 37) agree that the GMC should give greater explanation of the background and reasons for resolving the case consensually when agreeing undertakings with a doctor and concluding the case without a fitness to practise panel hearing. Key themes in support of the proposal include the importance of transparency and the need for greater transparency; helping patients and public understand why undertakings have been made with a doctor and what this means; and the doctor concerned or an appointed representative should be provided an opportunity to agree or reject the content of the information to be published. Key themes in opposition to the proposal mentioned the doctor's right to privacy and the risk that publishing information could make it easy to deduce that a doctor has a mental health problem, adding that this was unfair and breaches the doctor's human rights.

Equality	
19	The majority (61%, 34) do not think that GMC proposals will affect people with protected characteristics that are covered by equality legislation. Of those who did believe that GMC proposals would impact those with protected characteristics, key themes included: impact on the doctor, legislative implications, fairness, the need to strike a better balance and the need for greater consistency.

The GMC analysis of the consultation data on the publication and disclosure policy is an accurate reflection of the responses received

The overall conclusion is that the GMC provided a detailed and accurate reflection of individual and organisational responses to the public consultation. As Frontline was tasked to provide independent analysis, it was vital to develop codification frameworks in independence, and therefore, there are minor degrees of difference in the analysis as a result of the wording of themes. This did not detract from the overall meaning behind each theme analysis.

1 Introduction

1.1 Publication and disclosure of fitness to practise information

The General Medical Council (GMC), an independent organisation established by UK statute, is the governing body responsible for overseeing the regulation of doctors. The Medical Act 1983 empowers the GMC with a statutory duty to publish a range of decisions taken about a doctor's fitness to practise. The GMC also has a discretionary power to publish or disclose any information about a doctor to any person, where it is considered to be in the public interest. Fitness to practise represents the most high profile area of work carried out by the GMC.

The GMC received 9,866 enquiries about doctors in 2013. The largest source of enquiries came from the public, with 6,475 enquiries in 2013, accounting for 66% of the total, an increase of 5.2% from 2012 and a considerable increase of 43% from 2010 (4,525). The public appetite for knowledge on the doctors who serve them is growing year-on-year. Current GMC policy is underpinned by the principles of transparency and openness on processes and decisions, and accessibility for enquirers seeking information about a doctor's registration. Striking the right balance in GMC policy to ensure that what is needed in the public interest with those of individual interests of the doctor subject to a fitness to practise sanction, remains a delicate matter.

Professional competency is tantamount to ensuring that the NHS and private services are delivered effectively and that trust between doctor and patient is maintained and sustained. Even though public trust in doctors remains high, it is essential that the GMC's fitness to practise processes are regarded as fair and transparent – to both protect patients while being fair to doctors.

1.2 Public consultation

From 1 July to 23 September 2015, the GMC consulted on a number of proposed changes to the information published about doctors who have been through a fitness to practise investigation and received a sanction. The proposals are presented in Table 1.

Table 1 Proposed changes to the information published and disclosed by the GMC

Proposal theme	Proposed changes
01 Time limits on sanctions	Introducing limits on the length of time that sanctions in relation to a doctor's registration will be published on the medical register or disclosed to general enquirers, ranging from five to twenty years. At present, all sanctions (excluding warnings) are published and disclosed indefinitely.
02 Online medical register historical data	Transferring onto the online medical register historical data about sanctions that were imposed during 1994–2005, where the doctors are still registered. Information about the fitness to practise history for some doctors will be publicly searchable for the first time. At present, the online medical register contains data only from 2005 – the year it was introduced.

Proposal theme	Proposed changes
03 Increasing transparency in the information published	Where a doctor appeals the decision of a fitness to practise panel, making sure that the information provided on the outcome of the case is as transparent as possible. References to a fitness to practise appeal, regardless of outcome, will be noted on a doctor's record and published on the Medical Practitioners Tribunal Service (MPTS) website.
04 Clarifying GMC policy on information published	Where a doctor appeals the decision of an interim orders panel, there will be greater clarity on GMC policy on what information will be published.
05 Greater transparency and detail in cases	Providing greater transparency and detail in cases where the GMC agrees undertakings with a doctor without a fitness to practise panel hearing, by publishing a short summary.

The public consultation was open to any individual and organisation, from all sectors. Respondents were invited to share their view by:

1. Answering the questions on the GMC consultation website
2. Downloading a consultation document to complete answers
3. Attending the stakeholder event on 25 August 2015

Feedback from the public consultation will inform changes to the GMC's publication and disclosure policy, and seek to increase confidence and credibility among all stakeholders in how the GMC exercises its regulatory functions.

2 Methodology

Frontline was commissioned by the GMC from July to December 2015 to undertake an independent quality assurance of analysis of responses to the public consultation on the GMC publication and disclosure policy.

This section provides a summary of the methodology used in analysing the responses to this public consultation and in quality assuring GMC findings.

The activities of this project were to:

- Develop a methodology for analysing responses made in a variety of formats
- Develop a coding framework against which common themes could be identified and analysed
- Identify common themes in the responses and assign codes against them
- Review GMC analysis of consultation data in comparison to our independent analysis
- Provide an independent view on the extent to which the GMC report on the consultation outcomes reflects appropriate consideration of the consultation responses
- Aggregate the findings in a report

This report is the output from this project.

2.1 Data processing

Responses were received from the GMC in two formats and, where possible, were imported into the Frontline Consultation Analysis Tool. Each response format was processed as follows:

- **Online consultation responses** – these were imported directly into the response database using the Frontline Consultation Analysis Tool
- **August 25 2015 stakeholder event** – these were reviewed separately and commented on in the report, where appropriate

2.2 Exclusion criteria

No exclusion criteria was applied as the GMC provided all responses for analysis.

2.3 Coding framework and coding process

A coding framework was developed based on a brief review of 10 responses, followed by a detailed review of a further 10 responses. This coding framework consisted of assigning themes against each consultation question.

An example of our coding framework is presented in Figure 1 which includes themes and sub-themes for Question 1. Each response is reviewed and assigned a code comprised of a theme and a sub-theme.

Figure 1 Sample of the coding framework in relation to Question 1

No	Theme	Sub-theme	Code
1	Time limits	Time limits are too long	1-Time limits-Time limits are too long
1	Time limits	Less than 5 years is sufficient	1-Time limits-Less than 5 years is sufficient
1	Time limits	5 to 10 years is sufficient	1-Time limits-5 to 10 years is sufficient
1	Time limits	10 years plus is sufficient	1-Time limits-10 years plus is sufficient
1	Time limits	Time limits are not long enough	1-Time limits-Time limits are not long enough
1	Rationale	Disclose when there is a legitimate reason	1-Rationale-Disclose when there is a legitimate reason
1	Other	Not necessary	1-Other-Not necessary
1	Publication upon death	Delete publications upon death	1-Publication upon death-Delete publications upon death
1	Balance	Greater balance required	1-Balance-Greater balance required
1	Impact on doctor	Negatively impacts doctor's health and wellbeing	1-Impact on doctor-Negatively impacts doctor's health and
1	Impact on doctor	Negatively impacts doctor's career	1-Impact on doctor-Negatively impacts doctor's career
1	Rationale	Disclose when there is a legitimate reason	1-Rationale-Disclose when there is a legitimate reason
1	Time limits	Proportionate to severity of sanction	1-Time limits-Proportionate to severity of sanction
1	Time limits	5 to 10 years following erasure is sufficient	1-Time limits-5 to 10 years following erasure is sufficient
1	Accessibility of information	Information to be available to employers and regulatory bodies	1-Accessibility of information-Information to be available to employers and regulatory bodies
1	Time limits	Erase sanctions when spent	1-Time limits-Erase sanctions when spent
1	Availability of information	Information to remain on register permanently	1-Availability of information-Information to remain on register
1	Legislation	Must consider the DPA 1998	1-Legislation-Must consider the DPA 1998
1	Other	Depends on reason for removal from the register	1-Other-Depends on reason for removal from the register
1	Publication upon death	Delete publications upon death	1-Publication upon death-Delete publications upon death
1	Public interest	Not in the public interest	1-Public interest-Not in the public interest
1	Time limits	Five years for health problems	1-Time limits-Five years for health problems
1	Consistent approach	Should be no difference in time limits	1-Consistent approach-Should be no difference in time limits
1	Mental health	Must consider doctors with mental health issues	1-Mental health-Must consider doctors with mental health issues
1	Treatment of health issues	Treatment of health issues	1-Treatment of health issues-Treatment of health issues
1	Time limits	10 years if doctor leaves the register	1-Time limits-10 years if doctor leaves the register

The complete codification framework was entered into the consultation analysis tool, and was piloted on an analysis of 20 responses. Minor amendments were made.

Each member of the project team reviewed a sample of the responses and, where actions were identified, the relevant code was assigned to that response. Figure 2 provides an illustrated example of the analysis tool in relation to Question 1. Each response is allocated a unique reference identification number and there is an excel spreadsheet for each of the 19 questions. Each question is analysed using the tool. Each response is reviewed and assigned a code from the coding framework (see Figure 1). Many responses were detailed and included more than one theme as presented in Figure 2.

Figure 2 Sample of the consultation analysis tool in relation to Question 1

Question	Do you think the time limits proposed above provide the right balance between being transparent and open in the public interest and being fair to individual doctors?					
1:						
Unique	Response	Agreement	Theme 1	Theme 2	Theme 3	Theme 4
01	Doctors not currently registered should've visible for life.	No	1-Availability of information-Information to			
02	Too long for sanctions/undertakings for registered doctors. Instead, use 5 years as per doctors no longer registered.	No	1-Time limits-Time limits are too long	1-Time limits-5 to 10 years is sufficient		
03	If someone has been erased and then restored to the register, then I think this information should only be there for a limited time, say 5 to 10 years. Otherwise it becomes a life sentence, when someone may have been fully rehabilitated into practice.	No	1-Time limits-Time limits are too long	1-Time limits-5 to 10 years is sufficient		
04	If a doctor is granted undertakings re communication,organizational,team work etc why do you want to leave this information for 20 years? If the doctor is genuinely incapable of showing improvements why wait....and continue to allow him/her access to vulnerable patients, why not	No	1-Time limits-Time limits are too long			
05	20 years will effectively cover most of a doctors working life and I think that it might be worth considering the severity of the case wrt how long the sanctions remain rather than a blanket time period regardless of the concern/issue	Not sure	1-Time limits-Proportionate to severity of	2-Time limits-20 years is too long		
06	Once a doctor has left the register they are no longer able to practice legitimately. Leaving the information on the register is unnecessary and excessive. 20 years is a lifetime for historical problems to follow a doctor who is still practising. It makes it very difficult for a doctor to seek employment and move on. As for health issues, the wording is disingenuous, as the fact of having 'health' undertakings is understood as having serious mental health or substance abuse problems. It is a serious disincentive to a doctor to self-report as outside the M25 region, there is no support, merely opprobrium and public humiliation.	No	1-Time limits-Time limits are too long	2-Time limits-20 years is too long	1-Impact on doctor-Negatively impacts doctor's career	1-Treatment of health issues-Treatment of health issues

The tool incorporates formulae embedded into the cells allowing the quantification of themes per question and the automated generation of related tables so that the most common views expressed by respondents can be identified. Table 2 presents an example of how themes are quantified for Question 1, presenting the format to which each question has been analysed for this report in Section 3. The first two columns present the theme and sub-theme that has been assigned to each response, and the

third column 'number of points raised' provides the count total so that we can see which themes are the most common.

Table 2 Themes identified from the analysis of comments in relation to question 1 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Time limits	Proportionate to severity of sanction	3
	5 to 10 years following erasure is sufficient	1
	10 years if doctor leaves the register	1
Accessibility of information	Information to be available to employers and regulatory bodies	2
Rationale	Disclose when there is a legitimate reason	1

2.4 Quality control

The following approach to quality control was taken:

- **Each team member's coding was reviewed by another team member** – to check that they were broadly compatible
- **The Project Manager undertook a detailed review of 10% of the coded responses** – to identify systematic issues
- **Complex responses were flagged** – to indicate that they needed a detailed review by the Project Manager

Where any amendments to the coding were needed these were made and, where clarification was needed, this was circulated to all team members to achieve consensus.

2.5 Quality assurance of GMC analysis

Following the assignment of codes to all consultation responses, findings from the GMC report were reviewed against our independent analysis. Each question was reviewed in turn:

- All quantitative data was reviewed to ensure that the numerical analyses of consultation responses and analysis of responses by category of respondent were aligned
- Qualitative comments for each question were compared with the GMC analysis of each question and also with their summary sections

Section 3 presents our analysis of consultation responses with commentary regarding where this is addressed or not addressed in the GMC analysis, per question.

