

HOWLETT BROWN 

GENERAL MEDICAL COUNCIL

EXPERT REVIEW REPORT

13 OCTOBER 2022

A PEOPLE
INTELLIGENCE
COMPANY

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SECTION A

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. The purpose of the General Medical Council (“**GMC**”) is to “*protect, promote and maintain the health and safety of the public by ensuring proper standards in the practise of medicine,*”¹ and its functions are governed by the Medical Act 1983 (“**MA 1983**”). Recognising it undertakes high stakes work that can affect the public and registered doctors, GMC stakeholders seek assurance that its powers are exercised fairly. The GMC has periodically commissioned independent audits to evaluate fairness in its decision-making and its adherence to guidance.
2. The GMC appointed Howlett Brown in April 2022 to conduct an expert review evaluating its decision-making assurance work across its internal functions. Our remit was defined and detailed in the Invitation to Tender (“**ITT**”) document prepared by the GMC. In brief, we were asked to:
 - review the GMC’s past approach to auditing fairness in its decision making;
 - identify and report any learnings from our review;
 - report on findings related to the reservations of stakeholders that raised concerns and what they relate to; and
 - issue recommendations drawing on best practice and our expertise for the betterment of the GMC, to assist the design and implementation of its forward-looking programme of assurance and external audits including but going beyond the Fitness to Practise (“**FtP**”) function, mitigating any risks and alleviating any concerns from stakeholders.

We also considered E,D&I at the organisation from a structural, procedural and experiential perspective in order to provide holistic recommendations as referred to throughout this Report and in particular, Schedule 3.¹

[1] Please see Schedule 3 of this Report for further information regarding HB’s approach to reviewing E,D&I in the context of this Report.

3. Our Report was conducted in the following three stages: (i) Literature Review; (ii) Interview Phase; and (iii) Report Writing. The Literature Review allowed us to gain a thorough understanding of the GMC processes of registration, revalidation and FtP, including its audit process through looking at GMC’s policies, procedures, communications, and any other relevant documents from a governance and an E,D&I perspective. In the second interview phase we conducted a series of interviews both in group and individual settings based on four participant category groups, as follows:

- **Group 1:** GMC staff involved in auditing activities (individual interviews held with seven individuals)
- **Group 2:** GMC staff involved in key processes: Registration, Revalidation, FtP; and the GMC’s Employment Liaison Advisors, who are part of the Outreach team (group and individual interviews held with 13 individuals in total)
- **Group 3:** Key stakeholders, who are part of the Black and Minority Ethnic (“BME”) Doctors Forum and Strategic EDI Forum (group and individual interviews held). These forums/ organisations of groups 3 and 4 represent over 40 individuals.)
- **Group 4:** Doctors who have had experiences of GMC’s FtP process in recent years (group and individual interviews held with members of both forums and additional organisations. Group 4 participants were recruited via Group 3 contacts and were doctors who had experience of the FtP process.

4. During the third stage of our review, we analysed all the information gathered from the earlier phases. We distilled this information and communicated our findings and the key themes that emerged from our review in report form, answering the following questions:

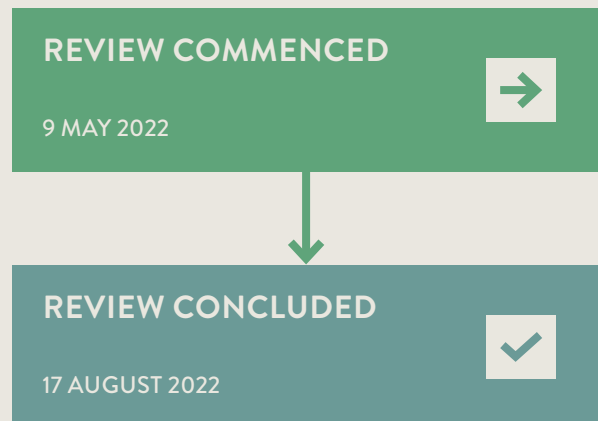
- How can the GMC improve its approach to commissioning independent external audits of its decision making? **(Research Question A)**

- How do key stakeholders view the GMC’s previous external auditing work? **(Research Question B)**

- Do the GMC’s key stakeholders perceive differences in the equality risks or sensitivities for its functions and do they believe this should have a bearing on the frequency or need of coverage by an external audit? **(Research Question C)**

5. As a part of our review, we also endeavoured to understand the GMC in the context of E,D&I. The GMC understands the importance and responsibility of its work to oversee UK medical education and training, set standards doctors need to follow throughout their career and, where necessary, take action to prevent a doctor from putting the safety of patients, or the public’s confidence in doctors, at risk. Its regulatory role is especially important in light of the disparities identified in the medical profession. The GMC reports that doctors from ethnic minorities are twice as likely to be referred to them by their employers for fitness to practise concerns than White doctors, and the referral rate for doctors qualifying outside of the UK is three times higher than that for UK doctors.²

6. Our findings in relation to the above research questions are summarised on the next page.



[2] <https://www.gmc-uk.org/news/news-archive/gmc-targets-elimination-of-disproportionate-complaints-and-training-inequalities>.

