1 April 2014

Strategy and Policy Board

General Medical Council

Regulating doctors
Ensuring good medical practice

16

To note

The Home Office review of police disclosure of pre-conviction information about doctors

Issue

1 The Home Office is reviewing the circumstances in which the police share information with regulatory bodies at the early stages of a criminal investigation in England, Wales and Northern Ireland. The Notifiable Occupations Scheme (NOS) is set out in the Home Office Circular 6/2006. A separate scheme exists in Scotland. This issue is listed on our Corporate Risk Register.

Recommendations

2 The Strategy and Policy Board is asked to note:

a The background to the Home Office review of the Notifiable Occupations Scheme.

b The impact of the review on our fitness to practise work.

c Our response to the review and next steps.

The Home Office review of police disclosure of pre-conviction information about doctors

Issue

3 As the Strategy and Policy Board noted at its meeting on 10 September 2013, the Home Office is undertaking a review of the Notifiable Occupations Scheme (NOS). The NOS provides advice from the Home Office to the police in England, Wales and Northern Ireland on when to tell us a doctor is the subject of a criminal investigation. A separate scheme exists in Scotland. The NOS is a valuable mechanism for ensuring we are promptly made aware of any criminal investigations that may indicate a risk to patient safety and public confidence in the medical profession.

4 *Good medical practice* says doctors must notify us without delay if they are charged or found guilty of a criminal offence anywhere in the world. The NOS enables us to identify doctors who have failed to notify us in accordance with *Good medical practice*. This ensures we can take appropriate interim measures to restrict a doctor's right to practise medicine pending the outcome of criminal proceedings. We also treat a doctor's failure to report a conviction as a separate fitness to practise matter.

Why did the Government decide to review the information police share with regulatory bodies?

5 In 2010 the Government commenced a review of the NOS to establish whether it was appropriate for the police to continue notifying professional regulators, employers and other bodies in this way. In particular, there were concerns about the proportionality of the amount of information being disclosed to a very wide range of organisations under common law. This was triggered by a decision of the Supreme Court (L v Metropolitan Commissioner) in October 2009 which established that the need to safeguard the vulnerable does not automatically outweigh an individual's right to privacy under Article 8 of the European Convention of Human Rights. The review has also taken place in the context of a challenging economic climate and increased focus on efficient use of resources.

What impact is the Home Office review having on our fitness to practise work?

6 Since the review commenced we have monitored the number of police referrals under the NOS. While there has been some fluctuation in the number of referrals, and a significant decrease in referrals in 2013, it is difficult to be certain if this is related to the review of the NOS.

7 In 2009, when the Home Office announced its review of the NOS, we received 219 police referrals police across the four countries. This represented a spike in referrals that reflected a general increase in fitness to practise complaints at the

time. The following year the number of police referrals fell despite a wider increase in concerns about doctors, and remained at approximately 175 referrals per year for three years while the review took place.

8 Last year, the Home Office circulated the initial findings of its review, which included draft proposals to cease direct notification to regulators. As a result of concerns raised by several regulatory bodies, including ourselves, the NOS remains in place pending further consultation and no Ministerial decision on the outcome has yet been made. However, in view of emerging case law the Association of Chief Police Officers (ACPO) has advised police forces to begin applying relevancy criteria before sharing information with third parties. We have noticed a gradual change in how the police are handling our requests for information about doctors.

9 In 2013, in a climate of increasing uncertainty about the Home Office guidance to police on this matter, we experienced a decrease in police referrals (143 were received). That said, there could be a range of factors which may explain the decrease in relevant referrals during 2013, including a general decrease in recorded crime last year[1]. It is possible that overall, the NOS review has been effective in raising police awareness of their responsibility to consider sharing information with regulatory bodies. A break-down of referrals across the four countries for the period 2006 to 2013 is at Annex A.

10 It is important to note that this decrease in referrals did not result in a decrease in the number of police referrals which resulted in interim orders during the same period. That suggests that the decrease in referrals relates to less serious criminal matters (that generally relate to public confidence issues) and that the police are continuing to share information appropriately in the most serious cases (where there is a risk to patients).

