3 February 2015

Strategy and Policy Board

To consider

**Update on fitness to practise legislative change**

**Issue**

1. An update on the Section 60 Order and plans to publicly consult between March and May 2015 on amendments to the Rules implementing the S60 Order.

**Recommendations**

2. The Strategy and Policy Board is asked to:


   b. Approve the draft Amendment Order, at Annex B.
Update on fitness to practise legislative change

Issue

3 This is the final stage in a reform programme to modernise adjudication. The reforms will, among other things, establish the MPTS in law and introduce a right of appeal for the GMC as a party to proceedings against decisions of the Tribunal it considers insufficient to meet the overarching objective of protecting the public.

Section 60 Order update

4 The Section 60 Order amends the Medical Act to create the powers necessary to reform the MPTS and establish the GMC’s right of appeal.

5 Although the timetable is tight, the Department is hoping to complete the Parliamentary approval process by the end of March 2015, with the Order due to be laid before the Privy Council on 26 March 2015 (the last Privy Council meeting before Parliament dissolves for the General Election).

Changes to the Rules

6 We are aiming to consult publicly on proposed changes to our rules between March and May 2015. A draft consultation paper is at Annex A, and the draft Amendment Order is at Annex B.

7 In summary, our proposals will:

a Create the governance structure needed for the MPTS Committee (as approved by the Board at its meeting on 3 December 2014).

b Give the MPTS responsibility, in law, for appointing and maintaining lists of panellists and setting and publishing the criteria for the appointment of legally qualified chairs.

c Change the name of Fitness to Practise Panels to Medical Practitioners Tribunals and the name of Interim Orders Panels to Interim Orders Tribunals.

d Set out how costs sanctions will be applied to encourage compliance with case management under the Section 60 powers for panels to award costs against either party where they have failed to comply with a rule or direction and they have behaved unreasonably in the conduct of proceedings.

e Where both the GMC and doctor agree the appropriate outcome on a review, implement in Rules the power to allow either a panel Chair or a full panel to consider all the information provided by both parties in writing, and to make a decision without the parties having to attend a review hearing (either FTP or IOP).
f Implement in Rules the power giving the MPTS the flexibility to appoint either a legal assessor and/or a legally qualified chair and, in exceptional circumstances, both.

g Introduce a framework in the Rules for a new type of non-compliance hearing where a doctor has failed to comply with a reasonable request for information or with a direction to undergo a performance, health or language assessment.

h Allow greater flexibility and consistency in carrying out assessments of clinical performance, for example, providing for the Registrar to define the area of a doctor's practice that should be assessed.

8 We recognise that unrepresented doctors may require additional support in navigating our fitness to practise procedures. The MPTS has recently launched a guide for unrepresented doctors with a supporting telephone information service. As part of the implementation programme relating to the Rule changes, we will amend the factsheets and provide training to volunteers providing the telephone service.

Public consultation

9 We plan to consult publicly on these rule changes between March and May 2015. This is necessary in order to meet the Department of Health's deadline to implement the changes by December 2015.

10 In order to achieve this tight timeframe, we are proposing to launch the consultation on 13 March for a period of eight weeks ending on 8 May 2015.

11 We have considered our policy on consulting during the pre-election period and the Government’s Consultation principles. Given our two previous consultations (on the principles of separation and the first round of rule changes to modernise adjudication and the Department’s consultation on the changes to the Medical Act to establish the MPTS in statute between August and September 2014), we believe a slightly shorter consultation period of eight weeks is justified. Given the technical nature of these changes and the fact that our proposals are not linked to political priorities of the Government or the Opposition, and the Department are content, we are confident that consulting during the pre-election period is also justified.

Next steps

12 The outcome of the Board’s consideration of the draft consultation paper will inform the final version to be considered by Council at its meeting on 24 February 2015, ahead of launching the consultation in March 2015.
Supporting information

How this issue relates to the corporate strategy and business plan

14 Strategic aim three: To improve the level of engagement and efficiency in the handling of complaints and concerns about patient safety.

How the issues support the principles of better regulation

15 The consultation on changes to the Rules is the final stage in completing our reforms programme to achieve enhanced operational separation of the GMC’s adjudication and investigation functions. This will support regulation that is accountable, transparent and targeted.

What engagement approach has been used to inform the work (and what further communication and engagement is needed)

16 In 2011, we conducted a public consultation on the principle of operational separation between our investigation and adjudication functions. The Department of Health has conducted and is currently analysing the outcome of a public consultation on the changes necessary to primary legislation to achieve this. We will seek to engage the public, patient groups and medical defence organisations through this consultation.

What equality and diversity considerations relate to this issue

17 We are developing an equality and diversity analysis of the proposals contained in the draft consultation paper and will seek views from a range of interested groups through the consultation process to inform the analysis.