RESEARCH QUESTION A – How can the GMC improve its approach to commissioning independent external audits of its decision making?

7. We were provided with two previous audits and one review which have been undertaken externally in relation to the GMC's FtP function. In December 2014, Plymouth University Peninsula School of Medicine & Dentistry undertook an audit that aimed to identify instances of bias or discriminatory practise in GMC's FtP decision making and assessed the quality of GMC's decisions and decision-making process ("**Plymouth Audit**"). In July 2018, University College London, UCL Medical School reviewed the GMC's decision-making process around whether case examiners refer or do not refer doctors to the Interim Orders Tribunal ("**IOT**"), specifically looking at whether there was any bias against over-represented groups as well as investigating reasoning behind the decision-making process in terms of decision-making theories ("**UCL Review**"). In July 2021, Fieldfisher and the University of Edinburgh, Edinburgh Law School considered whether the decisions made by GMC decision makers at key stages of the FtP investigation process were consistent with the publicly available GMC decision-making guidance ("**Fieldfisher Audit**").

Together ("**Audits and Review**")

Sampling techniques

8. We considered the sampling techniques used in the previous Audits and Review. The Fieldfisher Audit considered three types of decisions; however, a perceivably small sample size of cases (when compared to the original sample frame) was ultimately considered for each category of decision through random selection using Excel. For example, the final sample for triage decisions represented only 0.67% of the original sample frame. Similarly, in the Plymouth Audit, a statistical software program was used to randomly select a narrow sample of cases at each decision point. We provide further commentary on how to achieve an appropriately sized sample in the relevant recommendation in the final part of this Executive Summary. The UCL Review also considered 120 cases which were provided by the GMC. However, we understand that the UCL Review was a pilot with the intention to move to a wider sample if it proved practical, which, we understand from the findings of the UCL Review, it did not. The practical difficulties involved "*in redacting and falsifying cases made it impossible due to the resources that would be required to progress to a full study with a large number of cases.*"³

[3] The UCL Review, page 4.



9. We understand that the GMC has been unconvinced that the use of comparators is a reliable approach based on the perceived challenge of finding comparator cases that are identical across key variables that extensive analysis (carried out by the GMC and others) has shown to relate to case progression and case outcomes and where allegations are of the same level of seriousness. We also understand that the use of comparator cases in case sampling has been debated internally by the GMC following the employment tribunal case brought by Mr Omer Karim (“OK”) against the GMC in which the tribunal found that Dr Karim had been treated differently to a comparator, Mr L (a White doctor). Though the GMC argued, in response to the tribunal’s decision, that the cases “*differed in key aspects*”, in order to be able to assess whether an individual has been treated as favourably as another individual (or group of individuals), or whether any less favourable treatment has been applied, it is essential to compare the treatment of different individuals. This is especially true given that the Equality Act 2010 (“EA 2010”), which governs issues regarding discrimination in employment law, requires an individual to compare the treatment they have received with that of someone who does not have the same protected characteristic but whose ‘material circumstances’ do not differ, in order to prove that they have been discriminated against. The GMC would benefit from amending its approach to commissioning external audits by increasing the size of the sample of cases that are externally audited together with using comparator cases as a part of its methodology and practice. The benefit of this recommendation is discussed in further detail in the final section of this Executive Summary. This notion was reiterated by a Group 1 staff member, who stated, “*every case has a nuance but to say we can’t look at comparable cases where allegations have been similar makes no sense.*”

