

Summary note of the meeting on 14 March 2018

Attendees

Terence Stephenson (Chair)
Charlie Massey, GMC Chief Executive
Shaben Begum, Director, Scottish Independent Advocacy Alliance
Jason Birch, Senior Policy Manager, Scottish Government Health & Social Care Directorates
Dr Andrew Buist, Deputy Chairman of the SGPC, BMA Scotland
Catherine Calderwood, CMO, Scottish Government Health & Social Care Directorates
Shane Carmichael, GMC, Assistant Director, Strategic Communications & Engagement
Victoria Carson, GMC Head of Scotland Office
Adam Collins, Scottish Academy Trainee Doctors Group
Nicola Cotter, Scottish Liaison Adviser
Jenny Duncan, GMC Scottish Policy and External Affairs Manager
Susan Goldsmith, GMC Chief Operating Officer
Cat Harley, GMC Scottish Clinical Leadership Fellow
Stewart Irvine, NHS Education for Scotland
Paul Knight, GMC Council member
Carey Lunan, Chair, RCGP Scotland
Anthea Martin, Medical and Dental Defence Union of Scotland
Gordon McDavid, Medicolegal Adviser, Medical Protection Society
Miles Mack, Vice Chair, Scottish Academy of Medical Royal Colleges
Lucy Mulvagh, Director of Policy & Communications, Health and Social Care Alliance
Donna O'Boyle, Scottish Government
Terry O'Kelly, Scottish Government
Willie Paxton, GMC Employer Liaison Adviser
Paul Reynolds, GMC, Director, Strategic Communications & Engagement
Alison Smith, Scottish Independent Hospitals Association
Dr Hugh Stewart, Director of Legal Services and Scottish Affairs, Medical Defence Union
Matthew Walters, Board for Academic Medicine/Scottish Deans Medical Education Group
Steven Wilson, Healthcare Improvement Scotland
Dan Wynn, GMC Scottish Affairs Officer (note-taker)

Welcome and Chair's introduction

- 1** The Chair welcomed attendees to the March 2018 meeting of the UK Advisory Forum in Scotland, extending a particular welcome to Lucy Mulvagh of the Health and Social Care Alliance, Hugh Stewart of the MDU, Carey Lunan of the RCGP Scotland and Andrew Buist of BMA Scotland to their first UKAF meeting. He outlined the purpose of these meetings as being to ensure that attendees have an opportunity to discuss the work of the GMC in Scotland and to highlight matters of particular importance or concern to them.

Actions from the previous UKAF meeting

- 2** The Chair invited the Head of the GMC's Scotland office to feed back to the Forum on actions for the GMC which were agreed at the previous UKAF meeting on 31 October 2017. These included:

Sharing GMC data with partner organisations

- 3** At the previous UKAF meeting the Forum discussed the GMC's data and how it can support the development of quality of care in Scotland. Over the past six months the GMC has worked with HIS to provide access to and understanding of its data to ensure that existing data is used effectively. The GMC has also participated in the independent review of the national sharing intelligence function in Scotland to continue its discussions about how professional regulators can participate meaningfully.

Brexit

- 4** At the meeting in October, Forum members discussed the balance between patient safety and workforce provision. The GMC has also been working with the Scottish Government and partners to navigate Brexit pathways as discussions unfold.

Medical Licencing Assessment (MLA)

- 5** The GMC undertook to meet with the BMA Scotland Junior Doctor Committee (JDC) and Student Committee (SC) to discuss the MLA. The GMC has had an initial meeting and will remain in contact with the chairs of the committees, with a view to engaging further.

Exception reporting and monitoring

- 6** The GMC met with the BMA JDC chair to discuss exception reporting and a system for facilitating it. We will continue to take this conversation further.

Credentialing

- 7** The GMC-Scottish Government Scottish Clinical Leadership Fellow (SCLF) is in contact with her counterpart SCLF in the Scottish government who is working with on credentialing. In particular the Scottish government SCLF is taking an oversight of the Royal College of Surgeons' pilot of a credential in cosmetic surgery (members of all surgical colleges are able to undertake the process). This pilot will inform the GMC's framework for approving credentials.

Supporting doctors in maintaining good practice

Discussion on the Dr Bawa-Garba case

- 8** The GMC's Chief Executive provided a summary of the Bawa-Garba case, including a chronology of events and a description of the GMC's involvement. He acknowledged the relevance of system pressures and described some misunderstandings about the case and its impact on the GMC's relationship with doctors.
- 9** The Chief Executive went on to explain a range of actions that the GMC is undertaking which may help to address issues raised by the Bawa-Garba case, including a review of the way gross negligence manslaughter (GNM) in England, and culpable homicide in Scotland, is applied to medical practice, new guidance on reflection, and the GMC's programme to tackle the causes and impact of work on the mental health and wellbeing of doctors. The Chief Executive drew the forum's attention to the UK Government's review of GNM.
- 10** The forum discussed a range of issues relating to the Bawa-Garba case including the reaction of doctors, the need to maintain reflective practice, the legal differences between GNM and culpable homicide, and the GMC's ambition for more preventative, 'upstream' regulation.
- 11** Members considered current issues with the application of GNM in England to medical cases, noting that there are currently too many GNM investigations involving doctors, they take too long to reach a decision on proceeding and that between only 5 to 10% of cases that are investigated result in prosecution. Of those cases that are prosecuted, only around 1 in 3 result in conviction. The stress is experienced not only by doctors and their families but also by the families of patients.
- 12** The Forum discussed potential actions to address issues which may not require a change in the law. These included;
 - a** better and more up to date guidance for Coroners on GNM. Cases should be referred to the police only through the Chief Coroner.
 - b** revised guidance for Senior Investigating Officers on GNM