If you have any questions about this paper please contact: Anna Rowland, Assistant Director of Policy, Business Transformation and Safeguarding, arowland@gmc-uk.org, 020 7189 5077.
9 - Update on fitness to practise legislative change

Draft consultation document
Reforming our fitness to practise investigation and adjudication processes: a public consultation on changes to our rules [H1]

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About this consultation [H2]

We are consulting on changes to the rules\(^1\) we follow when investigating and acting on concerns about doctors. These changes will make our investigation process simpler and more effective, and will increase public confidence that doctors’ hearings are impartial.

We set up the MPTS in shadow form in June 2012 to run hearings at which decisions are made about serious concerns about doctors. This was to make sure this role (known as adjudication) is separate from our role in investigating complaints about doctors.

The Department of Health is now taking forward changes to the *Medical Act 1983* to establish the MPTS in law, which means Parliament must approve any fundamental changes that we want to make to the MPTS in future. The MPTS will be directly accountable to Parliament and will submit annual reports to the Privy Council.

The changes to the *Medical Act 1983* also include a new right of appeal for the GMC. Doctors are already able to appeal decisions made by the MPTS. In future, the GMC, as a party to the hearing before the MPTS, will also be able to appeal the MPTS’s decisions.

The Department of Health conducted a public consultation about these changes in 2014 and is implementing the changes by way of a Section 60 Order. The Parliamentary process for this Order has been completed and the Order is due to be approved by the Privy Council at the end of March 2015. Some of the changes to our rules we are proposing in this consultation are dependent on the changes to the *Medical Act 1983* included in the Section 60 Order and subject to Privy Council approval.

Responses to this consultation will help us to understand the impact our proposals could have on groups who are protected under the *Equality Act 2010*.\(^2\) We will use the responses to inform an equality analysis, which we will publish before our Council decides which changes we make to our rules.

Our proposed changes [H3]

- Creating the governance structure needed for the MPTS.
- Changing the name of fitness to practise panels to medical practitioners tribunals and interim orders panels to interim orders tribunals

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\(^1\) Our rules are the *General Medical Council (Fitness to Practise) Rules 2004* (the Fitness to Practise Rules), the *General Medical Council (Constitution of Panels and Investigation Committee) Rules 2004* (the Constitution Rules), and the *General Medical Council (Legal Assessors) Rules 2004* (the Legal Assessors’ Rules).

\(^2\) The *Equality Act 2010* specifies nine protected characteristics that cannot be used as a reason to treat people unfairly: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
• Giving the MPTS responsibility, in law, for:
  o appointing and maintaining lists of panellists
  o setting and publishing the criteria that a person must satisfy to be a chair or a legally qualified chair of a fitness to practise or interim orders tribunal.

• Giving the MPTS more flexible powers to appoint a legal assessor or a legally qualified chair, or both, in hearings.

• Introducing new rules so that case management decisions will be binding on all parties save in exceptional circumstances to make managing hearings more effective.

• To further improve how hearings are managed, giving panels the powers to deal with a situation where the doctor or the GMC has breached the procedural rules or case management decisions. These powers may include awarding costs against either party where they have behaved unreasonably.

• When sanctions previously imposed on a doctor are being reviewed and both the GMC and doctor agree on what action is needed, panel Chairs or panels will be able to consider all the information provided by both parties in writing, and decide whether to:
  o approve the outcome agreed between the parties without the parties having to attend a review hearing or
  o decide to hold a hearing.

• Introducing a new power to require doctors to cooperate with an investigation into serious concerns by sharing key information with us on request. If a doctor failed to respond to a reasonable request for information under this new power, or refused to undergo a performance, health or language assessment, we would be able to refer the doctor to the MPTS for a hearing to assess the seriousness of the concerns and any risks to patients.

How to take part [H3]

Answer the questions online on our consultation website: [www.gmc-uk.org/ftpreform_consultation](http://www.gmc-uk.org/ftpreform_consultation).

Alternatively you can answer the questions using the text boxes on pages [ ] to [ ] of this consultation document and either email your completed response to us at ftpconsultation@gmc-uk.org or post it to us at:

Fitness to Practise Policy team
General Medical Council

A3
This consultation runs from [ ] March to [ ] May 2015.

When the consultation has ended, we will report the outcome to our Council and then ask the Privy Council to approve a change to our rules by submitting an order to amend our rules.

We expect the changes to our existing rules and the new rules to establish the MPTS Committee will come into force by the end of 2015.
How do our fitness to practise processes work? [H2]

The General Medical Council (GMC) is an independent organisation that helps to protect patients and improve medical education and practice across the UK.

When a serious concern is raised about a doctor's behaviour, health or performance, we investigate to see if the doctor is putting the safety of patients, or the public's confidence in doctors, at risk.

We collect and review evidence, such as witness statements and reports from experts in clinical matters. Following the investigation we may issue advice or a warning to the doctor, or we may agree with the doctor that he or she will restrict their practice, retrain or work under supervision.