Provision of files to auditors

10. We identified that the GMC’s approach to how files are provided to auditors presents a risk as to the efficacy of the audit and assessment of the decisions made. Group 1 participants shared that the GMC currently extracts key documents that are related to the decisions being audited and formats the documents into a PDF, which must then be redacted to protect confidential and personal patient data before being given to the auditors. If external auditors require further documentation, the GMC will redact that documentation and provide it accordingly. They shared that these files are known to reach 10,000 redacted pages in some cases. The UCL Review observed that “*the volume and sequencing of documents was sometimes a hindrance in their ability to review cases efficiently*”. We note this approach likely creates time and cost inefficiencies for the GMC and could potentially risk failing to uncover any bias that may already exist, such as within the documentation of decisions made (visible or redacted), in the auditing process or cause the background of certain decisions to be overlooked due to document sequencing. For example, external auditors could find it challenging to consider all available and relevant evidence when making their assessment of whether or not a decision was made fairly if the document volume is extensive, incorrectly sequenced and the time requirements to conclude the audit are challenging to meet. We understand that the GMC sought legal advice and guidance for aspects of its process in late 2018 to early 2019 therefore, we recommend that the GMC review and assess the advice further.



We consider that the GMC may be able to share documents with external auditors which contain fewer redactions while still remaining compliant with relevant data privacy laws. Given that streamlining this process will require the GMC to balance its approach alongside data privacy and confidentiality risks, we have therefore set out the applicable data protection law requirements to assist the GMC in considering an evolution of its position in the main body of the report. Having a baseline methodology that is consistently applied by the GMC and, in turn, the auditors limit the risk and potential for documents to be missed (either not issued to or reviewed by the auditor), mitigates the assumptions to be inferred and reduces the risk of bias arising when reviewing documents in the wrong sequence.

Frequency of audits

11. Whilst a balance will need to be struck between cost and the number of audits commissioned, we consider that the GMC would benefit from a more structured and consistent approach to the frequency of audits. The previous Audits and Review were conducted at four year and three-year intervals and did not appear to be intended or run as a regular occurrence. We have provided a detailed recommended approach to planning the frequency of future audits in the final section of this Executive Summary.

Scope of previous audits

12. The Audits and Review were limited to whether decisions makers had followed decision-making guidance when determining an outcome. The Audits and Review did not consider whether the guidance was fit for purpose to facilitate decision grounded in fairness. We acknowledge that the scope of audits is likely to be under review by the GMC as the ITT for the planned audit of the registration process (“**Planned Audit**”) proposed to analyse the fairness of decisions in the GMC’s registration procedures with a wider scope. We have also identified further areas within scope that could be considered as a part of an external audit (for example, (i) the detailed review of decision-making guidance, (ii) a specific focus on whether E,D&I considerations have been included within decision making processes, and (iii) discussions and commentary shared between decision makers) which are discussed in the body of the report and in the Report’s final recommendations.

Detailed review of GMC decision making guidance

13. The GMC would benefit from an audit review and restructure of its decision-making guidance to ensure that it is reflective and considerate of ongoing legal updates (i.e., outcomes of relevant employment tribunal decisions) and any societal and -cultural trends of notable importance (such as societal challenge to terms and language to describe demographic groups), updates or nuances that may have an effect on the medical profession and professionals. We reviewed a selection of the GMC’s decision-making guidance and identified several inaccuracies and potential issues, which we recommend the GMC carefully consider when reviewing their decision-making guidance in the future.

Choice of external auditor

14. Further to our consideration of the Audits and Review, our view is that the GMC should consider its existing approach to choosing auditors to ensure that auditors have a breadth of relevant expertise and limit possible questions of independence of the auditors. Whilst we note that the GMC undertakes extensive proactive work to try and encourage organisations to bid for auditing work and must contend with the reality of currently having a smaller reach to auditors that meet its minimum quality threshold, we still noted that there was scope for improving diversity amongst the past auditors appointed to undertake the Audits and Review, including in relation to (i) having expertise in E,D&I; and (ii) having more diversity in the teams conducting the audits. These points were also raised by several participants in Groups 3 and 4, in particular about impartiality based on their perceptions of the existing relationships between the GMC and chosen auditors and a lack of diverse representation among the auditing team. We recommend the GMC consider establishing a panel of auditors over time, to ensure that the selection of auditors is representative and diverse, and they possess a combination of expertise and skills to effectively identify the nuanced and multi layered factors during a review and support the GMC’s goal of achieving consistent fairness in its decision making, including bias.

RESEARCH QUESTION B – How do key stakeholders view the GMC’s previous external auditing work?