Current status of the review

11 On 5 July 2013 the Home Office wrote to advise they may direct the police to continue sharing information with us, in addition to employers, if we meet certain criteria. This included our ability to consider and act without delay on pre-conviction or arrest information, powers up to and including the removal of an individual from a particular workplace, and mechanisms for timely notification to employers of any action taken. We are confident that our statutory framework and operational processes satisfy these requirements, and set this out in our reply of 22 July 2013. We have yet to receive a formal response and on 13 February 2014, our Director of Fitness to Practise wrote

[1] Recorded crime fell 7% in 2013 compared to the previous year, according to the Office of National Statistics. Source: http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-june-2013/index.html

again to the Home Office seeking written assurances that we will continue to receive police information. A copy of our correspondence on this matter is at Annex B.

Alternative mechanisms for police disclosure

12 In readiness for a Home Office announcement on the outcome of the review of the NOS, we have approached ACPO to commence discussions to refresh our Memorandum of Understanding (MOU) on information sharing. This document is currently published on our website and sets out the principles and operational mechanisms for exchange of information during a police investigation. We are currently in correspondence with the President of ACPO, Sir Hugh Orde, to clarify the lead contact for taking this work forward, and we are aware that a new ACPO Portfolio for Information Sharing has recently been established.

13 We have explored a range of alternative mechanisms to ensure smooth and effective police disclosure continues in the event that the NOS is withdrawn by the Home Office. We understand that on 19 March 2014, the ACPO Council was asked to approve new guidance for police on common law disclosure of arrest information to a select number of bodies, including the GMC. Under this guidance we will continue to receive arrest information where the police consider the nature of the offence suggests a pressing need to protect the public. The guidance will replace the NOS, which ACPO is expected to ask the Home Office to withdraw with immediate effect, from 1 April 2014.

14 ACPO is expected to charge a nominal fee to organisations who receive arrest information, to cover its costs. Under the new arrangements, the police will not share conviction information with us where we have not previously been notified of a doctor's arrest on the basis of a pressing need to protect the public.

15 Police forces have already ceased to comply with the NOS, leading to referrals in a more limited number of cases than in the past. However, the withdrawal of NOS in April is not likely to have a significant further impact. We are exploring the extent to which the Disclosure and Barring Service update service might provide us with notification of a change to a registrant's criminal record, to enable us to take appropriate action where necessary in a wider range of cases than those covered by the new ACPO guidance.

Differences in Scotland

16 The Home Office review does not include Scotland, which is covered by a separate agreement (the NOS (Scotland)) issued by Scottish Ministers. In January 2014 we met with the Scottish Police Service to discuss proposals for an MOU to increase awareness of the types of information which should be referred to us. We are aware that a fresh approach in Scotland may be considered following the outcome of the Home Office review. This is unlikely to

take place in the near future as the organisation is undergoing a period of consolidation following the merger of eight regional forces last year.

Risk management

17 This issue is included on our Corporate Risk Register and an independent audit of our work to prepare the organisation for the outcome was completed by Grant Thornton on 10 February 2014. This concluded in a 'sound' rating, which is the highest level of assurance. Auditors found that controls evaluated in relation to this project are sufficient and appropriate, and are operating effectively to provide assurance that risks are being managed and objectives should be met. Several areas of good practice were identified and there were no recommendations for improvement. A copy of the report is at Annex C.

Next steps

18 We will continue to liaise with both ACPO and the Home Office to monitor progress of the review and help shape plans for suitable information sharing mechanisms to replace the NOS. In readiness for the outcome of this, we hope to expedite a review of our information sharing agreements with relevant criminal justice agencies. There are also arrangements in place to continue monitoring the number of police referrals made to us about doctors to help us understand the effectiveness of current protocols. Our Regional Liaison Service will be undertaking activities to raise doctors' awareness of our guidance on reporting criminal cautions and convictions later this year.

Supporting information

How this issue relates to the corporate strategy and business plan

19 Strategic aim 2: to give all our key interest groups confidence that doctors are fit to practise. It also supports two key aspects of our business plan: dealing swiftly and appropriately with concerns raised about fitness to practise, maintaining this service despite rises in the number and complexity of enquiries; and ensuring that our strategic engagement builds and maintains relationships with organisations and individuals who influence our work.

Other relevant background information

20 Historically, police notifications have been the primary means by which we have been informed of conviction and cautions of registered doctors. We are undertaking a separate piece of work to ensure we continue to receive this type of information in a timely manner via the Disclosure and Barring Service, which merged with the Criminal Records Bureau in December 2012. This is important because otherwise, given the withdrawal of the NOS and the much more limited coverage of the new disclosure of arrest information, there could be a significant group of convictions of which we remain unaware.

21 As our guidance on reporting convictions requires doctors to report convictions 'without delay', it is not affected by the recent changes to the Rehabilitation of Offenders Act in relation to disclosure of historic convictions.