In some cases, we will refer the case to the MPTS for a hearing. As well as agreeing restrictions with a doctor or issuing a warning, an MPTS panel can also impose restrictions on, suspend or remove a doctor's right to work in the UK. If necessary, a panel can also temporarily suspend or restrict a doctor's right to work while the investigation is conducted. We always inform other regulators around the world about any action taken on a doctor's registration or warning.

For doctors with restrictions on their practice, we monitor whether the doctor is complying with the restrictions and regularly review whether the restrictions should be changed or removed. For sanctions imposed by a panel, the panel reviews whether the sanctions should be changed or removed.

Our fitness to practise processes are set out in law in the Medical Act 1983 and the Fitness to Practise Rules, the Constitution Rules and the Legal Assessors’ Rules. The Constitution Rules also cover the detailed working arrangements for panels.

[Insert graphic to show the investigation procedure, including:
- triage – assessing allegations and 5 year rule
- the investigation stage – information gathering
- assessments and referral to IOP/FtPP
- Case Review team – monitoring doctor post-sanction including directing assessments.]

[Insert graphic to show the adjudication procedure, including:
- notices of hearing to the doctor
- case management
- hearings and reviews].
Why are we proposing to make changes to our fitness to practise processes? [H2]

These changes complete the reforms we started in 2011 to clearly separate two of our roles: investigating complaints and holding hearings. We started the reforms after the government decided not to establish an independent adjudication body – the Office of the Health Professions Adjudicator. As an alternative to an independent adjudicator, we consulted on and received widespread support from 76% of respondents to establish the MPTS.³

We also want to improve our investigation and adjudication processes. Although our adjudication process is effective,⁴ best practice in other jurisdictions has moved on since we introduced our rules in 2004 and we have identified several improvements we can make. We introduced some improvements in 2013 that did not require changes to the Medical Act 1983, but the remainder of improvements do. The Department of Health completed a public consultation on these changes in September 2014.

Our proposed changes will:

- increase patients’, public and doctors’ confidence that doctor’s hearings are impartial by formally separating our investigation and adjudication roles
- streamline and modernise our hearing process, and reduce unnecessary delays, by making it simpler and more effective
- make management of hearings more effective and improve compliance by both parties with case managers’ decisions
- remove the need for some review hearings where the parties have agreed the outcome
- make the assessment of whether a doctor is fit to practise more effective and improve compliance with it
- make our investigation process simpler and more effective and improve a doctor’s compliance with it.

The following six sections explain our proposed changes to our rules to achieve these aims. The draft amendment order is in annex 1. The draft *General Medical Council (Constitution of the Medical Practitioners Tribunal Service) Rules* are in annex 2.
Section 1: Formally separating our investigation and adjudication roles by establishing the MPTS [H2]

Establishing the MPTS in law [H3]

Changes to the Medical Act 1983 that are going through Parliament will establish the MPTS as a statutory committee of the GMC to run fitness to practise hearings. The MPTS will be given the powers to run hearings, and the legislation will allow for these powers to be delegated to the Chair of the MPTS to support operational effectiveness.

We propose to introduce new rules to govern the MPTS Committee – The General Medical Council (Constitution of the Medical Practitioners Tribunal Service) Rules. These rules include:

- who will form the Committee – it will have five members, cannot include members of our Council, will have a maximum of two registrant members and three lay members (including the chair who could be either registrant or lay

- who is not eligible to be a member of the Committee, for example:
  - anyone convicted of an offence involving dishonesty or deception
  - anyone included on a barred list held by the Disclosure and Barring Service
  - anyone who has had their fitness to practise investigated and we are satisfied public confidence in the profession would be undermined if they became a member of the MPTS

- arrangements to appoint a deputy if the chair of the MPTS is absent for:
  - one meeting – Council may appoint a deputy from the MPTS Committee or may decide the meeting will not go ahead
  - more than one meeting – the Chair of Council will decide on an appropriate deputy.

The draft General Medical Council (Constitution of the Medical Practitioners Tribunal Service) Rules contains the new rules.

1. Do you agree with these proposed rules for governance of the MPTS Committee?

Yes/No/Not sure

Do you have any comments?

_________________________________________________________________________

_________________________________________________________________________
Establishing the medical practitioners tribunals and interim orders tribunals [H3]

We propose changing the name of:

- fitness to practise panels to medical practitioners tribunals
- interim orders panels to interim orders tribunals
- panellists to tribunal members
- panel chairs to tribunal chairs.

These changes make clear that the tribunals and those delivering them are part of the MPTS, and separate from our role in investigating complaints.

In our existing rules, we are responsible for appointing and maintaining lists of panellists for both fitness to practise panels and interim orders panels. To clearly separate our investigation and adjudication roles, we want to change our rules to make the MPTS, not the GMC, responsible for these activities.

Paragraph X of the amendment order contains the proposed change to rule X.

2 Do you with agree with the proposed changes?

Yes/No/Not sure

Do you have any comments?

Setting out qualifications for and appointing legally qualified chairs [H3]

Every fitness to practise panel and interim orders panel has a chair. We believe that there is a strong case for appointing legally qualified chairs to panels in certain types of case.