15. Stakeholders that we spoke to generally appeared to be unaware of external audits that had been performed and those that were aware, had rarely read or known about the content of the Audits and Review. Those few individuals who were aware of the Audits and Review, commented on a perceived a lack of “independence” and impartiality in the audit process, particularly concerning the GMC’s role in the auditing process with the appointed third party. One participant shared “*Anything that the GMC itself arranges to prove it is not doing anything wrong is just an eyewash process*”, questioning how meaningful the exercise was.
16. Various participants also expressed that the outcome of the external audits, which concluded that the GMC is not biased in its decision making, was not representative of their lived reality. A significant number of stakeholders referenced ongoing concerns, such as the disproportionality of ethnic minority doctors who are referred to the GMC and the racism faced by doctors at work from patients. To this effect one participant said “*there are issues remaining in terms of how things can be improved. Not much has changed on the ground.*” In order to respond to stakeholder views and mitigate the potential of those views to garner greater weight over time, we have provided a recommendation for the GMC to consider consulting further with stakeholders during the commissioning of audits. This will assist the GMC in having a better awareness at that particular time of concerns that may be included within an audit scope.
17. As the GMC audits are often funded by the annual fees that doctors pay, Group 3 and 4 participants expressed their frustration in that they did not see the value in the external audits and in how the GMC supported their professional lives. One participant said, “*they need to show that they have listened to the profession in terms of how they have established those assurance processes so when they come out with findings, it would add confidence.*”
18. In our conversations, stakeholder participants generally remained unconvinced that the MA 1983, which governs the GMC’s procedures, was fit for purpose and sufficient to achieve the substantial changes required to improve the decision-making procedure at local or GMC level as well as improving the lived experiences of doctors. One participant shared “*I think the way the GMC looks at itself, it likes to present itself as untouchable because it’s holding patient safety in its hands, and it is protected by legislation.*”
19. Procedural fairness before and after a referral to the GMC was also raised by the majority of participants. This was unsurprising, given the strong stakeholder response to a recent high-profile FtP case. Various group 3 and 4 participants commented on a lack of clarity and lack of support provided by the GMC during an FtP investigation and felt that the procedure was not sufficiently inclusive or considerate of cultural differences and E,D&I factors. Such participants spoke about risks to mental health and insufficient regard for the personal lives of doctors.
20. Several participants also perceived an imbalance of power during investigations given that the GMC understood its own processes far better than the doctors. Concerns were also raised around the conduct of employer organisations, the relationship between Employer Liaison Advisors (“**ELA**”) and Responsible Officer (“**RO**”) and whether this posed a risk of bias during the referral processes. One GMC staff member shared their thoughts in reference to the GMC as a collective and where it, as a regulatory body, could potentially scrutinise further in the context of an audit looking at the fairness of decision making: “*Should we, the GMC look harder at what colleagues do? We have a team of employer liaison advisors, which the RO can turn to and report any regulatory matter. Are ELAs biased? Do they recognise their own inherent biases?*” The concern that ELAs may at times express bias or do not recognise their own bias was, on a number of occasions, referred to as a reason for distrust in the GMC in respect of its decision-making processes. Several Group 3 and 4 participants shared that the GMC needed to improve its general transparency regarding its process, in order to gain the trust of the profession and to demonstrate how it was tackling issues and making processes fair.



RESEARCH QUESTION C - Do the GMC's key stakeholders perceive differences in the equality risks or sensitivities for our functions and do they believe this should have a bearing on the frequency or need of coverage by an external audit?