How the issues support the principles of better regulation

22 We are seeking to encourage the police to be transparent in sharing information where there are concerns about doctors, enabling us to take proportionate, targeted action to deal with the most serious matters.

How the action will be evaluated

23 We collect annual statistics on police referrals from across the four countries to help us monitor the effectiveness of relevant information sharing systems. This will be used to evaluate the extent to which we have successfully maintained and strengthened relationships within the current legal framework.

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

24 In taking this work forward, we engaged with colleagues from the Home Office, ACPO and the Nursing and Midwifery Council in a series of round-table meetings. We also liaised with colleagues in the Fitness to Practise directorate, the Employer Liaison Service and the Medical Practitioners Tribunal Service in developing a written response. The Media team liaised with Home Office press officials to respond to enquiries from journalists. We have also undertaken work

to establish and maintain relationships with local police disclosure units across the four countries.

If you have any questions about this paper please contact: Anna Rowland, Assistant Director - Policy and Planning, Fitness to Practise, arowland@gmc-uk.org, 020 7189 5077.

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Annex A

Police referrals 2006 to 2013

1 We are monitoring the number of police referrals to our fitness to practise procedures to help us understand the impact of the Home Office review of the Notifiable Occupations Scheme on effective information sharing. A breakdown of the number of police referrals from 2006 to 2013 is provided below.

Referrals from police across the four countries, 2007 – 2013

United Kingdom

2 We receive referrals from police across the four countries, however the NOS only applies in England, Wales and Northern Ireland. A separate scheme exists in Scotland. The police in England account for the vast majority of referrals each year, whilst significantly lower referral rates are experienced in Scotland, Wales and Northern Ireland.

Table 1: Seven-year trends in the United Kingdom

	# Referrals							
Referred by Police - UK Country	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**Total**
England	134	189	192	152	150	151	120	**1088**
Northern Ireland	1	0	4	10	9	2	3	**29**
Scotland	2	3	7	2	8	12	13	**47**
Wales	12	19	16	8	11	16	7	**89**
Grand Total	**149**	**211**	**219**	**172**	**178**	**181**	**143**	**1253**

England

3 There are 38 police forces in England. The number of referrals from police in England stayed constant at around 150 per year in the period from 2010 to 2012, however this decreased to 120 in 2013. This is proportionate to the number of doctors with a registered address in England (183,044 in 2012).

Table 2: Referrals from police in England (8 biggest forces) 2007 - 2013

	# Referrals							
Referred By Organisation Name	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**Total**
Essex Police	7	12	10	6	7	6	4	**52**
Greater Manchester Police	4	13	6	5	7	5	7	**47**
Kent Police	4	1	4	2	2	5	4	**22**
Merseyside Police	3	2	4	6	1	4	6	**26**
Metropolitan Police	13	22	40	45	46	56	21	**243**
Thames Valley Police	7	6	13	8	4	6	5	**49**
West Midlands Police	8	6	8	6	6	4	3	**41**
West Yorkshire Police	1	2	16	5	2	4	4	**34**
Grand Total	**47**	**64**	**101**	**83**	**75**	**90**	**54**	**514**

4 The Metropolitan Police are responsible for approximately a third of referrals in England which reflects the fact it is the largest force in the country covering a population of 7.2 million. It made 46 referrals in 2011 rising to 56 referrals in 2012. This decreased to 21 referrals in 2013. There are also a high number of doctors working in the London area and a higher incidence of crime. During this period all English forces made at least one referral to the GMC (in 2010, six made no referrals).

5 There is some evidence to suggest that the number of referrals in the regions outside London may in general be much lower than might be expected, in proportion to the number of doctors working in the area. For example Greater Manchester Police (covering a population of 2.5 million people) made only five referrals in 2012, over ten times fewer than the Metropolitan Police (56 referrals) although it covers a population which is only three times smaller. Further information about the number of doctors working in each area would help to place this in context.

Scotland

6 The Scottish Police Service was created on 1 April 2013 following the merger of eight separate police forces in Scotland: Central Scotland Police, Dumfries & Galloway Constabulary, Fife Constabulary, Grampian Police, Lothian & Borders Police, Northern Constabulary, Strathclyde Police and Tayside Police.