3 Analysis of Consultation Responses and Review of GMC Analyses

The following section presents an analysis of the consultation responses by question as featured in the proposal document. Our analysis of each question is presented, with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

Where possible, stakeholder event findings have also been incorporated into our analysis.

Our approach to analysis as described in Section 2 involves the review of each response per question to assign a code which includes both a theme and a sub-theme. Overall, the GMC analysis included high-level themes, and therefore, our analysis often includes several sub-themes which could be incorporated within GMC overarching themes. As Frontline was tasked to provide independent analysis, it was vital to develop codification frameworks in independence, and therefore, there will be some minor degrees of difference in the wording of themes, which cannot be avoided.

Please note that each individual's comment may raise more than one point and cover a number of themes, therefore the tables presented do not necessarily represent the total number of comments made by respondents to a specific question.

A deeper level of analysis was presented for Questions 1, 2 and 19 due to the volume and quality of responses provided.

3.1 Responses received

In total, 69 responses were received to the public consultation on the GMC's publication and disclosure policy. Table 3 shows the distribution of responses by respondent type.

Table 3 Number of responses by respondent type

Respondent Type	Category	Number of Respondents
Organisation	Body representing doctors	7
	Body representing patients or public	2
	Postgraduate medical institution	7
	Regulatory body	1
	Other	4
Individual	Doctor	36
	Member of the public	4
	Other	8
Total respondents		69

The following sections present our analysis of consultation responses by proposal question, reviewed against GMC findings.

3.2 Proposal 1 – Introducing time limits

3.2.1 Do you think the time limits proposed provide the right balance between being transparent and open in the public interest and being fair to individual doctors? (Q1)

Introduction

Less than one third (29%, 20) believed that the time limits proposed by the GMC provide the right balance between transparency and openness in the interests of the public and fairness to individual doctors. The majority (57%, 39) disagreed with the proposal. A total of 55 comments were received. Seven (10%) were not sure, and a further three (4%) provided comments only. In line with the GMC analysis, 55 comments were received.

Comments in support of the proposal

20 respondents agreed with the time limits proposed by the GMC with half (10) providing comments. Five of these comments were restating their general agreement with the proposal while five provided further information. Table 4 presents the themes identified in our analysis.

Table 4 Themes identified from the analysis of comments in relation to question 1 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Time limits	Proportionate to severity of sanction	3
	5 to 10 years following erasure is sufficient	1
	10 years if doctor leaves the register	1
Accessibility of information	Information to be available to employers and regulatory bodies	2
Rationale	Disclose when there is a legitimate reason	1

1 Time limits

Of the five respondents that provided comments, four made specific reference to the proposed time limits.

Three respondents raised points about the time limits being proportionate to the severity of the sanction. One, a doctor believed that sanctions other than erasure should be subject to a sliding scale time limit of between 5 and 20 years depending on the seriousness of the infraction and considered risks to the patient. This comment was recorded as an alternative suggestion to the time limits by the GMC in its analysis of the response.

The Professional Standards Authority (PSA) suggested that regulators should take a 'proportionate approach' to publishing lesser panel sanctions. They also wanted to understand what has prompted the reduction, and why the five, ten and twenty year time limits were chosen.

The PSA also commented that in their 2010 publication, *Health professional regulators' registers – maximising their contribution to public protection and patient safety*, they recommended that erasure should be published for a minimum of five years. The GMC reported on the response by the PSA in both its overall analysis for Question 1 and summary.

Action against Medical Accidents (AvMA) highlighted the difficulty in a one size fits all approach to publication and disclosure and felt that there should be a greater focus

on each individual case. The GMC also highlighted this response from the AvMA in its analysis.

One respondent, The Royal College of Radiologists stated that if a doctor should leave the register, then there should be a further publication period of 10 years. This was also reported by the GMC in its analysis.

2 Accessibility of information

The PSA indicated that they felt strongly that the GMC should continue to disclose information routinely about past sanctions to prospective employers – as well as to current employers and overseas regulators. The GMC also highlighted this in their analysis and commented further on the PSA's assumption that the GMC will continue to keep their own records regarding sanctions indefinitely.

NHS employers also highlighted that where erasure from the register is due to conduct there may be different levels of risk, which potential employers, and others may need to take into account. This was also reflected by the GMC in its analysis.

3 Rationale

NHS Employers highlighted that while they agree that the requirement to publish information in the public interest may decline over time, there may also be occasions where information should be made available to anyone with reasonable grounds. The GMC also reported on this comment in its analysis.

Comments opposed to the proposal

Of the 39 respondents that disagreed with the proposed time limits, almost all (36) provided comments. Table 5 presents the themes identified in our analysis.

Table 5 Themes identified from the analysis of comments in relation to question 1 for those opposed to the proposal

Theme	Sub-theme	Number of points raised
Time limits	Time limits are too long	29
	20 years is too long	12
	5 to 10 years is sufficient	10
	Proportionate to severity of sanction	8
	5 to 10 years following erasure is sufficient	3
	Less than 5 years is sufficient	2
	10 years plus is sufficient	1
	Five years for health problems	1
	Time limits are not long enough	1
Impact on doctor	Negatively impacts doctor's career	8
Treatment of health issues	Treatment of health issues	8
Public interest	Not in the public interest	3
Legislation	Must consider the DPA 1998	2
Availability of information	Information to remain on register permanently	1
Consistent approach	Should be no difference in time limits	1
Publish criticisms of the GMC	Publish criticisms of the GMC	1
Rationale	Disclose when there is a legitimate reason	1
Other	Depends on reason for removal from the register	1

1 Time limits

Of the 36 respondents that provided comments on their opposition to the proposed time limits, 29 respondents felt that they were too long. Of the 29 respondents, 12 specifically commented that 20 years was too long and five thought that sanctions should be erased as soon as they were spent. These comments were in line with the GMC analysis.

Respondents offered a range of alternative time limits for consideration by the GMC:

- Ten of the 29 respondents who said existing time limits were too long suggested time limits ranging from five to ten years
- Five respondents mentioned a five year time limit

These suggestions were echoed in the GMC analysis. For example, one doctor commented that the time limits are too long for sanctions/ undertakings for registered doctors and that instead, five years was more appropriate for doctors no longer registered. Another doctor suggested that a period of five years maximum should be enough.

The Medical and Dental Defence Union of Scotland (MDDUS) and two doctors believed that a period of ten years would be more appropriate with the MDDUS stating that this would be consistent with other aspects of the Rehabilitation of Offenders' legislation. One of the doctors who suggested a ten year time limit also thought that for purely health related problems, a lesser time limit of five years should be considered. The GMC analysis also highlighted the three respondents overall who suggested a ten year time limit and specifically commented on the response by the MDDUS and the doctor who suggested the five year time limit for health problems.

Our analysis also highlighted a further two doctors who suggested a five to ten year time limit rather than one or the other. One of the doctors felt that if someone is erased and then restored to the register, then the information should only be available for five to ten years because otherwise it is a life sentence for someone who may have been fully rehabilitated into practice. The GMC also reported on this particular response in its analysis.

A further two doctors believed that the time limits should be less than five years and this was echoed in the GMC analysis. One doctor believed that if a sanction greater than five years is applied, it could hamper the doctor's career and personal development. The other doctor suggested a three year maximum time limit for consideration by the GMC highlighting that because the GMC can use the civil standard of proof, they cannot expect to apply a low standard of proof and a sanction that is proportionately greater than those for the rest of the population. This specific response was also highlighted in the GMC analysis.

Only one respondent, an NHS employer, suggested a time limit greater than ten years indicating that a 15 year time limit would be more appropriate. This was also commented upon by the GMC.

In addition to suggesting time limits for registered doctors, three respondents also suggested time limits for doctors erased from the register. One doctor suggested a five year limit from erasure, and the Royal College of Psychiatrists suggested a ten year limit claiming that this would help the doctor stay off any register. BLM, a law firm representing doctors, also felt that publication for 10 years following erasure is too long and that a five year limit is more appropriate. These suggestions were also presented by the GMC in its discussion on the suggested five to ten year time limits.

Of the 29 respondents, eight suggested that the time limits should be proportionate to the severity of the sanction. This is in line with the GMC analysis who coded it as a

sliding scale. Respondents who commented on this believed that it would be fairer on the doctor and would provide a greater balance.

The MDU commented that a one size fits all approach cannot be proportionate and that while they would not suggest alternative time limits they believed that the GMC should consider setting three different time limits for suspension, conditions and undertakings, each for a shorter period.

The GMC reported specifically on the comment above by the MDU and also discussed the response by the BMA who were concerned that a “single band A suspension on the cusp of erasure and a conditions order which may have been aimed at addressing a specific and readily correctable issue of a completely different order of severity may well lead to unfairness in practice if publication of either matter is likely to have a significant stigmatising impact on the practitioner's professional reputation and employment prospects”.

A member of the public also suggested a sliding scale for undertakings, conditions and suspension, stating that more serious sanctions such as suspensions should be published for longer than lesser sanctions such as undertakings as this would represent a proportionate approach. This was also reported by the GMC.

2 Impact on the doctor

Eight respondents commented on the impact that the proposed time limits could have on a doctor's career. Of the six doctors that commented on this, one, highlighted that “20 years is a lifetime for historical problems to follow a doctor who is still practising” and that “It makes it very difficult for a doctor to seek employment and move on”. Another stated that the limits are too long and it affects the doctor's ability to find work.

The BMA also commented on this stating that “one suspects that in many cases, particularly when sifting applications for employment, the fact that a regulatory sanction has been imposed is sufficient to trigger a rejection.”

A further respondent who was uncategorised also highlighted that “the publication of limited ('practice-related') undertakings can cause discrimination and result in doctors, with physical and/or mental impairments, being denied employment opportunities, arising from prejudice within the health service.”

The GMC did not specifically have a section addressing the impact of the proposed time limits on a doctor's career, rather these were included in their discussion on the length of the time limits. This was also covered in the overall summary of the GMC report.

3 Treatment of health issues

Our analysis highlighted eight respondents who commented on how health issues were treated. This is in line with the GMC analysis which reported nine respondents. The GMC analysis highlighted four respondents, a member of the public, a solicitor and two doctors who specifically commented on their belief that it is unfair to treat doctors who have health issues the same as those that are negligent. Our analysis also included these comments.

A further two doctors expressed their concerns regarding the suicide rate amongst doctors with health issues and those facing sanctions. This was also reported by the GMC in its analysis. Our analysis also highlighted the respondent who believed that currently the way health issues were treated was unfair and was in breach of the Equalities Act 2010 and the Human Rights Act 1998. This was also discussed by the GMC in its analysis.

4 Public interest

Three respondents felt that the proposed time limits were not in the public interest, this included two doctors and a solicitor. One of the doctors expressed his concern that undertakings remain freely visible in a doctor's history after they have been lifted and stated his disagreement that this is in the public interest for most cases. The other doctor asked "what benefit is it to the public to know about conditions imposed in the past if the doctor is registered with the GMC and has been continuing to practise without problems". The solicitor highlighted that "the revocation of undertakings reflects the view that the practitioner's fitness to practise is not currently impaired and is unlikely to relapse in a manner which would expose patients to risk. The public do not need to be protected from such practitioners." This analysis is in line with the GMC analysis which also reported on the above respondents.

5 Legislation

Our analysis highlighted two respondents who raised concerns around breaches in the Data Protection Act 1998 and Human Rights Act 1998. This is in line with the GMC analysis who also reported on the above two respondents in their section on compliance with information legislation.

6 Other comments

Our analysis also highlighted the following themes from respondents' comments.

- **Publish criticisms of the GMC** – One respondent highlighted that where the GMC are to blame this should be recorded. This was discussed by the GMC in its section on 'other comments'
- **Depends on reason for removal from the register** – One respondent highlighted that publication should depend on the reason a doctor has been removed from the register. This was discussed by the GMC in its section on 'other comments'
- **Should be no difference in time limits** – The Patient Liaison Group believed that there should be a consistent approach to the time limits and that there should be no difference in the time limits on which information about the outcomes of fitness to practise panels are available to the public. This was discussed by the GMC in its section on 'other comments'
- **Information to remain on register permanently** – One respondent stated that information on the register should be visible for life. This was discussed by the GMC in its analysis on the 'length of time limits'
- **Disclose when there is a legitimate reason** – One respondent indicated that the proposed time limits should be baseline and not absolute, and that at the point at which they are reached, the rule should be that they should now come off the public domain, unless there is justification for their maintenance. The GMC reported on this in its discussion of the 'length of time limits'

Comments from those who neither agreed nor disagreed

Comments from those that neither agreed nor disagreed with the proposed time limits focused mainly on the length of the time limits.