21. Group 3 and 4 participants shared their concerns about the processes which take place at local level and whether they were robust, fair and unbiased enough to yield fair decisions ahead of the GMC's involvement. There was no specific participant commentary around whether the GMC's internal processes should be subject to a different degree of independent audit activity. However, the findings in our Report indicate that there may be further work to be done by the GMC to remedy ongoing challenges, such as disproportionality of referrals, a lack of procedural transparency and impartiality. We note that the GMC are aware of this and has made positive progress in light of these existing issues and continue to do so. In order to bolster this progress, we also recommend, as the GMC had planned to accommodate following our review, that an external audit should be performed for the registration and revalidation processes as this has not previously happened. This will allow the GMC to level set its external auditing across its decision-making processes, identify and understand any gaps in the revalidation and registration processes, so that it may address these in a consistent manner. Based on some of the concerns participants have raised during interviews, it is possible that future audits will highlight gaps and issues for the GMC to consider and this will inform how often audits for all processes will need to be performed. We address in our recommendations our views on how often audits should take place in further detail in the final section of this Executive Summary and the final section of this Report.
22. In respect of the commentary we did receive, some Group 3 and 4 participants felt there was a disconnect between the GMC and the wider medical profession and queried that the GMC may not fully comprehend and take into account the systemic and procedural issues which take place at organisations which employ doctors, that had a direct effect on the ways doctors worked and on the disproportionate number of referrals of ethnic minority doctors. In that spirit, one participant shared, *"What I don't like is when the GMC are being asked to judge a person without looking into the whole thing – it is a system failure [...] They are not focusing on the system failures, but they are focusing on the individuals."*
23. Another area that came up in several interviews with Group 3 and 4 participants was around the disparate experience of International Medical Graduates ("IMGs") compared to UK medical graduates. Concerns were raised about the GMC's lack of understanding towards the needs of IMGs and ensuring that they are well equipped to work and understand the UK healthcare system, especially during the registration process and through the coronavirus pandemic. In illustration of this one Group 4 participant shared *"internal practices are better for the local medical graduates. IMGs are disadvantaged and discriminated against."*
24. The final theme raised by stakeholders concerned procedures and participants shared comments which raised challenges around the GMC's perceived legalistic and process driven attitude within FtP cases and a perceived general lack of empathy towards doctors. Participants also expressed their perception that the GMC tended to have an unfair advantage over individual doctors who were being investigated, due to its depth of familiarity of its own process and ability to manage and navigate the process in comparison to some doctors who have, to their detriment, found it difficult to navigate the GMC's decision-making process and represent themselves appropriately. One participant, in speaking about their experience, noted *"They agree next steps in the investigation, but then take 4/5 weeks to do [anything], that too without any communication - they are silent. It's like bullying or harassment."* The point we observed being made here is that the GMC, as the party leading an investigation, was inevitably in control of procedural timelines which is not unexpected, particularly concerning complex or large investigations, but emphasises the importance of communication with individuals regarding the stages of the process in a manner that ensures their awareness, sense of support and preparedness.

RECOMMENDATIONS

25. We have suggested a number of recommendations for the GMC to consider in its future commissioning approach. We have categorised our recommendations in to three areas, to be considerate and realistic of time and costs, and the practicality of implementing these recommendations:

- (1) Critical recommendations;
- (2) Essential recommendations; and
- (3) Recommendations to strongly consider.

The critical recommendations represent those that the GMC should and can implement immediately to update its approach to commissioning external audits. The essential recommendations are those that we find necessary but can be implemented over time. Finally, the recommendations to strongly consider are those that do not require immediacy but, over time, can be reviewed and implemented according to time, cost and practicality.

CRITICAL RECOMMENDATIONS

Establish and agree a wider scope when commissioning future external audits

26. A wider scope will improve the accuracy of external audits, ensure that critical issues which can negatively impact decision-making fairness are flagged quickly, provide greater transparency about how effective the decision-making processes for each function are and what improvements can be made to strengthen the fairness of decision making and ameliorate doctors' experiences. The guidance (i.e., the ITT) provided to auditors concerning the scope must be clear and should look to include the following elements for auditors to review (where applicable):

- **Consideration of day-to-day decision-making discussions** - for example, conversations between and commentary from ELAs to ROs during the FtP referral process or discussions between case examiners at case review meetings that could possibly affect the outcome of a final decision. This would ensure that an auditor has full overview of how any final or interim decision leading up to the final decision was made. Our review of the Audits and Review showed that the scope did not include a review of the notes of internal discussions and advice shared between decision makers such as between case examiners or between ELAs and ROs, in order to determine final decisions. The Plymouth Audit identified that:

“There may be an informal or unrecorded element to the decision-making processes in the FtP procedures in the form of discussions



between colleagues which are not fully recorded in case files. Although not unusual or unexpected in a workplace, in a process as high-stakes and contested as FtP procedures, such discussions may raise questions about their impact upon decision outcomes – although none was identified in our review – and about the extent of transparency and accountability of the process.”⁴

Including notes of internal discussions for audits and reviews will likely provide helpful insights when assessing the fairness of decision making and the recommendations for future audits. By considering the effectiveness of all discussions and commentary shared in decision making processes (incremental decisions or otherwise) as part of the scope of an audit, the GMC would likely be able to address and mitigate any personal biases and/or heuristic processing that may arise in part or aspects of future decision-making processes and audit processes. Where these deliberations are not documented, auditors will be limited in their ability to robustly assess decision making which on balance, may undermine its findings and recommendations. The UCL Review also identified that decisions makers tended to rely on authority during the referral assessment and investigations in the FtP process.

