

## Summary note of the meeting on 3 October 2018

### Attendees

Terence Stephenson (Chair)  
Charlie Massey, GMC Chief Executive  
Shane Carmichael, GMC Assistant Director, Engagement and External Affairs  
Nicola Cotter, GMC Interim Head of Scotland Office  
Victoria Dobie, SAS Representative, Royal College of Surgeons of Edinburgh  
Jenny Duncan, GMC Policy and External Affairs Manager  
Susan Goldsmith, GMC Chief Operating Officer and Deputy Chief Executive  
Leslie Hamilton, Independent Review of Gross Negligence Manslaughter & Culpable Homicide  
Derek Bell, Academy of Medical Royal Colleges & Faculties in Scotland  
Robert Hendry, Medical Protection Society  
Lewis Hughes, BMA Scotland Junior Doctors Committee  
Stewart Irvine, NHS Education for Scotland  
Paul Knight, GMC Council  
Carey Lunan, Royal College of General Practitioners Scotland  
Robert Manton, GMC Clinical Fellow  
Richard Marchant, GMC Assistant Director, Regulation Policy  
Anthea Martin, Medical and Dental Defence Union of Scotland  
Mini Mishra, Scottish Government  
Lucy Mulvagh, Health and Social Care Alliance  
Donna O'Boyle, Scottish Government  
Rona Patey, Scottish Deans Medical Education Group  
Boyd Peters, Scottish Association of Medical Directors  
Brian Robson, Healthcare Improvement Scotland  
Alison Smith, Scottish Independent Hospitals Association  
Ian Somerville, GMC Scottish Affairs Officer (notes)  
John Stevenson, Scottish Public Services Ombudsman  
Hugh Stewart, Medical Defence Union  
Jill Vickerman, British Medical Association  
Luke Yates, Academy of Medical Royal Colleges and Faculties in Scotland  
Stephen Fenning, Healthcare Improvement Scotland (observer)

## Welcome and Chair's introduction

- 1 The Chair welcomed attendees to the October 2018 meeting of the UK Advisory Forum in Scotland. He acknowledged that this was his last meeting before he demits as Chair of the GMC at the end of the year, noting that he has enjoyed coming to Scotland, and that he was pleased at how these meetings have changed during his term. He reflected on his hopes they are now more interactive, enabling partners to say what they are doing as well as hearing from the GMC.

## Actions from the previous UKAF meeting

- 2 The Chair noted the good discussion at the last UKAF meeting on 14 March 2018, including on the Dr Bawa-Garba/Jack Adcock case, the GMC's new corporate strategy, and on Realistic Medicine. He then invited the GMC's Interim Head of Scotland Office to update on actions agreed to at the last meeting. These included:
  - Members had asked for more information on the Dr Bawa-Garba/Jack Adcock case. In addition to other ongoing communication with the GMC, members had since received an updated pack with frequently asked questions about the case, and were linked to other online materials.
  - It had been discussed whether Members could have access to the criminal court proceedings. Members were reminded that the GMC was not party to the proceedings, but the judgement on the criminal proceedings in Court of Appeal court and was available online. The High Court judgement in the GMC appeal was also published and we had flagged this to members.
  - Members had asked whether the GMC could provide illustrative fitness to practise case studies on its website. It was updated that this is ongoing work, and that this would be available on the website in due course.

## Medical workforce, quality and safety

### *Supporting a profession under pressure*

- 3 Building on the update provided in the meeting papers, the GMC's Chief Executive updated the Forum on the work the GMC is doing under its Supporting a Profession Under Pressure (SaPUP) work-stream. These work-streams relate to the issues emerging from the Dr Bawa-Garba/Jack Adcock case (although some had already started), and are starting to see some tangible output. He updated that:
  - The GMC has published updated reflective practice guidance in collaboration with The Academy of Medical Royal Colleges, the UK Conference of Postgraduate Medical Deans and the Medical Schools Council. The GMC's Chief Executive thanked members who had been involved in the process.