Table 3: Scotland – police referrals (2007-13)

	# Referrals							
Referred By Organisation Name	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**Total**
Central Scotland Police	0	0	0	0	0	0	0	**0**
Dumfries & Galloway Constabulary	0	0	1	0	1	1	0	**3**
Fife Constabulary	0	0	0	0	1	1	0	**2**
Grampian Police	0	0	0	0	0	0	0	**0**
Lothian & Borders Police	1	0	0	1	0	1	0	**3**
Northern Constabulary	0	0	2	1	0	2	0	**5**
Police Scotland	0	0	0	0	0	0	13	**13**
Scottish Police Services Authority	0	3	2	0	0	0	0	**5**
Strathclyde Police	1	0	2	0	6	7	0	**16**
Tayside Police	0	0	0	0	0	0	0	**0**
Grand Total	**2**	**3**	**7**	**2**	**8**	**12**	**13**	**47**

7 Overall, there has been a general upward trend in referrals from Scottish police since the introduction of the NOS (Scotland) on 21 June 2007 rising from two referrals in 2006 and 2007 to 13 referrals in 2013.

8 In 2010, there was one referral to the GMC from police in Scotland. By 2012 this rose to 12 referrals (including seven from Strathclyde Police). This seems low in proportion to the number of doctors with a registered address in Scotland (20,057 in September 2010).

9 From 2010 to 2012 no referrals to the GMC were made by four of the nine forces which formerly existed in Scotland. These include Central Scotland Police, Grampian Police, Scottish Police Services Authority and Tayside Police.

10 Before the merger, the Central Scotland Police covered a region including Falkirk and Stirling, with a total population of 281,000. Grampian Police covered the city of Aberdeen and surrounding rural areas. Tayside Police covered an area including Dundee, Angus, Perth and Kinross (combined population 384,000).

Wales

11 There are five police forces in Wales: Dyfed-Powys Police, Gwent Police, North Wales Police, South Wales Police and West Mercia Constabulary. The number of referrals from Welsh police remains fairly constant in a range of 7 to 19 per annum. This seems proportionate in relation to the number of doctors with a registered address in Wales (10,580 in 2010).

Table 4: Wales – police referrals (2007-12)

	# Referrals							
Referred By Organisation Name	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**Total**
Dyfed-Powys Police	0	0	1	1	0	2	1	**5**
Gwent Police	3	4	0	1	1	2	0	**11**
North Wales Police	1	2	3	0	0	1	0	**7**
South Wales Police	8	13	12	6	10	11	6	**66**
Grand Total	**12**	**19**	**16**	**8**	**11**	**16**	**7**	**89**

12 Over the last seven years, South Wales Police has made a total of 66 referrals, compared to seven from North Wales Police during the same period. North Wales Police covers a population of 670,000 compared to South Wales which covers 42% of the country's population (1,225,900 people). The difference in rates of referral cannot be fully explained by the fact South Wales covers a much bigger area.

Northern Ireland

13 Northern Ireland is policed by the Police Service of Northern Ireland (PSNI). In 2010, and 2011 police in Northern Ireland referred nine or ten doctors per annum. In 2012, this dropped to two referrals. There were 6,506 doctors with a registered address in Northern Ireland in 2010.

Table 5: Northern Ireland police referrals 2007-2012

	# Referrals							
Referred By Organisation Name	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**Total**
England	134	189	192	152	150	151	120	**1088**
Northern Ireland	1	0	4	10	9	2	3	**29**

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Annex B

Correspondence with Kevin Walsh

22 July 2013

Kevin Walsh
Head of Criminal Records Team
Safeguarding and Public Protection Unit
Home Office
2 Marsham Street
London SW1P 4DF

Dear Kevin,

Review of Notifiable Occupations Scheme

Thank you for your letter of 5 July 2013.

I am grateful for the opportunity to demonstrate how the GMC meets the criteria set out in your letter. I have provided our response (attached) setting out how we meet the criteria under the relevant headings for ease of reference.

We look forward to continuing to work together to ensure information flows effectively to safeguard the public where there are serious concerns about a doctor. I would be happy to take your call, if that would assist further.

Yours sincerely

Paul Philip
Deputy Chief Executive
020 7189 5124
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cc. Lee Warhurst, ACPO Disclosure Portfolio, Hampshire Constabulary

GMC RESPONSE

a) Able to consider and act without delay upon pre-conviction or arrest type information

Under Section 41A of the Medical Act 1983 we have the power to impose an interim order to restrict or suspend a doctor's right to practise medicine for a maximum of 18 months where this is necessary to protect the public. A referral to an interim orders panel (IOP) may be triggered by a criminal investigation.