The UCL Review, in citing the risk of heuristic processing, found that *“where cases included expert reports or documents from the police, these were described as potentially credible pieces of evidence that case examiners would actively hasten to find and review among files.”⁵*

This observation aligned with certain staff participant responses during the interview stage for this Report which stated *“I want all of us – all of the staff to be very alert to the potential of bias and things that come to us. I think we as an organisation and my team suffer from authority bias.”* We were informed by participants that decisions of internal audits or case review meetings completed at team level were not included in the scope of any previous external audits. The Fieldfisher Audit acknowledged that it was *“aware that the GMC has separate audit and quality assurance processes that review this work,”* and focused on the decision making at the end of key stages in the decision-making process. These observations support the requirement for the GMC to ensure that the scope of a future audit must consider decision making fairness, in a manner that is inclusive of notes of internal discussions and advice shared between decision makers. It is noted that this information may not have been historically recorded in Siebel, however the GMC should consider doing so, going forward.

[4] The Plymouth Audit, page 8.

[5] The UCL Review, page 10.

- **Review of Equality Impact Assessments (EQIA) and/or other relevant checks and balances in decision making** - whilst we understand that it would be impractical for an EQIA to accompany every decision made, should the result of the GMC's ongoing work on fairness (which includes this Report) find that additional checks and balances should be built into the decision-making process to ensure fairness, then such checks that have been documented and any completed EQIAs, should be included in the document scope of any external audits. This could be achieved practicably with the inclusion of two or three questions (known as "decision equality checkpoints" An external auditor should probe whether E,D&I or cultural factors have been considered when making a decision and what those were through auditing the checks and balances that are undertaken (should these become part of the decision-making process in future).
- **Sample of referral forms** – we recommend that a sample of the referral forms used by ROs should be routinely analysed for gaps, issues of bias or lack of consideration around E,D&I factors or systemic issues which go beyond the control of the doctor in question but have a consequential effect on their practice and actions. This would serve to improve the GMC's understanding of whether the local level referral process is a possible cause of unfair decision making and if so, which employer organisations are involved to help the GMC regulate more effectively.
- **Inclusion of GMC decision making guidance** – each of the Audits and Review differ in the way that they consider the GMC decision making guidance within their scope of review. For example, the Fieldfisher Audit did not audit the contents of the GMC's decision-making guidance (however we understand that this was at the direction of the GMC),

whilst the UCL Review focused mainly on the GMC Interim Order Tribunal referrals guidance and the Review assessed IOT decisions. Both audits considered whether the decision-making guidance had been followed correctly by decision makers and not whether the guidance was appropriate in the circumstances or if the guidance was a factor in potentially undermining the fairness of the decisions made. Conversely, the Plymouth Audit focused on the decision-making guidance and analysed a selection of GMC's decision-making guidance which may "*contribute to the overrepresentation of some demographic groups of doctors in the FtP procedures, impact upon the progress of doctors through the system, or the eventual outcome of their cases due to their particular demographic characteristics*".⁶ Whilst the result of the Plymouth Audit confirmed that there was no evidence of bias or discrimination practised in GMC's decisionmaking guidance, it still recommended the need for greater transparency and for the GMC to explain how the decision -making guidance should be used to determine decisions. In addition, the UCL Review suggests that "*case examiners wanted clear examples to be included in the guidance that would help them resolve challenging cases.*"⁷ This demonstrates that it would be helpful for the GMC to allow external auditors to also review and assess decision making guidance in its pursuit of gaining assurance for fairness in decision making across its processes and better equipping decision makers in making fair decisions.

[6] The Plymouth Audit, page 30.

[7] The UCL Review, page 23.

27. We also recommend including in the scope of external audits an additional E,D&I and capability lens to the process are as follows:

- **Consideration of E,D&I factors** – auditors should be instructed to consider how well E,D&I is factored into decision making processes across the GMC’s internal functions. An example of how this can be achieved is to scrutinise the GMC’s decision-making guidance and the practical application of it, for inherent biases or lack of consideration from an E,D&I perspective. The GMC in its E,D&I 2022 targets⁸ focuses on ensuring that it is not contributing to discriminatory outcomes in decision making and its commitment to making its processes transparent and considerate of equality issues. Some of the Audits and Review commented on possible E,D&I concerns when considering the fairness of decision making within the FtP process, as referenced above. For example, the UCL Review noted how “heuristic” processing may negatively affect the way decisions are made but concluded that GMC staff used heuristics that were grounded in GMC guidance and were appropriate. The Audits and Review each concluded that there was no evidence of bias in the way that decision makers interpreted the decision-making guidance. To ensure a streamlined approach in determining the scope in future external audits, we recommend that all tenders instruct external auditors to consider E,D&I factors, such as contextual insights, bias and equality and equity risks, when assessing the fitness of decision making. Whilst the GMC has demonstrated this in the tender for the Planned Audit , we recommend that examples of potential bias and unfairness that can occur in decision making are included as guidance to (i) help auditors understand the types of issues they need to identify and notify the GMC of; (ii) assist potential auditors to assess whether they have the capability and specialist expertise to undertake the work required; and (iii) provide context about

the specific issues that an audit is trying to resolve.