We currently have competent chairs, some of whom are legally qualified. In certain types of cases, we believe legally qualified chairs may, because of their specific, legal experience, have the necessary skills to deal with cases involving complex legal issues or large amounts of complex information.
We propose amending the Constitution Rules to allow the MPTS to set and publish criteria for appointing panel chairs, which would include chairs in certain types of cases being legally qualified.

In light of our proposal to appoint legally qualified chairs in some hearings, we are also proposing to introduce flexibility as to when we may appoint a legal assessor. Currently, we must appoint a legal assessor in every hearing. They act as a legal adviser to the panel.

To make sure that we keep an appropriate element of legal expertise, we are proposing that there will be either a legally qualified chair or a legal assessor, or both, in each hearing. To make sure hearings are fair, where a legally qualified chair is appointed and there is no legal assessor, the legally qualified chair will repeat any legal advice they give to the panel to all parties.

Paragraph x of the amendment order contains the proposed changes to rules [ ].

3 Do you agree with our proposal to appoint a legally qualified chair or a legal assessor, or both, in each hearing?

Yes/No/Not sure

Do you have any comments on the proposal?

Separating the notice of the allegation from the notice of the hearing [H3]

According to our existing rules, the registrar of the GMC has to send doctors the notice of the hearing, which includes the allegation on which the hearing is based. In practice, since the MPTS was established, it has taken on responsibility for sending the notice, including all of this information, 28 days before the hearing.

To more clearly separate our investigation and adjudication roles, we propose that:

- the GMC, as a party in the hearing, sends the notice of the allegation against the doctor and any information gathered during the investigation

- the MPTS sends the notice of the hearing, containing the date, time, venue and other information about the hearing.
Our existing rules say that no less than seven days notice has to be given for the precise time and venue. We currently give at least 28 days notice and propose that the rule be changed to reflect this.

Paragraph x of the amendment order contains the proposed changes to the rules 15, 20, 23 and 26.

4 Do you agree with our proposal for the MPTS to send the notice of the hearing and the GMC to send the notice of the allegation?

Yes/No/Not sure

Do you have any comments on the proposal?

Removing the need for the MPTS to refer cases to the GMC where an interim order is set to expire [H3]

Under the **Medical Act 1983**, an interim order can be imposed for a maximum of 18 months, after which we have to apply to the High Court for a further extension. When an interim orders panel is reviewing an interim order and the hearing is likely to be the last before the order expires, rule 27(6) of the Fitness to Practise Rules says that the panel has to tell the GMC to apply to the High Court for an extension.

The GMC decides whether to apply for this extension.

We believe that following the separation between the GMC and MPTS, it will no longer be appropriate or necessary for the MPTS to provide notification of when an interim order is due to expire. In future, the GMC will be responsible for identifying when an interim order is due to expire and applying to the High Court for an extension.

Paragraph x of the amendment order contains the proposed removal of rule 27(6).

5 Do you agree with our proposal to remove rule 27(6)?

Yes/No/Not sure

Do you have any comments on the proposal?
Specialist advisers [H3]

Our rules allow the registrar to appoint specialist advisers to give fitness to practise panels advice on medical issues that affect a doctor’s health or performance. But, in practice, specialist advisers are no longer used. We propose removing the reference in the rules to the registrar appointing or a panel directing the appointment of specialist advisers.

Paragraph \( x \) of the amendment order contains the proposed changes to rules 2, 3(2)-(6), 14, 17(4)(a) and 35(2)(d).
Section 2: Streamlining and modernising our hearing process [H2]

We are proposing several changes to make our rules clearer, remove ambiguity, and introduce greater flexibility.

Introducing an overriding objective [H3]

When changes to the Medical Act 1983 are fully implemented, our overarching objective will be to protect the public and will involve:

- protecting, promoting and maintaining the health and well-being of the public
- promoting and maintaining public confidence in the medical profession
- promoting and maintaining proper professional standards.

In line with changes to the Medical Act 1983 by the Department of Health, we propose to also introduce an overriding objective in the rules that we will deal with hearings justly and fairly. It will also apply to hearings before fitness to practise panels, interim orders panels and the Investigation Committee when they are deciding whether to issue a warning to a doctor.

The Investigation Committee is a committee, established in law, that at the investigation stage of our process, :

- decides the appropriate outcome in a case when our medical and lay decision makers do not agree
- holds a committee hearing when the medical and lay decision makers have decided to issue a doctor with a warning and the doctor disputes this.

In instances where there is a conflict between the overarching objective and the overriding objective in relation to how a hearing is conducted, the overriding objective (to deal with the hearing justly and fairly) will take priority.

7 Do you agree with our proposal to set out an overriding objective to deal with hearings justly and fairly in our rules?