Interim orders are always held within 3 weeks of notification or sooner. In the most serious cases a hearing can be arranged within 24 hours of the concern being raised with us. We then monitor and review any significant developments to consider whether the order should be revoked, maintained or varied as the case progresses. Disclosure from the police enables us to put arrangements in place at the earliest stages of an investigation into criminal activity where it is appropriate.

One in four cases under investigation by our criminal casework team is subject to an interim order. We only take temporary action to restrict a doctor's ability to work before the outcome of an investigation if this is a proportionate response, in line with relevant case law. In evaluating the acceptability of intervening or declining to do so the Interim Orders Panel will have in mind the ultimate possibilities of both the doctor's acquittal or conviction of the particular charges. The panel will also consider the individual features of each case and the particular facts of any allegations or criminal charges. Our guidance on imposing interim orders is published on the Medical Practitioners Tribunal website at www.mpts-uk.org.

b) Able to consider content of a notification and take action in an appropriate timescale to reflect the seriousness and urgency of the matter notified

Our dedicated triage team is experienced in assessing the seriousness of information and its relevancy to a doctor's suitability to practise medicine in the UK. Some matters are so trivial there is no need for us to investigate and these are closed without action. Other information, such as notification that a doctor is under investigation or arrest for a serious criminal offence is referred to decision makers to consider the need for immediate action to protect the public while the matter is resolved. If we restrict or remove a doctor's right to work on a temporary basis we will also notify a wide range of international medical regulators of the decision through our decisions circular and write specifically to any overseas regulator where we know the doctor also has overseas registration. It is not unusual for doctors

with overseas registration who are subject to GMC restrictions to leave the UK and work overseas.

A range of factors are taken into account when considering whether to refer a case involving arrest or pre-conviction information to an Interim Orders Panel while investigations are ongoing. In assessing the seriousness of the risk to the public if the practitioner were to continue to hold unrestricted registration, the panel will have in mind the seriousness of the allegations and the weight of the evidence, including evidence about the likelihood of further offences occurring whilst the allegations are investigated. The point at which doctors who are the subject of criminal investigations should be referred to an Interim Orders Panel is flexible and will depend on all the circumstances of the case.

We also have a discretionary power to refer information to the Disclosure & Barring Service or Disclosure Scotland where there is reason to believe someone poses a risk of serious harm to vulnerable adults or children. Referrals are usually made following conviction for an autobar or connected offence or substantive fitness to practise action however in exceptionally serious cases this may be sooner.

c) Powers up to and including the removal of an individual from a particular workplace are available

Anyone who wishes to work as a doctor and practice medicine in the UK is legally required to register with us. It is a criminal offence for a doctor to work as a medical practitioner anywhere in the UK unless they are registered with us.

Where concerns arise we have a broad range of powers to take interim or substantive action in the public interest from a warning to suspension or removal of a doctor's right to work as a medical practitioner anywhere in the UK including within the NHS and independent sectors. In some cases, a doctor may be specifically excluded from undertaking private practice, out-of-hours or locum work.

We have powers to impose proportionate and effective restrictions on a doctor's right to work tailored to the specific circumstances of the case. For example where there are concerns about allegations of indecent conduct, a doctor may be required to comply with robust chaperoning and supervision arrangements while the issue is investigated. Alternatively, they may be required to cease undertaking intimate examinations except in a life-threatening emergency until the matter is resolved.

Any restrictions imposed on a doctor's registration apply to their right to work as a medical practitioner anywhere in the UK. The NHS Employment Check Standards

(amended September 2012) requires employers to check a doctor's registration and licence status before confirming an appointment into NHS positions, across England.

d) Able to disseminate details of action taken to employers in an appropriate timescale to reflect the seriousness and urgency of the matter notified, including where an individual may have multiple relevant employers

Under Section 35B of the Medical Act 1983 we have a statutory duty to notify all of a doctor's employers as soon as reasonably practicable if we think it necessary to begin an investigation into their fitness to practise. We usually know who a doctor is working for once a concern has been raised because under Section 35A we have a power to require the doctor to provide details of all their employers within the UK and overseas including those in the NHS, independent sector, locum agencies or other contractual arrangements.

As mentioned earlier, in the most serious cases a doctor may be referred to an interim orders panel to consider the need for immediate action to protect the public while we investigate. When this happens employers are notified in advance of the hearing. This is intended to allow time for employers to make contingency plans to ensure continuity of care for patients where a doctor's right to work in medicine is suspended on a temporary basis. Employers are normally told about the outcome of an interim orders panel via a first class letter or email sent the following day or sooner. Doctors who are subject to interim conditions are usually required to notify us promptly about any change in employment status as a medical practitioner, including overseas work.