- c** a National Police Unit in England specialising in these complex cases to build expertise and consistency
 - d** using experts early – and with appropriate guidance as part of their instruction
- 13** The Forum discussed the nature of the Scottish crime of culpable homicide, noting that there have been no convictions of doctors for this.
 - 14** The chair undertook to circulate facts of the case and Frequently Asked Questions and answers to the forum. He also undertook to discuss with the GMC's Director of Fitness to Practise whether the record of the court proceedings in the case of Bawa-Garba could be shared with Forum members.
 - 15** Further issues were covered including the question of over-representation of BME doctors in GMC Fitness to Practise processes, fears over an increase in doctors practising defensive medicine, practical difficulties experienced by doctors in applying the GMC's guidance, and the use of appraisal to create a 'safe space' for honest discussion.
 - 16** The forum discussed the GMC's role vis-à-vis the contexts in which doctors are practising; team, working environment, and political.
 - 17** During a discussion on reflective practice the forum considered that courts have the power to require disclosure of information, including on reflective practice but that the GMC does not ask for this information in its investigations.
 - 18** The chair undertook for the GMC to put some Fitness to Practise investigation case studies on the GMC's website to illustrate the GMC's processes and thresholds.

Systems and collective assurance

How can we work together to implement our new strategy?

- 19** The chair invited the GMC's Chief Operating Officer to present on the GMC's new corporate strategy. She emphasised that the GMC wishes to work together with stakeholders and described the four aims of the strategy; supporting doctors in maintaining good practice, strengthening collaboration with our regulatory partners across the health services, strengthening our relationship with the public and the profession and meeting the changing needs of the health services across the four countries of the UK.
- 20** The Deputy Chief Executive of NES responded to the presentation, commenting on the volume of guidance issued by the GMC, the GMC's proposals for a Medical Licencing Assessment (MLA) for all entrants to the medical register, the limitations of the GMC's powers in relation to training environments, the opportunities that exist to

use GMC data in workforce planning and the GMC's engagement with Scotland, Wales and Northern Ireland.

- 21 The Forum discussed in more detail; the use of Enhanced Monitoring of training environments, the GMC's engagement with students and doctors (including the use of digital technology for learning how to apply GMC guidance), the Scottish Independent Advocacy Alliance's tools around decision-making and the involvement of hard-to-reach groups of patients and public in the GMC's work.

Upstream regulation: preventing harm and supporting professionalism

Realistic medicine and shared decision making - #decidewithme

- 22 The chair introduced the Chief Medical Officer who presented on her annual reports on *Realistic Medicine* and shared decision making between doctors and patients. This included research into the views of patients and the public. The CMO flagged that her third report is due to be published on April 20. She highlighted the synergy between the *Realistic Medicine* reports and GMC guidance on consent, and noted that the principles of the reports are becoming embedded in wider work and in doctors' practice.
- 23 The Forum noted that Professor Terry O'Kelly, Senior Medical Officer in the CMO's team, is a member of the task and finish working group revising the GMC's guidance on consent.
- 24 The Forum discussed the case law underpinning consent and the centrality of communication between doctors and patients.
- 25 The CMO asked Clinical Leadership Fellow, Dr Cat Harley, to present on the review of the GMC's guidance on consent. She described the demand for the guidance to be more practical and the process of the review, including multidisciplinary input and the use of surveys and research with key stakeholder groups. Dr Harley welcomed the involvement of Professor Terry O'Kelly in the review. She highlighted the GMC's forthcoming consultation on the new guidance and stressed that the GMC is keen to work with forum members both in the consultation, and to develop an implementation strategy and tools to embed the new guidance in doctors' practice.
- 26 The Forum discussed the application of *Realistic Medicine*, the GMC's new guidance to doctors' practice in the context of environment pressures, the ways in which the report and guidance might help doctors in their communication and decision-making with patients, and the need to prepare the public and the NHS for the implementation of both. The Forum reflected that discussions with the public will need to extend to issues such as end of life care, use of resources, systems and politics. Preparing the NHS will involve changes to processes, leadership and a new emphasis on team reflection.

AOB

- 27** The chair summed up some key points from the meeting with a plea to Forum members to carry the GMC's message regarding the Bawa-Garba case to their stakeholder groups. He thanked members for their positive and practical suggestions for addressing the issues underlying the case.
- 28** The chair reiterated the discussion on the need for the GMC to be a four-country regulator. He also reiterated the need for GMC guidance to be used practically and looked forward to a well-timed and implemented consultation on the GMC's new guidance on consent.
- 29** The chair thanked Forum members for their attendance and participation, stating that he looked forward to continuing to work with them in the interests of patient safety and high quality medical education and practise.