An independent medical educator, a royal college and the MPS highlighted that the proposed time limits were too long and felt that the limits should be proportionate to the severity of the sanction.

Health Education England, wanted to understand the rationale for 20 years and highlighted that under the Rehabilitation of Offenders Act, a conviction is spent in seven years. They further suggested that there may be occasions where information should remain visible on the register.

One doctor commented that information should remain on the register permanently. These responses were discussed by the GMC in its analysis of those opposed to the time limits in their section on the 'length of the time limits'.

In line with the GMC analysis, we also note the response by the Royal College of Physicians which highlighted that the proposed retention period for sanctions other than erasure could be longer than for erasure.

The information Commissioner's Office (ICO) stated that a blanket approach to the time scales would be problematic from a Data Protection Act point of view, because in practice, this would require a consideration of what information needs to be published or disclosed to fulfil the GMC's purpose, and this would have to be balanced with the effect publication or disclosure would have on the doctor, to ensure fairness and proportionality. The ICO did not provide any comments on specific time scales as they believe it is for the GMC to assess the balance. This response was also reported by the GMC.

Stakeholder events

Comments received from the stakeholder events were in broad agreement with the overall comments to the public consultation and were reflective of the GMC analysis for question1. Key themes highlighted at the events included

- 20 years is too long
- Time limits should be proportionate to the severity of the sanction
- Time limits could have a negative impact on a doctor's career

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.2.2 *Do you consider that, if time limits are introduced we should routinely disclose information about sanctions to prospective employers once the time limit has expired? (Q2)*

Introduction

More than one-third (38%, 25) agreed that, if time limits are introduced, the GMC should routinely disclose information about sanctions to prospective employers once the time limit has expired. The majority (42%, 27) disagreed with the proposal. In line with the GMC, analysis a total of 43 respondents provided comments.

Comments in support of the proposal

Of the 25 respondents that agreed with the proposal 15 provided comments. Table 6 provides an overview of the key themes identified during our analysis of the question.

Table 6 Themes identified from the analysis of comments in relation to question 2 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Interests of employers	In the interests of employers	6
Disclosure	Disclose more widely after time limits	3
Interests of patients or public	In the interests of patients or public	3
Patient safety	Necessary for patient safety	1
Other	Other	2

1 Interests of employers

Our analysis highlighted six respondents who believed that it was in the interests of employers to have access to information on sanctions once the time limit has expired.

Many of the comments were quite general, for example, one doctor highlighted that it was important to be transparent to employers and another believed that prospective employers should have information readily available to them about doctors who have previously received sanctions. The PSA also felt strongly that information regarding sanctions should be made available to both prospective and current employers, and overseas regulators. A member of the public also believed it essential for information to be disclosed to employers but highlighted that information should be available on both registered doctors and those not on the register. These comments were included by the GMC in its section under 'general agreement'.

One doctor believed that prospective employers have every right to know about their employees because their reputation and responsibility is at stake. This was highlighted by the GMC but included under their theme on 'transparency'.

CAIPE believed that employers should get routine disclosure of the information once the time limit has expired because of the wide variety of roles and professional teams that might be in it will enable them to make fully informed decisions. This specific response was discussed by the GMC in its section on 'transparency'

2 Disclose more widely

Three respondents commented that information should be disclosed more widely. The Patient Liaison Group of the Royal College of Surgeons stated that information should be disclosed to employers and should also be made available to the general public. The AvMA suggested that information should be disclosed to other interested parties including patients and their representatives.

They also highlighted that there may be historic cases that come to light where this information may be relevant. These responses were discussed by the GMC in its section on 'Consistency'.

A NHS manager also commented on this generally stating that the information should be disclosed more widely.

3 Interests of patients or public/Patient safety

A member of the public and two doctors believed that it was in either the public or patients interest, or both, for information to continue to be disclosed. One doctor stated that the information should be disclosed provided there was a test of it being in the patient or public interest, while the other highlighted that they would want to know if they were the patient. The member of the public stated that it was in the interest of all concerned including the patient and the employer. A further doctor believed that disclosure of information was necessary for patient safety but that the register should be time limited.

These responses were discussed by the GMC under the theme headings of 'general agreement' and 'public safety'.

3 Other comments

One respondent, the MDDUS commented that disclosure should remain as long as doctors are exempt from the benefits of the Rehabilitation of Offenders Act, but that if the legislation changes then disclosure will need further review.

The Royal College of Physicians of Edinburgh suggested that it may be less of an administrative burden to the GMC if information was routinely disclosed.

Both comments were discussed by the GMC in its analysis under the theme heading 'other comments'.

Comments opposed to the proposal

Of the 27 respondents that disagreed with the proposal 16 provided comments. Table 7 provides an overview of the key themes identified during our analysis of the question.

Table 7 Themes identified from the analysis of comments in relation to question 2 for those opposed to the proposal

Theme	Sub-theme	Number of points raised
Impact on doctor	Negatively impacts doctor's career	4
	Negatively impacts doctor's health and wellbeing	3
Disclosure	Not necessary	7
Treatment of health issues	Treatment of health issues	2
Rationale	Disclose when there is a legitimate reason	3
Legislation	Must consider the DPA 1998	2
Time limits	Erase sanctions when spent	2

1 Impact on doctor/ Treatment of health issues

Several respondents provided comments that related to the impact of disclosure on a doctor. Four mentioned that disclosure could have an impact on a doctor's career. One doctor commented that "If a doctor is sanctioned he has lost his livelihood". A second doctor highlighted that 20 years is a lifetime for historical problems to follow a doctor who is still practising.

It makes it very difficult for a doctor to seek employment and move on". This respondent also commented on the treatment of health issues noting that "the wording is disingenuous, as the fact of having 'health' undertakings is understood as having serious mental health or substance abuse problems. It is a serious disincentive to a doctor to self-report as outside the M25 region, there is no support, merely opprobrium and public humiliation".

The MDU also expressed its concern indicating that there is an assumption that the receipt of information relating to historical conditions would negatively influence a prospective employer and that this is punitive and unfair.

A solicitor also highlighted that the disclosure of old sanctions to prospective employers is likely to create an impression that the regulator continues to attach weight to historic matters pointing to current and relevant risk. A further three respondents also commented on the negative impacts that disclosure could have on a doctor's health and wellbeing.

One, a member of the public commented on the treatment of health issues indicating that it is inappropriate to treat those with health issues the same as negligent doctors. This respondent also stated that "disclosure, so long after an episode of ill health, under performance of wrong-doing would be unfair to the doctors concerned, compromising their chances to rehabilitate themselves. The GMC runs the risk of encouraging prejudice against these doctors, making rehabilitation less likely and relapse more probable. In the case of ill health, the GMC risks promoting and perpetuating stigma against doctors in recovery from addiction and mental ill health".

One doctor cited the high suicide rate amongst doctors reported to the regulator and suggested that the GMC be mindful of this by imposing an appropriate sanction then lifting it.

Another respondent claimed that "disclosing historic information may breach the Equalities Act 2010 if it relates to doctors who were subject to FTP procedures on grounds of health. This has the potential to blight doctors' careers and lead to secondary handicaps (through underemployment)."

Several of these responses were discussed by the GMC in its analysis under the theme heading 'impact on doctors.'

2 Disclosure

Our analysis identified seven respondents that believed disclosure about sanctions to prospective employers is not necessary.

The doctor that mentioned the high suicide rate among doctors reported to the regulator also commented that "it is not proportionate to continue to disclose 'spent' sanctions". Another doctor also indicated that leaving information on the register is unnecessary and excessive.

The Royal College of Radiologists, the Professional Support Unit, HENWEL and one doctor all believed that disclosure of information given the time limits was no longer necessary.

Another doctor highlighted that "unless there were serious issues of fitness to practise. Those who have accepted undertakings and have them revoked and have upheld these deserve a break!" A further doctor also commented that they could not see the benefit unless a doctor's actions had led to serious harm to a patient.

These comments were discussed by the GMC in its analysis under the theme heading 'relevance'.

3 Rationale

The Royal College of Psychiatrists and BLM Law indicated that information should be disclosed if a legitimate reason is provided. For example, the Royal College stated that “if specific people, such as the police or medical directors need that information, then they can approach the GMC and explain why they need it”. BLM Law commented that disclosure should not be routine rather only in exceptional circumstances and subject to the doctors consent.

Both comments were discussed by the GMC in its analysis under the theme heading ‘relevance’.

4 Legislation

Two respondents, a member of the public and BLM Law commented on the legislative aspects of disclosure of information outside of the time limits. The member of the public believed that it breached the Data Protection Act and the Equalities Act 2010.

BLM Law argued that “the approach is arguably unlawful as it fails to have proper regard to the importance of the Registrant's rights under Article 8 of the ECHR, the Data Protection Act and Articles 7 and 8 of the EU Charter of Fundamental Rights”.

Both responses were discussed by the GMC in relation to its analysis under theme heading ‘compliance with information legislation’.

5 Time limits

One doctor asked that the previous erasure be kept but that sanctions should only be displayed when current. This respondent also thought that the proposals were more stringent than the Rehabilitation of Offenders Act.

This was discussed by the GMC in its analysis under theme heading ‘compliance with information legislation’.

Comments from those who neither agreed nor disagreed

Nine respondents neither agreed nor disagreed with the proposal and eight provided comments covering the full range of themes highlighted by those that agreed or disagreed.

Three respondents, the Cambridgeshire Local Medical Committee, The British Medical Association (BMA) and a doctor all believed that disclosure should be agreed on a case by case basis depending on the relevance or circumstances. For example the Cambridgeshire Local Medical Committee believes that it is dependent on whether the doctor is still registered and the type of employment they are seeking. They highlight that if the doctor is no longer registered, then consideration should be given to the nature of the proposed employment and the relevance the sanction could have to it. They add that this can only be done on a case by case basis. The Committee also believed this would be reflective of the Data Protection Act.

NHS Employers, a royal college and a doctor all commented that disclosure is in the interest of the employer. The doctor indicated that while the limits should be based on the severity of the sanction, employers should still be provided for accordingly. The Royal College highlighted that their lay respondents believed that records should not be disclosed after the time limits because it could be detrimental to a doctor's career but their clinical respondents did agree that employers should be aware of past sanctions. NHS Employers indicated that “employers may nevertheless want to see a full fitness to practise history, including sanctions, so that they can make a fully informed decision on making an appointment”. They also suggested that it may be helpful for the GMC to produce guidance on this.

One doctor who provided a comment only suggested that the panel should take greater consideration in disclosing mental health conditions. The Information Commissioners Office who also provided a comment only indicated that “the GMC would need to set out the purpose for disclosing this information once time limits had expired, in terms of what it would achieve, and make a balanced and justifiable decision”.

The Faculty of Intensive Care Medicine who also commented only argued that “information should be disclosed to prospective employers without a time limit and such requests for information should be recorded and retained”.

These comments were also reflected by the GMC in its analysis of those that neither agreed nor disagreed with the proposal.

Stakeholder events

There were limited comments received from the stakeholder events for Question 2. However, of the comments received, it was highlighted that it was important for prospective employers to have access to information, although one respondent questioned at which point an employer becomes a prospective employer.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.2.3 Do you have other comments on the issues discussed in the above sections? (Q3)

Introduction

In line with the GMC analysis 25 respondents provided further comments to the proposed time limits which is in direct correlation to the GMC's analysis.

Summary of comments

We are in agreement with the GMC that many of the comments were reiterated from Questions 1 and 2. Table 8 provides an overview of the themes identified in our analysis of the question.

Table 8 Themes identified from the analysis of comments in relation to question 3

Theme	Sub-theme	Number of points raised
Impact on doctor	Punitive and unfair	5
	Negatively impacts doctor's career	1
	Negatively impacts doctor's health and wellbeing	1
Transparency	Greater transparency required	4
Legislation	DPA implications	3
	Implications for the Human Rights Act	1
Balance	Greater balance required	2
Accessibility of information	Information not to be available to general enquirers after expiration of time limits	1
Clarification	Changes must be clear for doctors	1
Public interest	In the public interest	1
Rationale	Greater rationale required	1

1 Impact on doctor

In line with the GMC, our analysis identified seven respondents that commented on the impact of publication on doctors. Four of these were doctors, one a relative of a deceased doctor, one a member of the public and one a solicitor. In line with the GMC's analysis two reported on their personal experiences of having information published. One doctor commented that disclosure of information after the time limit smacks of retribution and punishment, while the other believed that the doctor in the middle gets forgotten.