- Raising and acting on concerns remains important to the GMC, and 20 workshops have been held in Scotland this year on the topic reaching around 600 doctors and medical students.
- The GMC is collaborating with the Royal College of Surgeons of Edinburgh (RCSEd), and Royal College of Obstetricians and Gynaecologists (RCOG) on work relating to challenging unprofessional behaviours, and was pleased to support an RCSEd summit on this work recently. This will be developed further and will be shared with The Scottish Association of Medical Directors before being rolled out across Scotland in 2019.
- The GMC's data source in the National Training Surveys which tells us more about the experiences of trainees and trainers. The GMC is also looking to build a better understanding of the experiences of Speciality and Associate Specialist (SAS) doctors and is conducting a feasibility study to help fill the gaps in our knowledge about their work and training experiences.
- The GMC has been working on mental health and wellbeing. Building on previous work with Dr Louis Appleby, the GMC has commissioned a review on doctors' mental health and wellbeing, which is being led by Dame Denise Coia and Professor Michael West. They are in the midst of their work and expect to reach recommendations and conclusions early next year. The GMC is considering how it will support its partners for those recommendations which have wider implications for the medical workforce.
- There is a spotlight this year on fairness, recognising the disproportionate number of Black and Minority Ethnic (BME) doctors who go into and out of the GMC's fitness to practise processes. The GMC will shortly be committing to further audits of its own processes, but in the meantime has asked Roger Kline and Dr Doyin Atewologun to help it understand what is driving this disparity. Workshops in Scotland will form part of this review, and the thoughts and conclusions will allow the GMC and its partners to help change current referral trends.
- The GMC is looking at how much further it can embed human factors training into the training of its fitness to practise Case Examiners, and the medical experts used in its processes. The GMC is also exploring how it can help Responsible Officers apply human factors methodology in their investigations, supporting the GMC's objective that only the most appropriate referrals are referred to it. The GMC has since announced that all of its fitness to practise decision makers, case examiners and clinical experts are to receive Human Factors training, and advice on modifying investigation processes, as part of a collaboration agreed with Oxford University's Patient Safety Academy.
- That he was delighted that Leslie Hamilton was at the meeting to update the Forum on the Independent Review of Gross Negligence Manslaughter (GNM) and Culpable Homicide (CH).

- 4 The GMC's Chief Executive also updated that the GMC is also looking to do more work in the workforce space. Reflecting on the challenge of finding parliamentary time, the Chief Executive noted with some optimism that the UK Parliament may legislate to reform the Medical Act to allow the GMC to future-proof its processes. The GMC considers that reform would further enable it to spend more of its revenue on supporting doctors to achieve good practice as opposed to investigating doctors.
- The GMC is also seeking legislative change, enabling it the ability to set its own rules for doctors who don't come to the Register through conventional routes. Legislative change will also allow the Physician Associates profession to grow. Whilst it is not the GMC's responsibility, it has said that should it be asked, it would be willing to regulate them. The UK Government has since announced it will introduce legislation to regulate physician associates.
- 5 The Chair invited comments and questions. Forum members highlighted the push to recognise GPs as specialists in family medicine. The GMC's Chief Executive acknowledged the parity of the register and noted its wider calls for legislative reform of the Medical Act could provide for this change.
- On reflective practice, the new guidance was welcomed but it was noted that whilst the GMC's work on reflective practice had been positive, the supporting case studies might be enhanced by providing positive examples as well as negative ones. This suggestion was welcomed by the Chair.
  - The Forum welcomed the GMC's work on a feasibility study for a survey of SAS doctors. Members also discussed NTS survey data, how it can be enhanced, and survey burden.
  - Members discussed the merits of the GMC taking on responsibility for the regulation of physician associates and the opportunities and challenges this might bring. Donna O'Boyle, Scottish Government, confirmed that the response to the UK Government's consultation on the regulation of Medical Associate Professionals had been delayed, but noted the need for proportionate regulation taking into account investment, professional development and current regulatory status.
  - Members supported the work the GMC is doing on Human Factors, and drew parallels to work being led by Healthcare Care Improvement Scotland on its Morbidity and Mortality programme.
  - The Forum noted that safe staffing legislation is being considered by the Scottish Parliament, and how this relates to the GMC's work on rota monitoring was discussed. Members challenged the Forum to think about its terminology when using the term "rota gaps" and instead refer to "rota holes", and reflect that the problem most often stems from inadequate capacity as opposed to failures in rota design.

## **Systems and collective assurance**

### *Insight, intelligence and collective effect*

- 6 The GMC's Chief Operating Officer updated on the GMC's work on insight, intelligence and collective effect, which sits under its strategic aim of "strengthening collaboration with our regulatory partners across the health services." She noted that the GMC has made great strides over the past year, including the provision of more country-specific data and how it is presented. The GMC has also undertaken a strategic review of what collaboration there is with its regulatory partners and how it might work with them for greater effect.
- 7 With the aim of showcasing the work the GMC has done over the last year and inviting feedback, the GMC's Interim Head of Scotland office then took the Forum through a presentation outlining the GMC's data and intelligence capabilities, illustrated further by accompanying data packs for Members to consider.
- 8 Members praised the GMC's work on improving its four country data offering.
  - Members suggested the utility of the GMC being able to consider not just registration data, but also designated body data. Separately, it was suggested that more disaggregated data by equality groups would be helpful. It was also suggested that it would be useful to include SAS data.
  - The Forum considered how more intrinsic labelling of the data might support its use and avoid any incorrect assumptions being formed. It was also commented on in this regard that headcount figures on their own can be misleading, and that whole time equivalent (WTE) instead paints a better picture of workforce capacity. The Chair agreed to consider this point as an action following the meeting.
  - Members noted the importance of collaboration with partners, as well as the opportunities presented by considering other data sets in tandem to provide a fuller workforce picture.
  - The Forum explored whether it would be possible to bring forth longitudinal analysis, for example to track the journey of individuals over a 5 or 10 year period, and how this could help workforce planning.
- 9 The Interim Head of Scotland Office thanked Members for their feedback, and invited further feedback and suggestions to be captured in the data packs provided.