At the end of our investigation we write to the doctor's employers to provide details of any action taken to mitigate the risk to the public and the reasons for this within two weeks or sooner. Employers are always promptly told about any restrictions on a doctor's registration which affects their ability to practice or work in medicine. They are not told information which directly and solely relates to a doctor's health.

Finally, you may also wish to consider our role in sharing information with responsible officers, who have a statutory responsibility for clinical governance and concerns about doctors under the Medical Profession (Responsible Officers) Regulations 2010. Responsible officers make positive recommendations to us about revalidation of a doctor's licence to practise medicine.

13 February 2014

Kevin Walsh
Head of Criminal Records Team
Safeguarding and Public Protection Unit
Home Office
2 Marsham Street
London
SW1P 4DF

Dear Kevin

Review of Notifiable Occupations Scheme

I refer to our letter of 22 July 2013 from Paul Philip (who has now left the GMC). I am writing to seek an update on the Home Office review of the Notifiable Occupations Scheme, and whether we meet the criteria to continue to receive direct police notification.

We were grateful for the opportunity to demonstrate how we meet the criteria set out in your letter of 5 July 2013 and provided a detailed explanation of the relevant legislative powers and operational procedures.

We are committed to working with you to ensure information flows effectively to safeguard the public and would very much welcome your written assurance that we will continue to receive direct notification from the police where there are serious concerns about a doctor. This information is essential to enable us to take immediate steps to protect the public pending the outcome of criminal proceedings in appropriate cases.

Yours sincerely



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Annex C

Grant Thornton report

Preparations for the outcome of the Home Office review of the Notifiable Occupations Scheme

Final report 10 February 2014

Consultancy and Review Service

General Medical Council

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Grant Thornton

Preparations for the outcome of the Home Office review of the Notifiable Occupations Scheme

Final Report

Last updated 10 February 2014

Report rating	Sound

Distribution	Timetable	
Anthony Omo – Director of Fitness to Practise Anna Rowland – Assistant Director Fitness to Practise Claire Garcia – Policy Manager	Fieldwork completed	29 November 2013
	Draft report issued	06 January 2014
	Management comments	20 January 2014
	Final report issued	10 February 2014

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Glossary 1

The following terms are used in this report:

NOS	Notifiable Occupations Scheme
ACPO	Association of Chief Police Officers
NMC	Nursing and Midwifery Council
MOU	Memorandum of understanding

This report is confidential and is intended for use by the management and Directors of the GMC only. It forms part of our continuing dialogue with you. It should not be made available, in whole or in part, to any third party without our prior written consent. We do not accept responsibility for any reliance that third parties may place upon this report. Any third party relying on this report does so entirely at its own risk. We accept no liability to any third party for any loss or damage suffered or costs incurred, arising out of or in connection with the use of this report, however such loss or damage is caused.

It is the responsibility solely of the GMC's management to ensure that there are adequate arrangements in place in relation to risk management, governance and control.

1 Executive Summary

1.1 Background

The GMC routinely receives information from the Police about doctors' criminal activity to enable them to consider whether it is necessary to take action to protect patients and maintain confidence in the medical profession. The Notifiable Occupation Scheme (NOS) in England, Wales and Northern Ireland (as set out in the Home Office Circular 6/2006) is the principal method by which the GMC receives notification of convictions and cautions for doctors. The Scottish Executive issued a separate circular (4/2007) to provide guidance for Scottish Police forces. Between 2007 and 2012, over 1,100 cases involving criminal allegations have been referred to the GMC.

In December 2010 the Home Office commenced a review of the NOS in England. The scope of the consultation covered the type of information received by regulators from the Police, the actions taken as a result, and the impact on public protection if disclosure ceased.

In January 2013, the Home Office made an interim announcement that as a result of the review, it proposed to cease Police notification to regulatory bodies and replace this with a system of employer notification. It was envisaged that they would also provide advice to employers to consider the appropriateness of referring information onwards to the Disclosure & Barring Service (DBS) and relevant regulatory bodies.

A decision on the review by the Home Office is expected in due course; however there is no indication of the expected timing of this.

1.2 Scope

Extract per the Audit Plan

"This project is consultancy in nature aimed at providing information on what other regulatory bodies are doing in response to potential changes of the NOS. We will draw out any further actions that the GMC could be doing to manage this risk."