The relative of a deceased doctor also commented that "hasty disclosure of information and jumping to unsafe conclusions without due consultation in complex cases, is extremely dangerous and could shorten the life of the mentally ill doctor".

2 Transparency

Four respondents, three of whom were doctors commented on the need for transparency. For example one doctor stated that proof must be given to justify the decision before the public disclosure of sanctions and that information must be assessed according to the regulatory framework. This was discussed by the GMC in its analysis under the theme heading 'fairness'.

Another doctor highlighted that the GMC should not expect to be the sole arbiter of a doctor's professional fate, stating that "if we allow double and triple jeopardy and sanctions imposed to a civil standard by the GMC- then we should ask ourselves, whether an audit of FTP cases to a civil standard is available and can it be shown to

be an improvement"? This was discussed by the GMC in its analysis under the theme heading 'Transparency and public protection'.

The third doctor in describing his own experiences indicated that the GMC needs to justify the decisions it makes and be more accountable for them. This was discussed by the GMC in its analysis under the theme heading 'fairness'.

A final respondent, the Royal College of Physicians of Edinburgh commented that "it is unclear why, if the GMC is committed to transparency, information should be available to employers for longer than to other enquirers". This was discussed by the GMC in its analysis under theme heading 'transparency and public protection'.

3 Legislation

Four respondents made comments in relation to legislation. One doctor stated that "at least the right to be forgotten is there" while another doctor asked what safeguards are in place to ensure that once the time limit is up, the data will be forgotten. These are discussed by the GMC in its analysis under theme heading 'other comments'.

A member of the public referenced the Data Protection Act and Human Rights Act stating that "in the present context these can be only relevant if they cover up matters where patient care is involved. Such excuses should not be used, but if they are the fact that relevant information is withheld for such bizarre reasons should be recorded".

Another respondent, highlighted that searching for an individual's name is subject to data protection rules, and that links should not contain personal information that is no longer relevant. The respondent goes on to suggest that the GMC should comply with best practice in data protection. These comments were discussed by the GMC in its analysis under theme heading 'Relevance'.

4 Other comments

Our analysis also highlighted the following themes from respondents' comments.

- **Balance** – One respondent, BLM Law, expressed their concern that the proposals are weighted towards publishing as much information as possible. This respondent believed that a better balance between transparency and publication is needed. This was discussed by the GMC in its analysis under theme heading 'Relevance'
- **Accessibility of information** – The Cambridgeshire Local Medical Committee believes that there should be a distinction between general enquirers and employers, and that general enquirers should not have access to information once the time limits have expired. This was discussed by the GMC in its analysis under the theme heading 'other comments'
- **Clarification** – The Information Commissioners Officer commented that any changes to the publication and disclosure should be clearly communicated to doctors so they are fully aware of how their data will be used. This was discussed by the GMC in its analysis under the theme heading 'other comments'
- **Public interest** – One doctor highlighted the importance of informing the public of sanctions as soon as they are published. This was discussed by the GMC in its analysis under the theme heading 'transparency and public protection'
- **Rationale** – One doctor wanted to understand what the GMC was trying to achieve with the proposal. The doctor commented that there was no

change in the status quo and that it is paying lip service as fair to doctors. This was discussed by the GMC in its analysis under the theme heading 'other comments'

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.2.4 Do you agree with the proposal to stop publication of fitness to practise information after a doctor has died, unless there is a public interest? (Q4)

Introduction

Almost all (90%, 57) agreed with the proposal to stop publication of fitness to practise information after a doctor has died. A couple (3%, 2) disagreed with this proposal. In line with the GMC analysis a total of 25 comments were received.

Comments in support of the proposal

Of the 57 respondents that agreed with the proposal, 19 provided comments. Three of these were restating their agreement with the question. Table 9 provides an overview of the key themes identified during our analysis of the question.

Table 9 Themes identified from the analysis of comments in relation to question 4 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Publication upon death	Delete publications upon death	6
Availability of information	Disclose on request	4
Clarification	GMC to clarify why it is in the public interest	1
	Clarity required on process for retrospective cases	1
Fairness	Unfair on doctor/ doctor's family	1
Time limits	1 year after death	1
Other	Other	2

1 Publication on death

Six respondents highlighted their belief that publication should cease after a doctor has died. Two doctors generally agreed stating "why publish if the doctor has died", and "I think this should be removed if the doctor has died".

A further three doctors indicated that it was no longer necessary to publish the information as there was no longer a risk to the public. This was also mentioned by a member of the public. The GMC commented directly on these responses in the section on 'risks to patients or the wider public interest'.

These responses were also mirrored by BLM Law who commented that "it will be a rare case where there would be a public interest in continued publication. The purpose of publication is to protect patients and there can be no risk to patients or to public confidence when a doctor has died. We consider that the public interest exception should therefore be removed." This specific response was discussed by the GMC in the section on 'public interest exception'.

2 Availability of information

Four respondents felt that information should still be available on request. This included the AvMA, NHS employers, the Royal College of Physicians and a member of the public. For example the AvMA highlighted that "there will be a number of cases where this information will be relevant to current cases, for example, where harm caused by that individual has only just come to light or is subject to a current inquiry process". This was also mirrored by NHS Employers who also stated that patients and the public should be made aware of their ability to obtain this information should a legitimate need arise. These responses were also discussed by the GMC in the section on 'information on request'.

3 Clarification

Our analysis highlighted two respondents who indicated a greater need for clarity. One, a member of the public wanted to understand how retrospective cases would be covered. This was discussed by the GMC in its section on 'information on request'. The other, a doctor believed that the GMC needed to explain why it was in the public interest. This was also discussed by the GMC in the section on 'public interest exception'.

Other comments

Our analysis also highlighted the following themes from respondents' comments.

- **Fairness** – One respondent, a relative of a deceased doctor believed that relatives should be allowed to grieve particularly where a doctor has taken their own life. This was also commented on by the GMC in the section on 'fairness to doctors' families'
- **Time limits** – While the Royal College of Radiologists agreed with the proposal they suggested that the information should continue to be published for a year after a doctor has died. This was also highlighted by the GMC in the section on 'length of interim publication'
- **Other comments** – One respondent agreed with the proposal and directed us back to their original responses in question one which highlighted the suggestion that sanctions should be erased when spent

Comments opposed to the proposal

In line with the GMC's analysis two respondents were opposed to the proposal.

The Patient Liaison Group of the Royal College of Surgeons stated that a consistent approach across the medical register is required no matter what has happened to the doctor since that time. They thought that the proposal seemed complex and unnecessary.

The PSA commented that it was not clear from the consultation document why the timeframes for the publication of a deceased doctor's fitness to practise history differ from those for doctors who are still alive. They further highlighted on the importance of having access to information that may be pertinent to an ongoing investigation.

Both of these comments were discussed by the GMC in its analysis of those opposed to the proposal.

Comments from those who neither agreed nor disagreed

Three respondents neither agreed nor disagreed with the proposal.

One doctor believed that it would not make any difference to the family of the doctor and suggested that there should be a team to support doctors based on the severity of the problem. The doctor further highlighted that for minor concerns, doctors should be given the chance to build their confidence and practice safely without the stigma.

A member of the public also stated that the only reason for information to continue to be published would be "to assist in providing historical examples of GMC cover ups which should be reinvestigated".

Both of these responses were discussed by the GMC in its analysis of those that neither agreed nor disagreed with the proposal.

Our analysis identified a further response from the Medical Defence Union (MDU) which although had been answered as neither agreeing nor disagreeing highlighted its agreement with the proposal. The MDU further commented that it could not think of any compelling reason why there would be a public interest in publishing such information once a doctor has died and that information should only be provided on application to those able to demonstrate a legitimate right to have the information.

This response was discussed by the GMC in its analysis of those in support of the proposal.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.3 Proposal 1 – Introducing the time limits

3.3.1 *Do you agree that we should continue to publish the outcome of a public fitness to practise hearing for a period of time after the end of the hearing, even if a doctor subsequently dies? (Q5)*

Introduction

Just over half (52%, 33) agreed that, the outcome of public fitness to practise hearings should continue to be published for a period of time after the end of the hearing. Just over one quarter (27%, 17) disagreed with the proposal. In line with the GMC analysis, a total of 34 comments were received.

Comments in support of the proposal

Of the 33 respondents that agreed with the proposal, 13 provided comments, three of which stated their general agreement with the question. Table 10 provides an overview of the key themes identified during our analysis of the question.

Table 10 Themes identified from the analysis of comments in relation to question 5 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Time limits	More than 6 months	2
	3 to 6 months	1
Public interest	In the public interest	2
	GMC to clarify why it is in the public interest	1
Availability of information	Remove information only when a doctor is removed	1
	Publish on request	1
Legal issues	Legal interests	1

1 Time limits

Three respondents suggested time limits for the publication of fitness to practise information for a period of time after a hearing.

The Royal College of Radiologists suggested a year after death would be sufficient and the Professional Standards Authority (PSA) felt that six months falls short of what they would expect.

The MDU stated their agreement if it means that the information would then be public for only six months after the end of the hearing. However, they also stated their agreement with the proposal if it means that, the FTP hearing outcome would only be published for a further three months, if a doctor died three months after an FTP hearing.

All of these responses were discussed by the GMC in the section on 'Length of publication'.

2 Public Interest

Our analysis highlighted three respondents who commented on the publication of fitness to practise information for a period of time after a hearing being in the interest of the public. One, a member of the public felt that the information might be necessary in ongoing investigations where there are retrospective concerns regarding a doctor's conduct and that this would ensure the public and patients could be assured of any complaints they wanted to make.

NHS employers believed that publishing the information will allow patients and the public to follow the full progress of a particular case and help maintain their confidence in the process.

The Royal College of Physicians of Edinburgh wanted an explanation as to why fitness to practise hearings continue after death.

All of these comments were discussed by the GMC in the section on 'public interest'.

3 Availability of information

Two respondents made comments regarding the availability of information. The AvMA indicated that information should be made available on request because it could still be relevant to ongoing investigations. They further stated that the information should be available to patients and other relevant agencies. This specific comment was discussed by the GMC in the section on public interest.

The Patient Liaison Group of the Royal College of Surgeons believed that information should be removed from the register only when a doctor is removed. This comment was also discussed by the GMC in the section on 'public interest'.

4 Legal Issues

One respondent, BLM Law claimed that there will be a legal interest in publishing the outcome of a public hearing. This was discussed by the GMC in its section on 'public interest'.

Comments opposed to the proposal

Of the 17 respondents that disagreed with the proposal, 11 provided comments. Table 11 provides an overview of the key themes identified during our analysis of the question.

Table 11 Themes identified from the analysis of comments in relation to question 5 for those opposed to the proposal

Theme	Sub-theme	Number of points raised
Fairness	Unfair on doctor/ doctor's family	4
Publication upon death	Delete publications upon death	3

1 Fairness

Our analysis identified four respondents who believed that the proposals were unfair on the doctor or the doctor's family. Three of these were doctors.

One doctor commented that publication will be different for each case stating that if a doctor undergoing a hearing for health problems then commits suicide, this would be inappropriate, disproportionate and not fair on the family. This specific comment was discussed by the GMC in the section on 'public interest/ ongoing risk'.

Another highlighted that "there is a high suicide rate related to GMC investigations and this will only add to the assumed disgrace of the defendant". A third did not see why the findings are published at all because it is unfair on the doctor. The Royal College of Psychiatrists also shared their concern for doctors' families stating that published information is more likely to harm the family.

Another respondent, a relative of a deceased doctor, was opposed to the proposal because they felt that the hearing is a blunt instrument which may not pick up the mental health condition of a doctor. These comments were also highlighted by the GMC in the section on 'fairness for doctors and their families'.

2 Publication on death

Three respondents commented that the outcomes of public fitness to practise hearing information should not be published after the hearing if a doctor dies.

One doctor and a member of the public believed that there was little point and it was not relevant as there was no longer a public risk. The other doctor also did not see the point in publishing the information unless there were other doctors still alive.

All three comments were discussed by the GMC in the section on 'public Interest/ongoing risk'.

Comments from those who neither agreed nor disagreed

Eleven respondents neither agreed nor disagreed with the proposal and eight provided comments. Table 12 provides an overview of the key themes identified during our analysis of the question.