Yes/No/Not sure

Do you have any further suggestions about the definition of the overriding objective? Or do you have any other comments on the proposal?
Clarifying our use of undertakings [H3]

At the end of an investigation, we can agree undertakings with a doctor if they are prepared to voluntarily accept restrictions on their practice. At a hearing where a doctor's fitness to practise is found impaired, our existing rules also allow a panel to agree undertakings with a doctor as an alternative to imposing another type of restriction.

To increase separation between our investigative and adjudication roles, we propose in future any undertakings agreed with a doctor, including after their fitness to practise is found impaired at a hearing, will be between the doctor and the GMC. The panel’s role, as the adjudication tribunal, will be to take any undertakings agreed between the GMC and the doctor into account and to make no order if they consider the undertakings agreed are sufficient to protect patients and the public interest. We propose making the same changes to the process for agreeing undertakings at review hearings.

We also propose making it clear in our rules that the case may be referred for a review hearing before a panel if a doctor breaches the undertakings or their health or performance deteriorates, giving rise to further fitness to practise concerns.

Paragraph x of the amendment order contains the proposed changes to rules 17(m), 18, 22(h) and 37A.

Do you agree with our proposals to clarify how we agree undertakings with doctors after a finding of impairment is made?

Yes/No/Not sure

Do you have any comments on the proposal?

Streamlining our hearing process [H3]

Rule 17 sets out the process to be followed at a panel hearing. We propose making the following changes to this rule (and associated rules) to streamline hearings, making them easier for parties to follow.

Identifying a doctor before hearing the legal argument [H4]

Our existing rules say the preliminary legal argument has to be heard before a doctor is identified. We propose changing our rules to give the hearing a more logical order. Doctors will be correctly identified and the hearing started, before any legal argument is heard.
Paragraph x of the amendment order contains the proposed changes to rules 17(2), 22, 24 and 27.

*Making submissions and giving the reasons for a fitness to practise panel’s decision at the fact-finding stage of a hearing [H4]*

At the second and third stages of a hearing when a panel decides whether a doctor’s fitness to practise is impaired and, if so, what sanction to impose - both parties can make submissions and the panel must give reasons for its findings. But the rules do not allow for equivalent activities at the first stage when the panel decides which of the facts are true.

We propose changing the rules to make it clear that both parties can make submissions on the facts before the panel decides which facts are true, and that the panel must give its reasons for these decisions.

Paragraph x of the amendment order contains the proposed changes to rule 17(2).

*Removing the need to refer to transcripts in review and restoration hearings [H4]*

At review and restoration hearings, the rules say we have to direct the panel to any relevant evidence, including transcripts of previous hearings. This is done before the panel goes on to consider any new evidence and submissions from the parties at these hearings.

The panel already has the record of the final decision by a panel from previous hearings, which are announced and made available in written form. It is not therefore necessary for panels to refer to full transcripts of previous hearings.

We propose changing our rules to remove the references to ‘transcripts of previous hearings’. Parties can still reference transcripts of previous hearings where necessary, and interested people will still be able to ask for a transcript at the end of a hearing. The change aims to make hearings more flexible and to reduce the unnecessary administrative costs of a full transcript when it is not needed.

Paragraph x of the amendment order contains the proposed changes to rules 22(c)(ii) and 24(2)(c)(ii).

9 Do you agree with our proposals to streamline our rules, improving the order of hearings, and removing the need to refer to transcripts of previous hearings in review and restoration hearings unless this is necessary?

Yes/No/Not sure

Do you have any comments on the proposal?
Clarifying the type of record of a hearing that we can supply [H4]

If asked, we must give a record of a hearing to a party. We want to clarify that we can give a written record - ie a transcript of a hearing - and we do this at the end of a hearing.

Paragraph [x] of the amendment order contains the proposed change to rule 39(2).

10 Do you agree with our proposal to clarify that we will give a transcript at the end of a hearing when any party asks for this?

Yes/No/Not sure

Do you have any comments on the proposal?

Clarifying terminology [H4]

We want to introduce a definition of witnesses. This will make clear that references to witnesses in the rules include the doctor and all other witnesses for both parties. For example, rule 34(11) which requires a signed witness statement as evidence-in-chief.

Paragraph x of the amendment order contains the proposed changes to rule 2.

We also want to change the terminology we use when talking about the GMC as a party in the hearing. In our rules, the GMC's legal representative is referred to as the presenting officer. We would like to change this to legal representative, which is a more appropriate term.

Paragraph x of the amendment order contains the proposed changes to rules 2, 11(7), 17, 22, 24, 27 and 33.

11 Do you agree with our proposal to change the terminology we use, clarify what we mean by witness to the role of the GMC's representative?

Yes/No/Not sure

Do you have any comments on the proposal?
Adjourning hearings [H3]

Extending the case manager’s powers to adjourn hearings [H4]

We changed our rules in May 2013 to transfer the power to postpone hearings as part of our investigative role to MPTS case managers. This change reflected the operational separation between our investigative and adjudication roles, and has increased flexibility and saved time by avoiding the need for a panel to make this decision.