During the audit, we considered the:

- extent to which the GMC has appropriate plans and processes in place to respond effectively to any decision by the Home Office that results in some form of change to the existing NOS. Our review included:
  - assessments by the GMC to understand the importance of the information being accessed through the NOS, as well as the scale of information it received through the NOS system;
  - the extent to which the GMC is working collaboratively with the other organisations in preparing for potential changes and in lobbying on emerging decisions (for desired outcomes); and
  - the adequacy of the GMC's preparation for a range of potential outcomes; including the identification of key internal stakeholders of the information received via the NOS system, the allocation of responsibilities within the organisation to oversee and take action to address plans

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prepared in advance of the announcement of the Home Office outcome.

- level of governance in place to oversee the progress made in preparing for the NOS outcome. This included the nature of progress reporting; and
- approach to prepare for the outcome of the Home Office review and compared it with those taken by other organisations impacted, to identify relevant practices that the GMC should explore further.

We compared the GMC's approach with two other organisations which will be affected by the change in the NOS scheme. One is a regulator and the other within the higher education sector. Within the report they will be collectively referred to as the "Peer Group".

Further details on our approach are included in Appendix A.

1.3 Overall conclusion

Our review identified that the GMC's primary focus has been to influence the outcome of the Home Office review. This has resulted in the Home Office now considering awarding some organisations (including the GMC) special case status, which should allow the active sharing of information to continue.

In addition, the GMC's core strategy in preparing for the outcome of the Home Office review is to strengthen the existing relationships it has with key organisations such as ACPO and the individual Police Disclosure Units. In comparison to the peer group, the GMC demonstrates greater proactivity and engagement with key organisations to strengthen existing relationships.

Even if the Home office decides to retain the existing notification scheme, which would be the ideal outcome for the GMC, the engagement with Information Policy Leads and Police Disclosure Units would still be of benefit to the GMC.

The areas of strength in Section 1.5 of this report reflect some of the arrangements that the GMC has put in place to be prepared to deal with the outcome of the Home Office review. We are satisfied with the mechanisms in place to ensure that the GMC remains informed and appropriately notified with developments in this area.

1.4 Areas for improvement

During the review we did not identify any areas for improvement.

1.5 Areas of strength

In comparison with the Peer Group, we have identified the areas below as strengths, including where the GMC is ahead of the Peer Group in preparing for the outcome of the Home Office review. We were able to obtain information from only two organisations due to the limited progress made by comparable organisations.

These areas include:

- The Fitness to Practise Policy Team has established the impact on Fitness to Practise and Registration processes should information sharing discontinue, which has been reported to Council. Although changes to the NOS will have an effect on other parts of the GMC, FtP and Registration were identified as the key users of information received through the NOS. Therefore the impact assessment was focussed on their use of the information.
- The steps taken to mitigate the risk have been to strengthen key relationships to ensure that dependency on information shared

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through the NOS is well known and understood by the Home Office as well as Police Disclosure Units.

- By reviewing correspondence, we have seen that the Deputy Chief Executive and the Policy Team have been in contact with the Home Office to explain the impact of a change to the current system, to the organisation as a regulator.
- Due to the proactive approach taken by the GMC to inform the Home Office of its role and dependency on information received from the Police, the Home Office has decided that it would apply 'special case' exemption to some organisations, should the NOS be withdrawn. Such organisations that meet special case criteria might still be able to receive notifications from the Police. The GMC is likely to be considered as one of the special case organisations. This was identified through the review of letters and email communications between the GMC and the Home Office.
- The GMC has also actively pursued a range of alternative mechanisms to ensure effective Police disclosure continues in the event of the NOS being abolished, as initially envisaged by the Home Office. From our review of meeting minutes between the GMC and ACPO we have seen potential solutions explored, which include a centralised notification service administered by ACPO Criminal Records Office and the Disclosure & Barring updates service.
- When the Home Office's review commenced, the FtP Policy Team engaged with the Nursing and Midwifery Council (NMC), to work together to influence the Home Office. As the communication with the Home Office progressed, it became apparent that the GMC and NMC use the information received under NOS for different purposes. Therefore the FtP Policy Team, with the agreement of the Policy & Strategy Board, continued with engaging with the Home Office, on its own , to ensure that the GMC could influence in a manner that is most beneficial to the organisation. .
- We have noted that the directly affected directorates (FtP and Registration), are working together, to understand the impact of the proposed change and also to ensure a cohesive approach, when in contact with the Police Disclosure Units, ACPO or the Home Office.
- Through reviewing meeting minutes, we have seen that the Policy & Strategy Board has been kept informed of developments and progress regarding the establishment of relationships with key organisations. There have also been reports to Council on the actions taken to be prepared for the outcome of the Home Office review, as evidenced in the minutes of the Council meetings in April and May 2013.
- As Scotland is served under a separate scheme to the rest of the UK, the GMC has, through email communication and meetings, taken steps to establish a relationship with the Scottish Police Service in anticipation of any future changes in Scotland.