Table 12 Themes identified from the analysis of comments in relation to question 5 for those who neither agreed nor disagreed with the proposal

Theme	Sub-theme	Number of points raised
Fairness	Unfair on doctor/ doctor's family	3
Public interest	Not in the public interest	2
Availability of information	Publish on request	1
Sanctions	Only if sanctions still exist	1
Publish outcomes	Continue to publish outcomes	1
Other	Other	1

1 Fairness

Three respondents who neither agreed nor disagreed believed that the proposal is not fair on the doctor's family.

Two of the respondents, both doctors felt that the families of doctors were not being considered. One of the doctors also highlighted that "publishing information for some time means that it may be picked up by the media at a later date who may then publish information that might be distressing to the dead doctor's family". This respondent also believed that it is not in the public interest. The GMC also discussed these comments in its analysis of those that neither agreed nor disagreed.

Health Education England (HEE) also indicated that continuing to publish the outcome of a public fitness to practise hearing after the end of a hearing could be painful for the family. As an alternative, HEE suggested that a note could be put on the website to indicate that the doctor is deceased and that information is available on request. The GMC also reflected on this comment in its analysis.

2 Public interest/Availability of information

Two doctors believed that it is not in the public interest to continue to publish the outcome of a public fitness to practise hearing after the end of the hearing.

One doctor, already discussed above, commented that it was not clear what purpose this will serve and that it is difficult to see what the public interest would be, if the doctor is dead, in publishing this information from a period of time after the decision, as no sanctions would have an impact.

The other commented that it is not necessary if the doctor has died and questioned whether it will really be of public interest.

Both of these comments were discussed by the GMC in its analysis.

Other comments

Our analysis also highlighted the following themes from respondents' comments.

- **Publish Outcome** – One doctor stated that no difference would be made after a doctor has died and therefore the information should continue to be published. This was also reflected in the GMC's analysis
- **Sanctions** – One doctor felt that outcomes should be published only if a sanction has been applied otherwise there should be no need to publish an exoneration. This was reflected in the GMC's analysis under the theme heading 'Fairness/ ongoing risk'
- **Other** – A member of the public felt that the only reason information should be published was if it were to provide historical examples of GMC cover ups which should be reinvestigated. This was also commented upon by the GMC in its analysis

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.3.2 *If you have answered yes to Question 5, do you agree that six months from the end of the hearing is an appropriate length of time? (Q6)*

Introduction

A total of 39 responses were received for Question 6. The majority (67%, 26) agreed that six months from the end of the hearing is an appropriate length of time. A minority (13%, 5) disagreed. In line with the GMC analysis 19 respondents provided comments.

Comments in support of the proposal

Of the 26 who supported the proposal, five provided comments, with two of these stating their general agreement.

Of the three remaining respondents, the MDU believed that the six month time limit would allow anybody with a legitimate interest, the opportunity to gain access to it.

The Royal College of Psychiatrists also thought that six months was sufficient and BLM Law thought that the proposed six months would "provide sufficient time for any legal points to be raised where necessary". These comments were discussed by the GMC in its analysis of comments in support of the proposal.

Comments opposed to the proposal

In line with the GMC analysis, all five respondents who were opposed to the proposal provided comments. Three commented that six to twelve months is an appropriate length of time.

The PSA and the Patient Liaison Group of the Royal College of Surgeons of England both thought that the outcomes should be published for as long as the doctor's name remains on the register.

Comments from those who neither agreed nor disagreed

Six respondents neither agreed nor disagreed with the proposal and all provided comments.

Three respondents suggested alternative time limits: a three month limit; a six to 12 month limit; and six months, with the caveat that this was from the date of publication of the outcome unless there are reasons in the interest of the public that it should be longer.

A further respondent did not think that the proposed time limit of six months was long enough but did not provide an alternative.

The Royal College of Physicians of Edinburgh was not clear on why information on a deceased doctor should be removed from the public domain earlier than those who are still alive and the AvMA felt that the time limits should be proportionate to the severity of the sanction.

Of the two respondents that provided a comment only, one, the Information Commissioners Office highlighted that "as the definition of personal data in the DPA covers only data about identifiable living individuals, the DPA would not apply to the publication of information about an individual doctor after their death. Other obligations such as any duty of confidence may, however, still apply". However, the other respondent believed that "it breaches the 'not kept for longer than is necessary'; Principle of the DPA 1998".

These comments were discussed by the GMC in its analysis of comments for those who neither agreed nor disagreed with the proposal.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.3.3 *Do you agree that, were a doctor has died, we should continue to disclose fitness to practise information to enquirers after the point at which we stop publication of the information (subject to our overall publication time limits) to enable us to deal transparently with queries where there is a public interest? (Q7)*

Introduction

The majority (52%, 32) agree that, where a doctor has died, the GMC should continue to disclose fitness to practise information to enquirers after the point at which the GMC stops publication of the information (subject to overall publication time limits) to enable the GMC to deal transparently with queries where there is a public interest. One quarter (28%, 17) are in disagreement. In line with the GMC analysis, a total of 23 respondents provided comments.

Comments in support of the proposal

Of the 52% (32) who supported the proposal, eight provided comments. Most commented that the GMC should continue to disclose fitness to practise information, and commented that information should be made available when a legitimate reason is demonstrated. Comments included:

- Three respondents highlighted that information should be made available only where there is a legitimate reason. One, a doctor, believed that details should only be published if impairment was found
- NHS Employers highlighted that there will be some cases where there is a legitimate reason for enquiring about previous fitness to practise history (for example in the case of complaints, claims, inquiries etc. which arise sometime after the event) and that patients and the public should be made aware of their ability to obtain this information should a legitimate need arise
- One royal college agreed that information should be disclosed but only to properly interested persons
- Two respondents, the Patient Liaison Group of the Royal College of Surgeons of England and a member of the public believed that information should be publicly available while the AvMA believed that information should be available on request

These comments were discussed by the GMC in its analysis of comments for those who supported the proposal.

Comments opposed to the proposal

Of the 28% (17) who opposed the proposal, 9 provided comments. Table 13 provides an overview of the key themes identified during our analysis of the question.

Table 13 Themes identified from the analysis of comments in relation to question 7 for those who opposed the proposal

Theme	Sub-theme	Number of points raised
Rationale	Disclose when there is a legitimate reason	4
Public interest	Not in the public interest	2
	Only if it is in the public interest	1
Fairness	Unfair on doctor/ doctor's family	2

1 Rationale

In line with the GMC analysis, four respondents believed that information should be disclosed when there is a legitimate reason.

The Medical Defence Union (MDU) stated that “a doctor's FTP history should only be made available where a person or body can demonstrate a legitimate reason for having access to that information”. The British Medical Association (BMA) also supported this suggesting that “the proposal should be refined to provide for a narrower and more specific set of circumstances in which disclosure should take place after the suggested six months period has elapsed”.

The Royal College of Psychiatrists also commented that information could be made available in exceptional cases and one doctor believed that an enquirer must meet stringent criteria for information to be disclosed.

2 Public interest

Our analysis highlighted three respondents that made comments relating to the public interest.

One, a doctor, believed information should only be published if it is in the public interest. This was discussed by the GMC in the section on ‘public interest’.

The Royal College of Psychiatrists commented that they “struggle to imagine a case where there is relevant public interest”. This particular aspect of the response by the Royal College of Psychiatrists was not discussed specifically by the GMC rather it was discussed in relation to information being published in exceptional circumstances.

BLM Law also echoed this stating that they “cannot see what public interest there could be in disclosure of such information after a doctor has died”. This was commented on by the GMC in the section on ‘public interest’.

3 Fairness

One doctor and a member of the public commented on the fairness to a doctor's family. The doctor highlighted that there should be regard given to the doctor's family. This particular aspect of the respondent's comment was not discussed explicitly by the GMC rather it was covered as part of the analysis on ‘exceptional circumstances’.

The member of the public believed that registrants are entitled to dignity and privacy after death and the GMC reported on this in its section on ‘fairness’.

Comments from those who neither agreed nor disagreed

Of the three respondents that neither agreed nor disagreed with the proposal:

One, a doctor, believed that information should only be disclosed where it has direct relevance to a coroner's enquiry.

The Cambridgeshire Local Medical Committee, while agreeing with the proposal wanted greater explanation of what is deemed to be in the public interest.

A further doctor was not clear on what purpose publishing the information would serve and thought that it was difficult to see what the public interest would be.

In addition the Medical Protection Society commented that fitness to practise information should only be disclosed where a genuine public interest can be demonstrated.

These comments were also reflected in the GMC's analysis of those who neither agreed nor disagreed with the proposal.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.3.4 Do you have any other comments on the issues discussed in the above section? (Q8)

Introduction

In line with the GMC analysis, nine respondents provided further comments on questions 4 to 8. These comments varied and covered a range of themes highlighted in Table 14.

Table 14 Themes identified from the analysis of comments in relation to question 8

Theme	Sub-theme	Number of points raised
Publish outcomes	Continue to publish outcomes	4
Rationale	Disclose when there is a legitimate reason	2
Fairness	Unfair on doctor/ doctor's family	1
Clarification	GMC to clarify why it is in the public interest	1
Legislation	Must consider the DPA 1998	1
Other	Duty of confidence applies	1

Four respondents believed that outcomes should continue to be published.

One doctor indicated that information should still be published for doctors who had died and made major mistakes and another stated that “if there is wrong doing then this needs to be transparent and information made available”. This was also echoed by an Academic Clinical Researcher who commented that “transparency and openness are of paramount importance given that the public entrust their health to doctors”.

A member of the public also believed that if a doctor's health problems are transmitted to patients through their incompetence then they do not deserve privacy nor prevention of records being kept.

Two doctors stated that information should be released when there is a legitimate reason. One doctor commented that this should be done on decision by a panel who should justify the public interest. The other suggested that information should be limited to official requests.

The Royal College of Psychiatrists highlighted that “bullying and cyber bullying is a risk that could have an impact not only on the doctor but the doctor's family and that there is a need to be a balance public safeguarding with the family and relatives' rights to privacy”.

Another doctor questioned what the GMC perceive to be in the public interest.

The ICO commented on the Data Protection Act 1998, stating that “the definition of personal data in the DPA covers only data about identifiable living individuals, the DPA would not apply to the publication of information about an individual doctor after their death. Other obligations such as any duty of confidence may, however, still apply”.

These comments are all reflected by the GMC in its analysis of Question 8.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur,

these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.4 Proposal 2 – Transferring onto the online medical register historical data about sanctions that were imposed during 1994-2005

3.4.1 *Do you agree that, in the interests of transparency, we should transfer information on to the medical register about sanctions imposed on a doctor's registration between 1994 and 2005, where that doctor is currently registered? (Q9)*

Introduction

The majority (59%, 36) agreed that, in the interests of transparency, the GMC should transfer information on to the medical register about sanctions imposed on a doctor's registration between 1994 and 2005, where that doctor is currently registered. Almost one-third (30%, 18) did not agree with Proposal 2. In line with the GMC analysis, a total of 30 comments were received.

Comments in support of the proposal

36 respondents agreed with Proposal 2 with 10 providing comments. Two of these comments restated their general agreement with the proposal, while one provided further information. Table 15 presents the themes identified in our analysis.

Table 15 Themes identified from the analysis of comments in relation to question 9 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Consistent approach	Greater consistency required	2
Transparency	Transparency of the register	2
Time limits	Publish historical data from the 80s	1
Clarification	Confusing for members of the public	1
Other		4

Our analysis highlighted a range of themes from respondents' comments:

- **Greater consistency is required** – NHS Employers and one doctor agreed that there should be consistency in the treatment of doctors regarding their fitness to practise history. This was discussed by the GMC in its section on 'consistency'
- **Transparency of the register** – The Centre for the Advancement of Interprofessional Education (CAIPE) and The Royal College of Physicians of Edinburgh (RCPE) agreed that in the interests of transparency, information should be transferred to the medical register. This was discussed by the GMC in its section on 'transparency'
- **Publish historical information from the 1980s** – One of the royal colleges commented that some of their members believe that the proposal should go further and publish information from as far back as the 1980s. This was discussed by the GMC in its section on 'consistency'
- **Confusing for members of the public** – The Patient Liaison Group of the Royal College of Surgeons of England commented that the proposal would be fair to the profession as a whole and help to reduce confusion among members of the public. This was discussed by the GMC in its section on 'other comments'

- **Other comments** – The Medical and Dental Defence Union of Scotland (MDDUS) commented that the proposal should be subject to the same time limits on retention and data referred to in Proposal 1. The GMC commented on this in the summary for Question 9. One doctor commented that the GMC should state when the sanction was found proven to a criminal standard of proof and when it was a civil standard in each and every case. The GMC discussed this under ‘alternative approaches suggested’

Comments opposed to the proposal

Of the 18 respondents that disagreed with the proposal, almost all (15) provided comments. Table 16 presents the themes identified in our analysis.