However, under our existing rules, the case manager can postpone a hearing only before it has begun. Once a hearing has begun, only the panel can adjourn the hearing. This means that when a panel adjourns a hearing to another date that then turns out to be unsuitable, another hearing must be held to fix another date even when all parties agree on the new date. This wastes considerable time and can cause inconvenience to those who have to attend.

We propose that case managers should be given the power to further adjourn cases that are part heard, without going before a panel, where it is clear that the date scheduled is not suitable. As is the case now, the case manager would only be able to do so when both parties have had a reasonable opportunity to give their view and agree on a new date. They could give their views in writing to avoid unnecessary further hearings.

Paragraph x of the amendment order contains the proposed changes to rule 27(2).

12 Do you agree with our proposal to allow case managers to adjourn hearings that are part heard when both parties agree?

Yes/No/Not sure

Do you have any comments on the proposal?

Extending a sanction where a review hearing is adjourned [H4]

We want to make sure the public is protected where a hearing to review the restrictions on a doctor’s registration has begun, but has been adjourned before the panel has decided whether the doctor’s fitness to practise is still impaired. The rules do not allow us to extend the restrictions until the hearing can recommence.
To make sure patients are protected, we propose changing our rules to allow us to extend sanctions when a review hearing is adjourned before a finding of impairment has been made.

Paragraph x of the amendment order contains proposed changes to rules 21A and 22(2).

13 Do you agree that, to protect the public, a panel should be allowed to extend a sanction when the panel has adjourned a review hearing before it has made a finding of impairment?

Yes/No/Not sure

Do you have any comments on the proposal?
Section 3: Making case management more effective [H2]

Case management refers to the steps that need to be taken before a hearing to make sure that the hearing runs effectively. This involves the case manager meeting with the GMC and the doctor or their legal representative, usually by teleconference, to discuss issues including:

- sharing documents and information that will be relied on in the hearing
- agreeing what evidence each party will present
- identifying which issues are agreed or in dispute
- alternative ways for witnesses to give evidence
- other steps that need to be taken before the hearing.

Following our 2011 consultation, changes to the Medical Act 1983 have given us more powers to enforce directions to make sure parties comply with our rules for case management. Currently, panels can draw inferences that it considers are appropriate, for example, by placing less weight on evidence that is presented late.

Failure to comply with case management decisions can cause substantial delays to the hearing. It increases stress and inconvenience for all those involved and wastes money. More effective enforcement of decisions is therefore intended to shorten hearings and resolve cases more quickly.

Making case management decisions binding [H3]

75% of respondents to our 2011 consultation supported having a way to enforce case management decisions.

We propose changing rule 16 so that case management decisions will be binding on the parties unless it is in the interests of justice for the panel to reconsider the decisions (for example, because circumstances have changed), and it is also in line with the overriding objective to deal with cases fairly and justly.

Case managers will deal with all case management issues. But a fitness to practise panel will still hear preliminary legal arguments (for example, that the hearing is an abuse of process), in advance, at a preliminary hearing, rather than delaying the start of a hearing.

Our aim is to make sure all parties comply with case management directions, sharing evidence and preparing their cases ahead of the full hearing. This will help us to shorten hearings and make our processes more efficient.

Paragraph x of the amendment order contains the proposed changes to rule 16(1), (1A) and (6).
14 Do you agree with our proposal to have case management decisions be binding?

Yes/No/Not sure

Do you have any comments on the proposal?

Awarding costs [H3]

If a party does not comply with a case management decision or with the procedural rules, we propose that the panel should be able to do one of a number of things depending on the particular circumstances of the case:

- draw adverse inferences
- exclude evidence
- make the non-complying party pay costs.

Changes to the Medical Act 1983 have given fitness to practise panels the powers to order one party (the paying party or its legal representative) to pay limited costs to the other party (the receiving party). The panel can do this when:

- the paying party has not complied with a case management direction or a rule
- the paying party or its legal representative has acted unreasonably.

Costs are already widely used in civil and criminal proceedings, as well as in other regulatory proceedings (eg the Solicitors Disciplinary Tribunal).

We are aware that costs are rarely awarded in other jurisdictions by tribunals making the first decision on a case. However, this power means there are consequences for parties failing to comply with case management decisions and rules that are not directly linked to the outcome of the case (eg such as refusing to hear evidence presented late), and so we believe it will encourage all parties to comply with the case management process.

Costs will be paid by the paying party to the receiving party and will be calculated based on the amount of the receiving party’s time that was wasted by the paying party’s failure to comply and unreasonable conduct. Any costs incurred by the panel itself will not be included.
Making a decision about costs [H4]

We believe it is important that awarding costs does not add additional complexity to the hearing or unduly delay the hearing. For this reason, we propose that costs should be dealt with at the end of the hearing, following an application from either party (although the panel could consider awarding costs at its own discretion).