- **Role of ELAs** - the GMC should review its approach to auditing the controls around fair decision making in respect of the provision of advice to ROs to further support the mitigation of bias and ensure fair decision making. External auditors should also review whether the GMC guidance is adequate to enable ELAs to operate in an unbiased manner. This can be assessed by speaking to a sample number of ELAs throughout an audit period to ensure that this part of an audit is time and cost effective.



[8] Equality, diversity and inclusion targets, progress and priorities for 2022, GMC.

Undertake a review of the drafting of GMC decision making guidance and referral related documents and ensure the guidance documents are grouped practically for accessibility and consider frequency of future reviews

28. This recommendation offers the GMC the benefit of creating a more streamlined approach in ensuring that GMC decision making guidance is clear and free from inherent biases and is comprehensible, accessible, and helpful to decision makers in their deliberations and doctors who are going through the GMC process. There should be a set process in providing a full suite of decision-making guidance together with clear explanatory and troubleshooting notes at the time a future external audit is commissioned.
29. We would also recommend that the GMC extend their considerations to the following suggestions: (i) auditing the guidance on a routine basis to ensure it is up to date and devoid of biases, inconsistencies and ambiguities, (ii) consider audio versions and different language versions of decision-making guidance representing good D,E&I practices⁹; (iii) ensure that examples and case studies that are contained within the decision making guidance are clear and consistent, and develop an archive of case studies on its website, for reference with guidance on assessment attached; and (iv) should the GMC undertake the review of decision making guidance, it should consider routinely reviewing such guidance alongside any additional documentation relevant to process (such as the Referral Form).

Set a consistent frequency for commissioning external audits

30. We recommend that audits of the registration and revalidation functions take place within a reasonable time period as planned the by GMC, given that no external audits have yet taken place for these processes. We would suggest that the GMC consider 2023 as a reasonable period to conduct the combined audit. Following this, we recommend that the GMC conduct an internal review of each internal process, lessons learned and insights from the audits, including the FtP, revalidation and registration functions, to allow the GMC to level set across the processes and review them in a consistent manner all at the same

time ("Initial Audits"). This does not mean a re-auditing of those functions but a review to level set across each and ensure consistency of practice where relevant to support fairer decision-making processes and mitigate bias where relevant in each of these functions. Subject to internal costs, practicalities and logistics, the GMC could conduct follow up audits at reasonable intervals that it determines and manages. We suggest a biennial frequency to its audits of the decision-making processes ("**Biennial Audit/s**") based on our expertise, particularly for processes that have not been routinely and regularly assessed; this also allows for the balancing of resources, cost, time and stakeholder perspectives. The scope of the Biennial Audits could possibly be informed by issues raised in recent cases, so that the GMC are able to keep on top of and rectify any potential challenges or lessons learned to the fairness of decision making, rather than a full end to end audit every two years.

31. Within the Initial Audits and Biennial Audits, the GMC should build in a mechanism, by which decisions that are concerning will be flagged for escalation outside of the usual audit process ("**Red Flag Mechanism**"). For example, the Red Flag Mechanism should pick up nuanced or bespoke cases or ones that are challenged by the profession.. The Red Flag Mechanism will not erode the need or ability to have the Biennial Audits, if necessary, but it will hopefully provide the GMC the opportunity to be flexible on how large scale its Biennial Audits may need to be. These red flag decisions will then inform smaller, discreet assessments that can take place to succinctly assess vulnerabilities that have been highlighted by the larger audit. Based on this Report, we envisage that external audits for separate stages of decision-making across the processes where there is risk that fairness is compromised could be helpful, as these more focused audits can be carried out on an ad hoc basis to allow the GMC to have flexibility in responding to issues, insights and reflecting how they might impact the auditing processes. This recommendation looks to achieve greater time and cost effectiveness, transparency and more reliability in auditing so that the GMC can rely on its external audits as a checkpoint for itself without doubt.

[9] And based on any applicable data it has which details the most spoken languages of doctors in the UK.