1.6 Acknowledgement

We would like to take this opportunity to thank the staff involved for their cooperation during this internal audit.

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1.7 Levels of assurance

Assurance Level	Definition
Sound	Controls evaluated are sufficient, and appropriate, and are operating effectively to provide assurance that risks are being managed and objectives should be met.
Substantial	A few specific weaknesses were noted. Generally, however, controls evaluated are sufficient and appropriate, and are operating effectively to provide assurance that risks are being managed and objectives should be met.
Limited	Many specific control weaknesses were noted. Controls evaluated are unlikely to provide assurance that risks are being managed and objectives should be met.
Minimal	Controls evaluated are not adequate, appropriate or effective to provide assurance that risks are being managed and objectives should be met.

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A Scope of the review

Internal Audit approach

Our audit was carried out in accordance with the guidance contained within the Public Sector Internal Audit Standards (April 2013). Our role as internal auditor was to provide objective and independent assurance to the Audit and Risk Committee and management that risks are being managed successfully for each of the areas audited.

We achieved our audit objectives through the following work:

- Through discussion with the Fitness to Practise Policy Team:
  - establish the GMC's overall approach and plan to prepare for the outcome of the Home Office review including; review of any formal plans developed, their logic and coherence within the GMC, milestones agreed, and an assessment of whether the mitigating actions set out in the corporate risk register are being effectively delivered with appropriate management assurances received for these actions;
  - establish how an accurate understanding has been reached on the impact should some or all of the NOS information no longer be available to FtP and Registration. This includes a review of the analysis undertaken to identify the importance and the scale of information received through the NOS system; and
  - understand how the GMC is liaising with other regulatory bodies in order to identify, and possibly learn from, any changes they are making to deal with the anticipated outcome of the Home Office review;
- Reviewing the meeting minutes and briefing documents of the Fitness to Practise Policy Team to gain an understanding of the relationship established between the GMC and key stakeholders impacted by the NOS, including relationships with other regulatory bodies;
- Engaging with a sample of key direct users of the NOS scheme within GMC to:
  - assess the extent to which they have been engaged to date in the development of the overall plan; and
  - directly seek evidence of the volume and actual use of the information received through the NOS scheme as a basis for understanding the likely impact on FtP processes of any change to the scheme;
- Assess the accuracy and sufficiency of information shared internally, by reviewing relevant reports provided to the Strategy and Policy Board, as well as a sample of its meeting minutes;
- Through discussion and review of relevant documents, including meeting notes, establish whether key decision points and appropriate approval levels have been agreed for the execution of plans and processes, and whether these are being complied with; and
- Through discussion with other organisations impacted by the outcome of the Home Office review, we will identify and compare the processes implemented by them to prepare for the outcome, with a view to identifying any areas of improvement for the GMC.

The findings and conclusions from this review will contribute to the Head of Consultancy and Review Service's annual opinion to the Audit and Risk Committee on the adequacy and effectiveness of corporate governance, risk management and internal control arrangements in place.

Additional information

Client staff

The following staff were consulted as part of this review:

- Anna Rowland – Assistant Director, Policy and Planning
- Claire Garcia – Fitness to Practice Policy & Planning Manager
- Shaun Moggan – Investigations Manager

The key internal stakeholders were identified as the Fitness to Practise and Registration Directorate and the Investigations team. We identified and interviewed key individuals to interview on the subject. These meetings in combination with the documented evidence were sufficient to draw the conclusions in the report. We therefore did not extend the number of people to meet with during the review.

Documents referred to

The following documents were referred to during the course of this audit:

- Various emails between, GMC, ACPO, Home Office, NMC and other stakeholders
- Minutes to the Strategy and Policy Board meetings
- Minutes to the Council meetings, included restricted minutes;
- Memorandum of Understanding between GMC, ACPO and NMC;
- Police Disclosure of Information briefing document
- Final process for agreeing MOU's
- Various data analysis on the number of cases referred by the Police

Locations

The following locations were visited during the course of this review:

- GMC London office, 350 Euston Road.



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Chartered Accountants

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