Assessing the amount of costs to be paid [H4]

A case manager will decide the amount of costs to be paid on the basis of information provided by the parties, when the hearing has ended. They will do so within the timeframes we have specified in the draft rules and taking into consideration the paying party’s ability to pay. We will develop appropriate guidelines to make sure that any costs orders are simple to understand and proportionate (ie reasonable for the person paying).

Enforcing costs awards [H4]

We propose that a receiving party will be able to enforce an award of costs in the same way as an order of the County Court.

Paragraph x of the amendment order contains the proposed new rules 16A and 17(2)(q).

15 Do you agree with our proposals for awarding costs, as outlined in the draft rules?

Yes/No/Not sure

Do you have any comments on the proposal?

Excluding evidence and drawing adverse inferences [H3]

Excluding evidence [H4]

In our 2011 consultation, 73% of respondents supported the proposal that fitness to practise panels should have the power to exclude evidence when parties seek to introduce evidence in breach of directions and do not give a good reason for doing so. Some of those objecting to this power argued that it would not be in the public interest to prevent the GMC or a doctor from giving evidence, and some recommended introducing a system to award costs as an alternative.
We propose introducing this power alongside the power to award costs and to draw adverse inferences when parties have failed to comply with case management directions or rules in submitting evidence. We believe that this will give panels the flexibility to respond appropriately in the individual circumstances of the case.

Paragraph \textit{x} of the amendment order contains the proposed changes to rule 16(8).

\textit{Drawing adverse inferences \[H4\]}

If a party fails to comply with a case management decision, a panel can draw inferences that it considers are appropriate. These are always adverse, such as discounting one party’s version of events if that party refuses to disclose supporting documentary evidence that is known to exist.

We are amending this rule to confirm that when a party fails to comply, the inferences panels draw are adverse. We further propose amending the rule to allow the panel to draw adverse inferences when a party fails to comply not just with case management directions (which is the current position) but also with the rules.

Paragraph \textit{x} of the amendment order contains the proposed new rule 16(8).

\textbf{16} Do you agree with our proposal to clarify that panels can exclude evidence and draw adverse inferences when parties fail to comply with case management directions or rules in certain circumstances?

Yes/No/Not sure

Do you have any comments on the proposal?

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Section 4: Removing the need for review hearings where the parties have agreed the outcome [H2]

Hearings are stressful for all involved. We want to make sure that we only hold hearings when they are needed because we are:

- considering imposing a sanction for the first time
- reviewing a sanction and the parties cannot agree an outcome.

When panels are reviewing an existing restriction on a doctor, we propose that if the parties agree on the outcome – ie to extend, change or remove an existing restriction – the panel Chair or a full panel can review the information provided by both parties in writing and make a decision without the parties attending a hearing.

These changes will apply to a review of a sanction or an interim order. The review will be considered by either a panel chair or a full panel. If the chair or the panel do not agree with the outcome reached between the parties, they can decide that a full hearing should be held with both parties attending.

Paragraph [x] of the amendment order sets out new rules 21B and 26A.

17 Do you agree that a review of a sanction or an interim order, where both parties agree the outcome, can be considered in writing by either a panel chair or a full panel?

Yes/No/Not sure

Do you have any comments on the proposal?
Section 5: Making the assessment of whether a doctor is fit to practise more effective and improving compliance with it [H2]

When we are concerned about a doctor’s fitness to practise because of their performance, health or knowledge of English, we can carry out an assessment. The case is then considered by two senior GMC staff known as case examiners (one medical and one lay). The case examiners will use evidence gathered from the assessments and other sources to help them decide whether the case should be referred to a fitness to practise panel.

It is essential that we can gather information about a doctor’s fitness to practise in an efficient and timely manner to protect the public. The proposals in this section are designed to improve how we gather information by making assessments more flexible and giving us greater powers to deal with parties that do not comply.

Increasing the flexibility of how we assess clinical performance[H3]

When we assess a doctor’s clinical performance, our rules say that we have to assess the whole of their practice. This is not always necessary - for example, when we have previously assessed the doctor’s performance and found that the concerns relate to only one or a few issues. Additionally, our existing rules say we can require an assessment in some circumstances but not in other circumstances, which means there are gaps in our ability to protect the public.

We propose changing our rules to allow greater flexibility and greater consistency in carrying out assessments, so that the registrar is able to:

- require an assessment in all types of cases where doing so is fair and proportionate
- define the area of a doctor’s practice that should be assessed
- define the form and content of the assessment
- specify the person or team who will carry out the assessment, with the minimum requirement that at least one assessor is medically trained.

Paragraph x of the amendment order contains the proposed changes to schedules 1 and 2 of our rules.

18 Do you agree with our proposal to allow greater flexibility and consistency in how we assess a doctor’s fitness to practise?