## **Upstream regulation: preventing harm and supporting professionalism**

### *GNM/CH review: responding to the specific interest in this issue in Scotland*

- 10 Leslie Hamilton, Chair of the Independent review of gross negligence manslaughter and culpable homicide, provided an update. He set out that the purpose of the review

is to consider GNM and CH in relation to the perceived vulnerability of the medical profession to charges of GNM and CH, and to examine what might be done to improve the application of the existing law, procedures and processes to address this, whilst maintaining the core objective of protecting the public and maintaining confidence in the profession.

- 11** Mr Hamilton updated that the review had received over 800 written responses, and had held workshops and oral evidence sessions across the UK, including in Scotland. The review aims to report in early 2019. He also updated the Forum of the work the Review is doing to consider the separate Scottish offence of culpable homicide, which informed the establishment of a Scottish Task and Finish Group to consider the issues from this perspective and feed in thoughts to the Review's main working group.
- 12** Stewart Irvine, a member of the Scottish Task and Finish Group, then provided an update on the work in Scotland, which has included two meetings of the group and a stakeholder workshop which was well attended. He noted there is a very different legal structure and culture in Scotland, and was pleased that the review will consider these differences so thoroughly. He updated that some of the issues considered by the group include the consistency of approach for investigations, the involvement of patients and families, what support for doctors involves, how medical expertise is used in initial investigations and Medical Practitioners Tribunal Service processes, and how it interacts with the different legal processes.
- 13** Questions and comments were then invited.
  - Members shared their praise for the stakeholder workshop, which attendees had found informative and inclusive.
  - Members also highlighted anxiety about the GMC pressing for automatic erasure in certain circumstances. The GMC's Chief Executive clarified that in response to the UK Government's consultation on regulatory reform, the GMC had pressed for automatic erasure for crimes such as murder, rape and paedophilia, and not for gross negligence manslaughter or culpable homicide.
  - The Forum considered the question of what is public interest and whether criminalising medical error helps to reduce incidences, and members reflected positively of the approach taken by the Crown Office and Procurator Fiscal Service in such cases.
  - Members highlighted the importance of ensuring that the views of BME doctors are properly sought and considered as part of the review.
  - The Forum noted the Scottish Law Commission is currently undertaking a review of culpable homicide (the Review of GNM and CH is discussing this with them). In subsequent discussion it was questioned whether there was an issue of equality

for doctors on the differing legal thresholds at either side of the Scottish/English border.

- Members reflected that the Scottish Parliament is considering the Health and Care (Staffing) (Scotland) Bill and noted a sub-group considering the Bill is looking at the area of escalation and raising concerns. It was acknowledged that the Bill is in its early stages so liable to change as it progresses.
- The differing status of formal cautions in Scotland and other parts of the UK and the implications for criminal disclosure in different jurisdictions was discussed. The GMC's Chair committed the GMC to revisiting the advice provided on its website as to the status of a police caution in Scotland. It was also suggested that more could be done with undergraduate and postgraduate students to train them on the status of differing legislation either side of the border.
- The Forum commented that this should also be something that could be picked up on for international doctors applying to join the register. The GMC's Interim Head of Scotland Office confirmed that she would take forward the suggestion of this being included in the GMC's Welcome to UK Practice Programme in Scotland.

## **AOB**

- 14 The Chair summed up some key points from the meeting, and thanking members, noted that the constructive dialogue on the agenda items underlined the importance of these meetings.
- 15 Stewart Irvine, NHS Education Scotland, said a few words of thanks on behalf of Forum members ahead of Sir Terence Stephenson demitting the post of GMC Chair.
- 16 He noted four areas of particular thanks:
  - Since taking on responsibility for the regulation of postgraduate education, the GMC speaking out about the system where needed and being a light-tough regulator.
  - The GMC recognising that the health system is under pressure and speaking up about system-wide issues.
  - The GMC making reforms to Fitness to Practise, with fewer investigations and processes becoming less burdensome.
  - The GMC's current commitment to devolution and its Devolved Offices. He noted that its excellent team in Scotland is a visual representation of this, and said this commitment is particularly important given ever diverging health policy across the UK.