Table 16 Themes identified from the analysis of comments in relation to question 9 for those opposed to the proposal

Theme	Sub-theme	Number of points raised
Balance	Greater balance required	4
Legislation	Breaches the Equalities Act 2010	2
	Must consider the DPA 1998	2
Time limits	Time limits are too long	2
	Less than 5 years is sufficient	1
Sanctions	Only if sanctions still exist	3
Impact on doctor	Causes doctor distress	3
Information	Accessibility and use	3
Privacy	Doctors have a right to privacy	2
Case by case	Consider on a case by case basis	1
Consistent approach	Greater consistency required	1
Mental health	Must consider doctors with mental health issues	1
Public interest	Not in the public interest	1
Status quo	Maintain the status quo	1
Other		2

1 Balance

Four responses: a member of the public, a doctor, the British Medical Association (BMA), and the Medical Defence Union (MDU) believed that Proposal 2 would be disproportionate. The member of the public commented on the relevance of historical data to the current practice of the doctor. The doctor commented that the GMC has the balance wrong, with interests of the public put before those of the doctor, referencing doctors that have been driven to suicide. The BMA felt that it was “inequitable now to transfer on to the register information about sanctions imposed during 1994-2005 without transferring information about sanctions imposed before 1994”. Finally, the MDU commented that “it should be a question about balancing the potential use of the increased accessibility in terms of patient protection or public confidence against any potential impact on the individual doctor”. This theme was discussed by the GMC in its section on ‘proportionality’ and also under ‘fairness’.

2 Legislation

A solicitor who was previously a medical practitioner, a member of the public and an uncategorised respondent commented on legislation, referencing the Data Protection Act (DPA), the Equality Act 2010 and the European Convention on Human Rights

(ECHR). Both commented that the publication of historical data would be contrary to the principles of the DPA. The solicitor added that publication of historical data would need “to be justified in accordance with the constraints imposed by the ECHR” and believed that publication of such data would go against the doctor’s right to privacy. The member of the public also referenced the Equality Act 2010 commenting that “sick doctors, subject to health-related FTP proceedings, may be regarded as disabled” and therefore, publication of historical FTP data for “sick doctors as under-performing doctors, is unfair and discriminatory under the legislation”. This theme was discussed by the GMC in its section on ‘impact on doctors’.

3 Time limits

Three responses: a law firm representing doctors, a doctor and an uncategorised respondent commented on time limits. The law firm restated their response to Question 1, that the 20 year publication time limit is excessive. The doctor and the uncategorised respondent believed that publication of information from over ten years ago was not justified. The uncategorised respondent added that “suspension may warrant publication for a limited period after restoration, however this should not extend beyond 5 years”. This theme was discussed by the GMC in its section on ‘fairness’.

4 Sanctions

Three doctors commented that publication of information should only occur if sanctions and restrictions still exist for the doctors involved. This was discussed by the GMC in its section on ‘impact on doctors’.

5 Impact on doctor

The MDU, the Royal College of Psychiatrists and a member of the public commented on the impacts of Proposal 2 on the career and health of the doctor. The MDU cited an example of a junior doctor who had agreed undertakings and 20 years on, had experienced a distinguished career – publication of historical data would impact their current status. The Royal College of Psychiatrists commented that Proposal 2 “does not demonstrate an understanding of the real world impact of sanctions on a doctor’s career and health”. The member of the public believed that Proposal 2 would likely cause harm and distress among doctors. This theme was discussed by the GMC in its section on ‘impact on doctors’.

6 Information

The MDU, Royal College of Psychiatrists and an uncategorised respondent commented on the accessibility and use of published information. The uncategorised respondent believed that “making the information available would not protect the public from improper or unprofessional conduct”. The MDU added that the “on-line register will make it automatically far more accessible and we are concerned about the adverse impact this will have on some doctors”. The MDU also stated that the improved accessibility of information could “cause some people to trawl through it in order to make mischief about doctors individually or collectively”. The Royal College of Psychiatrists also queried the purpose of publishing historical information stating that “We wonder if the information will only be posted online if it is likely to be used, and if information about time-expired sanctions is used against a doctor, to deny him/her employment for example, then it remains a sanction”. This theme was discussed by the GMC in its section on ‘fairness’ and also in the summary for Question 19.

7 Privacy

A member of the public and an uncategorised respondent commented that Proposal 2 would breach the doctor’s right to privacy. This was discussed by the GMC in its section on ‘impact on doctors’.

8 Other comments

Our analysis also highlighted the following themes from respondents' comments:

- **Consider on a case by case basis** – an uncategorised respondent commented that “it may be appropriate to publish information relating to suspension in cases of misconduct, however these cases should be considered on a case-by-case basis”. This was discussed by the GMC in its section on ‘other comments’
- **Greater consistency is required** – The BMA commented that there may be an argument for applying the same rule to all registered doctors who have been the subject of sanctions, as opposed to a specific portion of the group in relation to the suggested time period as outlined in Proposal 2. This was discussed by the GMC in its section on ‘consistency’
- **Must consider doctors with mental health issues** – The Royal College of Psychiatrists commented on the lack of relevance of sanctions pre 2005 stating that the “awareness of mental health was not as developed as it is today”. This was discussed by the GMC in its section on ‘impact on doctors’
- **Not in the public interest** – One doctor commented that it is wrong to assume that “making information accessible maintains confidence in the medical profession and is in the public interest”. This was discussed by the GMC in its section on ‘fairness’
- **Maintain the status quo** – The Cambridgeshire Local Medical Committee disagreed that Proposal 2 would be in the interests of transparency as the current process makes information available on request, and therefore transparency already exists. They would prefer the current arrangements to remain in place. This was discussed by the GMC in its section on ‘proportionality’
- **Other** – Other comments included one doctor who believed that only erasure from the register should be available online from 1994 and one other doctor who stated that interim orders suspensions/ conditions which did not result in erasure/ suspensions or conditions should not be published. This was discussed by the GMC in its section on ‘comments from those who neither agreed nor disagreed’

Comments from those who neither agreed nor disagreed

There were three comments from doctors who neither agreed nor disagreed to Proposal 2. Key themes from their comments included:

- **Consider on a case by case basis** – This doctor commented that Proposal 2 would depend on the nature of the sanction and called for a list of minor and major offences to be drawn. This was reflected in same section of the GMC report
- **Legislation** – The second doctor referenced the same point made by The Royal College of Psychiatrists, commenting that “those who are genuinely unwell are been tarred with the same brush as those who have been negligent”. This was reflected in same section of the GMC report
- **Impact on doctor** – The third doctor commented on the impact of the doctor stating that “if the doctor has rehabilitated from wrongdoing this information freely available could act as a stigma”. This comment was reflected in the summary for Question 9 in the GMC report

Feedback from those who provided comments only

Two provided comments only: the Information Commissioner's Office (ICO) and a relative of a deceased doctor. Key themes from their comments included:

- **DPA legislation and accuracy of data** – The ICO echoed their response to question 1 restating that the publication of historical data must comply with “the first DPA principle – that it is fair, lawful and in accordance with a schedule 2 condition and schedule 3 if any of the data is sensitive”. The ICO also commented that accuracy of historic data should also be considered, and checks should be conducted as “the publication of inaccurate data could cause damage and distress to the individuals involved”. These comments were discussed by the GMC in its report under ‘impact on doctors’
- **Disability discrimination legislation** – One relative of a deceased doctor implied their agreement with Proposal 2 so long as it does not breach disability discrimination legislation. This was discussed by the GMC in its report under ‘impact on doctors’

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5 Proposal 3 – Increasing transparency in the information published when a doctor appeals a fitness to practise panel's decision

3.5.1 Do you agree with the proposal in relation to appeals that are unsuccessful in scenario A? (Q10)

Introduction

Three-quarters (75%, 44) agreed with the proposal in relation to appeals that are unsuccessful in scenario A. Almost one-fifth (17%, 10) were in disagreement. In line with the GMC analysis, a total of 21 comments were received.

Comments in support of the proposal

44 respondents agreed with Q10, with 11 providing comments. Five stated their general agreement with the proposal and were coded as 'other', while six provided further information. The key theme was around the amount and detail of information to be published.

One doctor, member of the public and the uncategorised respondent called for more information, commenting that the basis and grounds of the appeal should also be published.

The MDU believed that "in the interests of transparency the register should also record appeals against the panel's decision that are brought by other parties" applied to both successful and unsuccessful appeals.

One royal college also believed it to be important to record appeals on the doctors' record for both successful and unsuccessful appeals.

NHS Employers would like the full fitness to practise history to be made available, including where this has been subject to appeal, commenting that it would be in the public interest.

The GMC discussed all comments in their analysis but did not single out the response from the royal college, rather this was absorbed into the overall section under 'comments in support of the proposal.'

Comments opposed to the proposal

10 respondents disagreed with Q10, with 8 providing comments. Table 17 presents the themes identified in our analysis from these six.

Table 17 Themes identified from the analysis of comments in relation to question 10 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Information published	Amount and detail of information published	6
Balance	Greater balance required	1
Consult doctors	Consult doctors	1
Public interest	Not in the public interest	1

1 Information to be published, amount and detail

Six responses commented on the amount and detail of information published, including the Royal College of Psychiatrists, a NHS manager, three doctors and a member of the public. Four called for more information.

The NHS manager and one doctor commented that the Medical Practitioners Tribunal Service (MPTS) page should also reflect that there was an appeal.

The Royal College of Psychiatrists stated that the appeal outcome should be published for as long as the sanction is published.

One doctor commented that in the interests of transparency, all details should be published including outcome of the appeal and any criticism of the GMC.

One member of the public commented that any dishonesty and/ or other disreputable behaviour should also be recorded in the appeal.

Finally, one doctor thought that the proposal in relation to appeals that are unsuccessful in scenario A penalises doctors for taking up their option to appeal and added that only new relevant information should be included.

2 Other comments

Our analysis also highlighted the following themes from respondents' comments:

- **Greater balance is required and consult doctors** – One doctor commented that in the interests of fairness and balance, the defendant doctor has the right to be asked if their appeal should be included and to be informed of the legal reason for publishing the outcome of an appeal
- **Not in the public interest** – The Professional Standards Authority indicated that it was not clear to them what public interest was served by publishing the record of an unsuccessful appeal for 12 months

All comments were discussed by the GMC in its section 'comments opposed to the proposal'.

Comments from those who neither agreed nor disagreed

Health Education England was not sure in their level of agreement or disagreement with Question 10. They echoed a similar thought to the Professional Standards Authority, commenting that it was not clear to them what benefits would be served to the public and employers by recording the fact an appeal has occurred. The GMC also reflected this in its analysis.

Feedback from those who provided comments only

The Information Commissioner's Office (ICO) did not indicate a level of agreement with Question 10 but provided comments. The ICO believed that the proposed changes were likely to result in increased accuracy of information published and also called for more information to be published – including a description of the circumstances, for successful and unsuccessful appeals. The ICO also suggested that the GMC could include this information in any privacy impact assessment that was carried out to ascertain if any further privacy risks exist, and to work out how to mitigate them. The GMC discussed this comment under 'comments from those who neither agreed nor disagreed.'

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5.2 *Do you agree with the proposal in relation to appeals that are successful in scenario B? (Q11)*

Introduction

The majority (62%, 36) agree with the proposal in relation to appeals that are successful in scenario B. Almost one-quarter (24%, 14) were in disagreement. In line with the GMC analysis, a total of 24 comments were received.

Comments in support of the proposal

36 respondents agreed with Question 11, and 6 provided comments. Our analysis highlighted the following themes from respondents' comments:

- **Fairness in information to be published** – One doctor commented that in the interests of fairness, information about doctors who are exonerated should be made public
- **Publish apology from the GMC** – One doctor commented that if an appeal is successful, there should be a formal apology from the GMC.
- **No reference if a doctor is not found to be impaired** – One royal college supported the proposal but added that some of their respondents believed that if a doctor is found to be innocent, there should be no record of the hearing and appeal process
- **Make full fitness to practise information available** – NHS Employers echoed their response to Q10 and stated that in the public interest, the full fitness to practise history should be made available, including where this has been subject to appeal
- **Greater transparency is required** – One doctor commented that there should be greater transparency, and all details should be published including outcome of the appeal and any criticism of the GMC
- **Greater clarification is required** – The Professional Standards Authority commented that it would have been beneficial if the consultation had "explained what the GMC's policy would be in relation to disclosure (on request) of the original decision after it has been removed from the doctor's record"

These themes were discussed by the GMC in its section 'comments in support of the proposal'.