Yes/No/Not sure

Do you have any comments on the proposal?
Improving powers to deal with a doctor’s failure to comply with health, performance and language assessments [H3]

If a doctor fails to comply with an assessment of their health, performance or knowledge of English, we can refer them to a fitness to practise panel. In some circumstances, a panel can take action based on the doctor failing to comply but, in other circumstances, a panel can take action only if it finds that the doctor’s fitness to practise is impaired. When a doctor refuses to cooperate with an assessment, we may not have been able to gather the evidence needed for a panel to find the doctor’s fitness to practise impaired, and we believe this gap in our powers can put patient safety at risk.

To make sure we can deal with doctors failing to comply with assessments consistently in all cases, we propose changing our rules to allow panels to suspend doctors or impose conditions on their registration if evidence of the doctor’s failure to comply has been established. This would no longer be dependent on the panel first finding the doctor’s fitness to practise impaired. We would develop processes to make sure doctors are aware they are required to have an assessment and have been given a reasonable opportunity to comply before we take steps in relation to non-compliance.

Panels would have the power to impose conditions on a doctor’s registration (for up to three years) or to suspend a doctor (for up to 12 months) until the doctor shows they have complied with the required assessment (demonstrated at an early review or review hearing). If a doctor continued to refuse to comply with an assessment after being suspended for two years, the panel would be able to suspend the doctor indefinitely.

Paragraph x of the amendment order contains the proposed changes to rules 7(6), 17(7) – (8), 19, 22 and schedule 2.

19 Do you agree with our proposal to give panels the powers to impose conditions or suspend all doctors who fail to comply with an assessment of health, performance or knowledge of English?

Yes/No/Not sure

Do you have any comments on the proposal?
Section 6: Making our investigation processes simpler and more effective and improving compliance with it [H2]

Removing the need to tell employers about allegations against a doctor in some circumstances [H3]

We have to tell a doctor’s employer about any investigation into the doctor’s fitness to practise. The wording of our existing rules means we have to tell a doctor’s employer even when we are making provisional enquiries to decide whether there is an issue relating to a doctor’s fitness to practise that might need to be investigated.

This delays our carrying out these enquiries but can also damage a doctor’s reputation with their employers before it is clear whether there is even a concern that needs to be investigated.

In our view, we should not need to tell employers until we have decided that there is a real concern that needs investigation.

We propose to change rule 13 so that we do not have to tell a doctor’s employer about provisional enquiries. This would not prevent us from telling a doctor’s employer or responsible officer about provisional enquiries if we decided we needed to. Under the rules, if we decide to start an investigation, we will still have to tell the doctor’s employers immediately.

We believe that this will make our processes faster and more effective and be fairer to doctors.

Paragraph [x] of the amendment order contains the proposed changes to rule 13.

20 Do you agree that when we make provisional enquiries to decide if we need to carry out an investigation, we do not need to tell a doctor’s employer in every case?

Yes/No/Not sure

Do you have any comments on the proposal?

Changing the five-year rule [H3]

We do not investigate allegations about incidents that happened more than five years before we found out about the allegation, unless it is in the public interest and there are exceptional circumstances requiring us to investigate.
As a result of changes to the Medical Act 1983, we propose to remove the requirement for exceptional circumstances. This means we will investigate allegations about all incidents that happened more than five years ago if it is in the public interest to do so.

Paragraph [x] of the amendment order contains changes to rule 4(5).

21 Do you agree with our proposal to remove the requirement for exceptional circumstances?

Yes/No/Not sure

Do you have any comments on the proposal?

Requiring disclosure of information from doctors and dealing with non-compliance [H3]

Every year we deal with allegations about doctors who consistently refuse to engage with our investigation process. This causes delays to our investigation and can stop us taking appropriate action to minimise risk to patient safety.

We propose introducing powers, similar to those set out above for assessments, to deal with doctors who fail to comply without good reason with a reasonable request for factual information needed for our investigation (e.g., their employer’s details). As in the case of assessments, we would need to make sure the doctor was aware of the request for information and had been given a reasonable opportunity to comply. Fitness to practise panels would have the power to impose conditions on a doctor’s registration (for up to three years) or to suspend a doctor (for up to 12 months) until the doctor complied with the request for information. If a doctor continued to refuse to comply after being suspended for two years, the panel would be able to suspend the doctor indefinitely. If the doctor subsequently complied, a panel would remove the restriction.

22 Do you agree with our proposal to give panels the powers to impose conditions or suspend doctors who fail to comply without good reason with a reasonable request for factual information needed for our investigation?

Yes/No/Not sure

Do you have any comments on the proposal?
Equality [H2]

The Equality Act 2010 identifies nine groups of people who share characteristics that are protected by the legislation: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. We have carefully considered the aims of the equality duty in developing our proposals.

23. Do you think any of our proposals will adversely affect people from the protected groups? This could include groups of doctors, patients and members of the public.

Yes/No/Not sure

If you answered ‘yes’ to the question above, please tell us which proposals and what you think the impact might be.
About you [H2]

Finally, we’d appreciate it if you could give some information about yourself to help us analyse our consultation responses.

[To be inserted: same text for this section as in the indicative sanctions guidance consultation document]