Comments opposed to the proposal

14 respondents disagreed with Q11, with all 14 providing comments. Table 18 presents the themes identified in our analysis.

Table 18 Themes identified from the analysis of comments in relation to question 11 for those in support of the proposal

Theme	Sub-theme	Number of points raised
No reference	No reference if doctor not found to be impaired	7
Status quo	Maintain the status quo	4
Impact on doctor	Damages doctor reputation	2
Legislation	Breaches the DPA 1998	1
Consult doctors	Consult doctors	1
Punitive and unfair	Punitive and unfair	1

1 No reference if doctor not found to be impaired

Seven commented that they would like there to be no reference if a doctor is not found to be impaired. This included three doctors, a member of the public, an uncategorised respondent, Health Education England and BLM, a law firm representing doctors.

2 Maintain the status quo

Four respondents commented that they would prefer to retain the current situation in dealing with successful appeals.

3 Damaging to doctor's reputation

Two doctors commented that the proposal would be damaging to a doctor's reputation. One doctor added that the proposal could "result in a professional person losing their livelihood or career pathway, whether or not it is proven at a hearing."

4 Other comments

Our analysis also highlighted the following themes from respondents' comments:

- **Breaches the Data Protection Act 1998** – An uncategorised respondent commented that in the event of a successful appeal, information relating to the hearing should be deleted as this information would not be relevant to a doctor's practice and breaches the principle of the DPA 1998
- **Consult doctors** – The British Medical Association commented that the doctor should have a right to "decide whether or not a note of the kind proposed should be included on the medical register"
- **In the public interest** – One member of the public commented that it was in the public interest to record outcomes of appeals
- **Punitive and unfair** – The Cambridgeshire Local Medical Committee commented that the addition of notes that would remain on a doctor's record for 12 months and further information on the MPTS page when a doctor was found to be unimpaired was "unnecessarily punitive"

All comments were addressed by the GMC in its section 'comments opposed to the proposal'.

Comments from those who neither agreed nor disagreed

Six respondents neither agreed nor disagreed with Question 11, and two provided comments. One doctor commented that if a doctor is successful in their appeal, there was no justification for information relating to the appeal to be recorded for 12 months. A second doctor had mixed views, commenting that while information published online could be perceived to be damaging to a doctor's reputation, they also believed it to be important to include information of a successful appeal as the information about the original decision, and sanctions have been on the register and visible previously.

The GMC addressed these comments in its section of the same title.

Feedback from those who provided comments only

The Information Commissioner's Office (ICO) and the Medical Protection Society provided comments only to Question 11.

The ICO repeated their response to Question 10.

The Medical Protection Society commented that the proposal for Question 10 was "prejudicial to the doctor who has been found to be unimpaired" and called for all reference of the adverse sanction having been applied to the doctor in question to be removed from their record, upon a successful appeal.

The GMC discussed these comments in its summary to Question 11.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5.3 *Do you agree with the proposal in relation to appeals that are partly successful and sent back the GMC for a new hearing in scenario C? (Q12)*

Introduction

The majority (81%, 47) agree with the proposal in relation to appeals that are partly successful and sent back the GMC for a new hearing in scenario C. A minority (3%, 2) were in disagreement. In line with the GMC analysis, a total of 13 comments were received.

Comments in support of the proposal

47 respondents agreed with Question 12, and 8 provided comments. Three of the eight comments expressed their overall agreement and were categorised as other. Our analysis highlighted the following themes from the remaining five respondents' comments:

- **Difficult to understand** – While one of the royal colleges expressed their overall agreement with this proposal, they also noted that it could be “confusing to a lay person”
- **Publish apology from the GMC** – One doctor commented that in the event of a partly successful appeal, there should be an apology from the GMC
- **Record dishonesty/ disreputable behaviour** – One member of the public commented that improper claims in the appeal should be recorded
- **Make full fitness to practise information available** – NHS Employers echoed their response to Q10 and stated that in the public interest, the full fitness to practise history should be made available, including where this has been subject to appeal
- **Greater transparency required** – One doctor reiterated their response to Question 11 and commented that there should be greater transparency, and all details should be published including outcome of the appeal and any criticism of the GMC.

The GMC noted that many of the responses to Question 12 were already reflected in Questions 10 and 11, and therefore, discussed these comments already in those sections. The GMC also discussed the new comment made by the Royal College regarding the potential for proposal to be misunderstood by a lay person.

Comments opposed to the proposal

Two doctors commented on their disagreement to Question 12. One believed that all information should be removed from the doctor's record once the appeal is partly successful. The second doctor stated that information published could impact the reputation and livelihood of the doctor.

Again, the GMC noted that many of the responses to Question 12 were already reflected in Questions 10 and 11, and therefore, discussed these comments already in those sections.

Comments from those who neither agreed nor disagreed

Two respondents were not sure if they agreed or disagreed with the proposal in Question 12. One doctor commented that while there was an active case, there should be a record of the appeal. However, if the doctor is found not to be impaired, then the “record should be clean, otherwise you are continuing to cast a shadow over the doctor's reputation.” The GMC noted that many of the responses to Question 12

were already reflected in Questions 10 and 11, and therefore, discussed these comments already in those sections.

Feedback from those who provided comments only

The ICO replayed their response to Question 10.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5.4 *Do you agree with the proposal in relation to appeals that are part successful and the original outcome is changed by the appeal court in scenario D? (Q13)*

Introduction

The majority (78%, 46) agree with the proposal in relation to appeals that are part successful and the original outcome is changed by the appeal court in scenario D. A minority (10%, 6) disagreed with the proposal. In line with the GMC report, a total of 13 respondents provided comments to the question. However as with the GMC report we have only reported on any additional responses made over and above those reflected in Questions 10 and 11.

Comments in support of the proposal

All three comments provided by respondents opposed to the proposal were already reflected in Questions 10 and 11. This is in line with the GMC report.

Comments opposed to the proposal

Three respondents provided extra comments. One doctor indicated that cases should be dealt with on a case by case basis. This was also echoed by the Cambridgeshire Local Medical Committee. Another respondent believed that there should be even more disclosure in the interests of the public and the doctor.

These comments were also discussed by the GMC in its analysis to this question.

Comments from those who neither agreed nor disagreed

Of the four comments from those who neither agreed nor disagreed with the proposal three were already reflected in Questions 10 and 11.

One doctor questioned the 12 month time limit and asked why it wasn't six months.

This comment is also discussed by the GMC in its analysis of the question.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5.5 *Do you agree with the proposal in relation to appeals that are withdrawn in scenario E? (Q14)*

Introduction

The majority (77%, 44) agree with the proposal in relation to appeals that are withdrawn in scenario E. A minority (7%, 4) disagreed with the proposal. In line with the GMC proposal a total of 12 respondents provided comments to the question. However as with the GMC report we have only reported on any additional responses made over and above those reflected in Questions 10 and 11.

Comments in support of the proposal

Of the four respondents that provided comments in support of the proposal, two simply restated their agreement. A further two provided comments that have already been reflected in Questions 10 and 11. This is in line with the GMC report.

Comments opposed to the proposal

All three comments provided by respondents opposed to the proposal were already reflected in Questions 10 and 11. This is in line with the GMC report.

Comments from those who neither agreed nor disagreed

Of the five comments from those who neither agreed nor disagreed with the proposal three were already reflected in Questions 10 and 11. Two respondents provided extra comment.

One doctor questioned the 12 month time limit and asked why it was not six months. However this was also reflected in the respondents answer to Question 13. Another respondent highlighted that it would depend on why the appeal was withdrawn.

This is in line with the analysis conducted by the GMC.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5.6 *Do you agree with the proposal in relation to cases where no appeal is made in scenario F? (Q15)*

Introduction

The majority (85%, 50) agree with the proposal in relation to cases where no appeal is made in scenario F. A minority (5%, 3) disagreed with the proposal. In line with the GMC proposal a total of eight respondents provided comments to the question. However, as with the GMC report, we have reported on additional responses made over and above those reflected in Questions 10 and 11.

Comments in support of the proposal

One doctor highlighted that they were unsure as to why extra comment was required.

Comments opposed to the proposal

Only one respondent, a doctor provided a comment in relation to the proposal. This stated that the 28 day time limit for appeal was not enough.

This was also reported by the GMC in its analysis to the question

Comments from those who neither agreed nor disagreed

One of the royal colleges provided the only comment to this section but this had already been reflected in Question 11.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.5.7 *Do you agree with our proposed general approach to situations where a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning, is overturned on judicial review? (Q16)*

Introduction

The majority (71%, 42) agree with the GMC proposed general approach to situations where a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning, is overturned on judicial review. One fifth (20%, 12) disagreed with the proposal. In line with the GMC proposal a total of 19 respondents provided comments to the question. However as with the GMC report we have only reported on any additional responses made over and above those reflected in Questions 10 and 11.

Comments in support of the proposal

Of the six respondents that provided comments in support of the proposal three provided extra comment not already reflected in Questions 10 and 11. This is in line with the GMC report.

One doctor stated that if a decision is overturned then the GMC must accept full responsibility and provide an apology which must be published.

Another doctor commented that any judicial review that is overturned should be made public including the reasons why in the interest of fairness and transparency.

A royal college highlighted their agreement in treating the cases the same way as successful appeals.

Comments opposed to the proposal

Of the ten respondents that provided comments, the majority had already been reflected in Questions 10 and 11, with most commenting that all information should be removed from the doctor's record. In line with the GMC analysis, one doctor asked the question why you would want to retain a guilty verdict on the register and another respondent stated their apprehension in judicial review if the panel makes a fair and sound decision based on the expertise of the panel and the evidence presented.

Comments from those who neither agreed nor disagreed

Comments from those who neither agreed nor disagreed include were already reflected by respondents in their answers to Questions 10 and 11. These comments focused on information being removed from the doctor's record and cases being considered on a case by case basis.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.6 Proposal 4 – Clarifying the policy on the information published when a doctor appeals an interim orders panel’s decision

3.6.1 *Do you have any comments on our proposed approach to publishing information about appeals in interim orders cases, as set out in the section above? (Q17)*

Introduction

A total of 27 comments were received for Question 17. The majority, 17 respondents were in favour of the proposed approach, while four did not agree.

Comments in support of the proposal

In line with the GMC, ten respondents simply stated their general agreement with the proposal while five provide further comment.

Respondents comments focused on increased transparency which they believed would be in the interest of both patients and the public. For example, NHS Employers believed that setting out the approach in the publication and disclosure policy will help patients, the public and employers to understand their purpose and role in safeguarding the public. The Patient Liaison Group of the Royal College of Surgeons of England agreed that there should be clear information for the public on the approach taken and why.

A member of the public highlighted that the patient and public needs are paramount and one doctor indicated his agreement with increased transparency because it is currently one sided against the doctor.

These comments were discussed by the GMC in its analysis under the theme heading ‘transparency and clarity’.

Comments opposed to the proposal

In line with the GMC analysis, four respondents provided comments on their disagreement with the proposal. These comments focused on the removal of information from a doctor’s record.

BLM Law indicated that if the court no longer considers previous concerns to be an issue then there is no risk to patient safety and no requirement for interim measures to protect the public. Two doctors stressed that all information should be removed from a doctor’s record. A further doctor highlighted that the employer or the provider should confirm to the GMC that interim order sanctions are being carried out.

Comments from those who neither agreed nor disagreed

In line with the GMC analysis, six respondents neither agreed nor disagreed with the proposal. Most comments focused around the need for greater clarification of the approach and the importance of robust processes.

For example, the AvMA stated that whatever information is published, is underpinned by robust processes. The BMA suggested that the record should provide greater clarity “that interim orders do not reflect any determination of the underlying merits of the referral and are therefore necessarily provisional in character”.

The Information Commissioners Office suggested that a privacy impact assessment may prove useful in setting out why the approach for interim orders is different from fitness to practise appeals.

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.7 Proposal 5 – Providing greater transparency and detail in cases where the GMC agrees undertakings with a doctor without a fitness to practise hearing

3.7.1 Do you agree that the GMC should give greater explanation of the background and reasons for resolving the case consensually when agreeing undertakings with a doctor and concluding the case without a fitness to practise panel hearing? (Q18)

Introduction

The majority (64%, 37) agree that the GMC should give greater explanation of the background and reasons for resolving the case consensually when agreeing undertakings with a doctor and concluding the case without a fitness to practise panel hearing. More than one-fifth (21%, 12) did not agree with Proposal 5. In line with the GMC analysis, a total of 31 comments were received.

Comments in support of the proposal

Of the 37 who support the proposal, 14 provided comments, with one comment stating general agreement with the proposal, which has been categorised as 'other'. Table 19 presents the themes identified in our analysis.

Table 19 Themes identified from the analysis of comments in relation to question 18 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Transparency	Greater transparency required	2
	Importance of transparency	1
Understanding	Help patients and public understand	3
Consult doctors	Consult doctors	2
Health cases	Only in cases related to health	2
Consensual disposal	Process of consensual disposal not fit for purpose	1
Wording of summary	Difficult to agree wording of the summary	1
Other		3

1 Transparency

The Royal College of Physicians of Edinburgh, the Professional Standards Authority and Action against Medical Accidents (AvMA) commented on the importance of transparency and the need for greater transparency. The Professional Standards Authority added that if the intention of the proposal is to increase transparency and public confidence, "the GMC will need to design a process that guards against any bargaining in relation to the content of the summary" and suggested that it may be necessary for its contents and the undertakings to be agreed as one. The AvMA commented that a transparent approach must be applied throughout the complete process including "ensuring that the person or body who has reported concerns about a doctor to the GMC is given the opportunity to comment or respond to information submitted by the doctor at any stage of the process." This theme was addressed by the GMC under 'transparency'.

2 Understanding

NHS Employers, the Centre for the Advancement of Interprofessional Education (CAIPE) and the Patient Liaison Group of the Royal College of Surgeons of England commented that Proposal 5 will help the public understand why undertakings have

been made with a doctor and what this means. The GMC addressed this theme in their summary for Question 18.

3 Consult doctors

The MDU and one doctor commented that the doctor concerned or an appointed representative should be provided an opportunity to agree or reject the content of the information to be published. This was discussed by the GMC in its 'process' section.

4 Health cases

One doctor agreed with Proposal 5 with the exception of cases related to health. This doctor did not specify if this was in relation to physical or mental health. A member of the public commented that physical health information should be published if it is related to the undertaking e.g. transmission to patients. The GMC addressed this theme under 'other comments'.

5 Other comments

The Medical and Dental Defence Union of Scotland (MDDUS) believed that Proposal 5 could lead to challenges in agreeing the wording of the summary commenting that "there will be areas of dispute concerning the factual summary and background information". The MDDUS added that in circumstances where there was disagreement with the GMC's proposed text, it would be "disproportionate to require these matters to go for a hearing to resolve these differences and a formula for doing so will need to be put forward." The GMC addressed these comments under 'process.'

Comments opposed to the proposal

Of the 12 responses that were in opposition to the proposal, eight provided comments. Table 20 presents the themes identified in our analysis.

Table 20 Themes identified from the analysis of comments in relation to question 18 for those in support of the proposal

Theme	Sub-theme	Number of points raised
Impact on doctor	Must consider doctors with mental health issues	1
Privacy	Doctors have a right to privacy	3
Other		4

Our analysis highlighted a range of themes from respondents' comments:

- **Privacy** – Two doctors and an uncategorised respondent commented on the doctor's right to privacy. The uncategorised respondent added that doctors who are unwell are entitled to the same level of privacy and confidentiality as applied to patients, and in publishing information, the GMC would breach confidentiality. The GMC addressed this theme under 'other comments'
- **Impact on doctors** – A member of the public commented that publishing information could make it easy to deduce that a doctor has a mental health problem, adding that this was unfair and breaches the doctor's human rights. The GMC discussed this theme under 'health cases'
- **Other comments** – Three doctors and a solicitor who was previously a medical practitioner provided other comments. One believed that Proposal 5 may lead to doctor unwillingness to agree undertakings and going to panel, adding that doctors may choose voluntary removal from the register

or ending their life. The second doctor commented that the proposal was disproportionate if it was determined that a hearing is not required, adding that a letter to the complainant, copied to the doctor concerned, would be sufficient. The third doctor commented that all undertakings should be removed immediately from the record once they were revoked. The solicitor commented that “the proposal would simply serve as an impediment to consensual disposal”. The GMC addresses these comments under ‘other comments’, and ‘proportionality’

Comments from those who neither agreed nor disagreed

Six respondents neither agreed nor disagreed with the proposal and all provided comments. Their comments and related themes included:

- A law firm representing doctors, the BLM commented on the need to differentiate between health and non-health cases, difficulty in agreeing wording of the summary and summaries to be only available to employers on request, rather than publishing on the register
- One doctor commented that 20 years was too long for information to remain on a doctor’s record
- Another doctor agreed with Proposal 5 only in cases of clinical negligence and the patients were at risk
- The Cambridgeshire Local Medical Committee believed that greater clarification was required regarding the final version of the summary as they were unclear if the summary would only be published subject to agreement with the doctor
- A royal college commented that while their clinical respondents agreed with proposal and believe that proposals would help colleagues and patients to understand the reasons behind undertakings, their lay members, however, did not believe that a detailed explanation would always be beneficial
- The BMA commented on the importance of consulting doctors so that they would be permitted to respond to the proposed summary to ensure that a fair and accurate account of circumstances was provided

All comments were addressed by the GMC in the section of the same heading and also in their summary of Question 18.

Feedback from those who provided comments only

The Information Commissioner's Office, Medical Protection Society and Royal College of Psychiatrists provided comments only. Their comments and related themes included:

- The Information Commissioner's Office commented that doctors should be sent the list of proposed undertakings, and the proposed summary, prior to publication. The GMC addressed this comment under ‘process’
- The Medical Protection Society (MPS) agreed with the ICO that doctor should be given the opportunity to agree and comment on the summary. The MPS added that they would need “more detail about the form these summaries would take and the means by which they would be put together, before taking a considered position”. The GMC addressed this comment under ‘process’

- The Royal College of Psychiatrists also raised the issue of clarification, commenting that the “GMC should make a clear distinction between sanctions and undertakings made because of health problems where there has been no complaint or fault, such as self-reporting”. The Royal College added that in these circumstances, there was no need for publication after the undertakings had been lifted. The Royal College also stated that publication of summary data for doctors with mental health and addiction problems, even if it excluded information relating to solely to health would not be in the public interest and would be “punitive in the extreme to the doctors involved.” The GMC addressed these comments under ‘alternative approaches suggested’

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

3.7.2 *Do you think that any of our proposals will affect people with protected characteristics that are covered by equality legislation? This could include doctors, patients and members of the public. (Q19)*

Introduction

The majority (61%, 34) do not think that the proposals will affect people with protected characteristics that are covered by equality legislation. One fifth (20%, 11), however, do believe that the proposals will impact those with protected characteristics. In line with the GMC analysis, a total of 15 comments were received.

Comments from those who do not think that the proposals will affect people with protected characteristics

34 responses were received with two providing comments: from the Cambridgeshire Local Medical Committee and NHS Employers. The Committee stated their general belief that equality legislation would not be an issue with GMC proposals. NHS Employers “do not believe that the proposals will affect people with protected characteristics any more or less favourably than those not in this group” and added that there was a more difficult issue around the fact that “some groups of doctors with protected characteristics may be subject to GMC investigation and action [more] than others, but these proposals will not affect that issue”.

Comments from those who do think that the proposals will affect people with protected characteristics

11 responses were received with most (9) providing comments. Table 21 presents the themes identified in our analysis.

Table 21 Themes identified from the analysis of comments in relation to question 19 for those who think that the proposals will affect people with protected characteristics

Theme	Sub-theme	Number of points raised
Impact on doctor	Disability	4
	Family	1
	Victimised at work	1
Legislation	Breaches the Equalities Act 2010	3
Fairness	Punitive and unfair	1
Consistent approach	Greater consistency required	1

1 Impact on doctor

Six responses commented on the impacts of the proposals on doctors: three doctors, one member of the public, one uncategorised respondent, and one solicitor who was previously a medical practitioner. Four responses from one doctor, the member of the public, one uncategorised respondent, and one solicitor who was previously a medical practitioner commented that proposals will impact doctors with a disability who are subject to fitness to practise proceedings due to adverse health. Another doctor commented that the proposals would “affect badly” doctors and their families, and referenced a BMA news report of 30th May 2015. A further doctor commented that doctors with protected characteristics could be at risk of victimisation or harassment at work as a result of the proposals and that summaries should not be included online. This theme was discussed by the GMC in its section on ‘impact on doctors with health conditions – disability’.

2 Legislation

Three responses from a member of the public, a solicitor who was previously a medical practitioner and an uncategorised respondent commented that publishing information relating to unwell doctors would contravene the principles of the Equality Act 2010 as “doctors suffering from longer-term health conditions are likely to be covered by the provisions of the Equalities Act 2010 definition of disability”. This was discussed by the GMC in its section on ‘impact on doctors with health conditions – disability’.

3 Other comments

Our analysis also highlighted the following themes from respondents’ comments:

- **Fairness** – The BMA does not agree with the “blanket imposition of a 20 year time limit for sanctions short of erasure” commenting that this “could lead to unfairness in less serious cases”. The BMA make two suggestions. The first involves equipping panels with the “power to stipulate the period when a sanction should appear in the online register, taking the specific features of the case into account” and the second, described as “a procedural mechanism by which doctors who may suffer harsh and disproportionate consequences through, for example, the operation of the twenty year long stop, have the opportunity to apply to the GMC seeking a direction that the period for publication and disclosure be shortened”. This was discussed by the GMC in its section on ‘impact on doctors with health conditions – disability’
- **Greater consistency is required** – The Patient Liaison Group of the Royal College of Surgeons of England commented that the GMC must exercise consistency so that members of the public are provided with the same information as given to an employer, an individual or a group and to the approach should be simple and straightforward, and easy to understand. The Group added that use of white text on blue background was not appropriate for those with sight difficulties. The GMC discussed these comments under ‘wider impact’

Comments from those who are not sure if the proposals will affect people with protected characteristics

8 responses were received and only one comment was received. However, the comment restated their uncertainty only.

Feedback from those who provided comments only

Three responses did not indicate level of agreement with Q19 and provided comments only. This included a relative of a deceased doctor, the Medical Protection Society and the Royal College of Psychiatrists. Key themes from their comments included:

- **Impact on doctors with mental health problems** – the Royal College of Psychiatrists and the relative of the deceased doctor commented on the impact on doctors with mental health problems. The Royal College of Psychiatrists stated that “the proposals could potentially have an adverse effect on individuals with long-standing mental health problems who are covered by this legislation and who are patients/ relatives of doctors about whom information is published on the medical register, on the GMC website and on the MPTS website”. The relative of the deceased doctor referenced a case where information was disclosed about a doctor with documented long term mental health conditions who went on to take their own life, and commented that the GMC had failed in their equality duty. This was

discussed by the GMC in its section on 'impact on doctors with health conditions – disability'

- **Gender reassignment and sexual orientation** – the Medical Protection Society raised the issue of gender reassignment, commenting that the GMC must consider what mechanisms would need to be put in place for cases of gender reassignment and any reference to doctors' sexual orientation. This was discussed by the GMC under 'other equality issues raised'

Conclusion

Based on our analysis of the comments, we are in agreement with the analysis presented by the GMC. On the whole there is correlation between the Frontline analysis and the GMC analysis which is evident in the comments discussed and themes raised. Differences between the two were minimal and largely based on variations in coding styles as outlined in the narrative above. Where minor differences do occur, these are discussed in the analysis with commentary regarding where this is acknowledged in the GMC appendix analysis of each question and summary.

4 Conclusion

Overall our analysis has identified that the key findings on the consultation are in correlation with the analysis produced by the GMC.

Where minor differences exist these are a result of the individual approaches applied to the theme analysis and groupings. These differences were minimal and are discussed within the narrative of each section.

For some questions, where there was a larger volume and better quality of responses, it was possible to provide a deeper level of analysis and review of GMC findings (e.g. Proposal 1). At the other end of the scale, for some questions where there were fewer responses, this was reflected in the GMC findings, and it was subsequently, difficult to provide detailed analysis (e.g. Proposal 4 and 5).

Based on our analysis we believe that the GMC analysis of the consultation data on the publication and disclosure policy is an accurate reflection of the responses received.

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