Review the method of sampling used in external audits

32. We recommend that the GMC use sampling and comparator cases in an external audit that is looking at fairness in decision making. The two methods are recommended for use in audits. For example, the use of sampling would ensure that an adequate and reasonable sample size has been allocated for review. Following the sample selection, the auditor would review cases in the usual way and also pay greater attention to any comparator cases to assess and compare decisions made.¹⁰
33. In terms of using comparator cases, consistent demographic data and insight from previous decisions should first be used as markers by external auditors to check where there is consistency across sanctions, across demographics. The GMC should take the legal approach used in Employment Tribunal discrimination cases and the Equality Act 2010 as an example of how a comparator is used to assess fairness in employment law and build that into the methodology of the audit itself. This will help to futureproof process and mitigate bias.
34. In respect of ascertaining a relevant sample size, we acknowledge that there is no defined acceptable practice when determining an appropriate sample size across all manner of assessments, sectors and industries. Therefore, we have recommended a possible option for the GMC to consider when ascertaining its sample sizes for audits below, notwithstanding possible resource and informational governance constraints that may make this approach difficult to implement.
35. In order to calculate a sample size, we recommend that the GMC consider (i) the confidence level (which equates to how certain the population figure is within the sample estimate and its associated precision), (ii) the margin of error (i.e., the plus or minus figure which represents the level accuracy of any findings.); (iii) the population size (in this case the total amount of decisions being reviewed); and (iv) the standard deviation (i.e., a decimal value which refers to how much each decision will vary preferably in the range of +/- 2).

Once those elements are deliberated, the sample size can be adduced through a calculation which considers the desired confidence level (the most commonly used confidence level is 95%),¹¹ population size, margin of error (5% is typical) and standard deviation. An example of this calculation in practice is as follows: in the Fieldfisher Audit, a sample of 80 triage decisions were reviewed, but only represented 0.67% of the original sample frame, which had originally consisted of 11,903 decisions. Applying the aforementioned calculation, (i.e., a confidence level of 95%, a rounded-up population size of 12,000 and a 5% margin of error) the ideal sample size would have been 373 decisions and not 80 decisions. Therefore, a larger sample size is recommended in external audits because, on balance, this likely helps to mitigate against margins of error and provide results that are statistically robust and accurate, further strengthening the decision-making audits which the GMC commissions and relies upon.

Assess its data privacy position and ensure that it is fully compliant in collecting special category data

36. It is recommended that the GMC assess its current data privacy position and the legal advice that the GMC obtained and follows, to ensure that the GMC is fully compliant in collecting special category data (relating to a person’s racial or ethnic origin, political opinion, religious or philosophical beliefs, trade union membership) so it can feel reassured in sharing unredacted information with auditors. This will undoubtedly improve and streamline that way in which information is provided to auditors and external audits are organised and managed in future.

To adjust the audit process for more ease, transparency and efficacy

37. We recommend that the audit process is adjusted in the following ways, to achieve more ease, transparency and efficacy and reduce the margin of error or duplication:
 - Allow external auditors access to a secure ring-fenced area of GMC’s secure system, Siebel. This would create a confidential space

[10] Please see paragraph 72-81 of this Report for more discussion on the evidence behind this recommendation.

[11] <https://www.qualtrics.com/blog/calculating-sample-size/>; <https://mathworld.wolfram.com/ConfidenceInterval.html>.

and allow the GMC to electronically transfer or copy relevant documents for auditors.

- Organise documents within this ring-fenced area of Siebel to ensure that auditors clearly understand which documents relate to which stage of the decision-making process.

Remove restrictive word counts on external auditors

38. This recommendation is to remove restrictive word limits of 15,000 words in order to create a more flexible approach for external auditors. This will allow their expertise to be utilised properly and ensure that an audit is as thorough and complete as possible but remove any limitations on external auditors where an in-depth analysis may be required that extends beyond the prescribed word limit.

ESSENTIAL RECOMMENDATIONS

Expand the choice of external auditor based on their specialist expertise and create a panel of auditors over time

39. We note that independence of auditors is difficult to achieve in any industry and for the GMC, it has historically been challenging to find external auditors who meet the minimum criteria threshold and equally have the relevant expertise to undertake an audit. This recommendation will assist the GMC to continue to build professional relationships with a range of auditors, become familiar with their work and vice versa and provides a solution to the challenge in finding suitable auditors to undertake audits for the GMC specifically. Overtime, we recommend that the GMC create a panel of trusted auditors that have a wide range of relevant expertise (across the regulatory and healthcare industry and E,D&I) that it has established relationships with and solely engaged for external auditing. External auditors should be able to demonstrate how they are able to meet the demands of the GMC and how they would balance governance, law, E,D&I, culture and addressing controls failings to varying degrees that are bespoke to the particular needs and practices of the GMC. The GMC could also mandate in the creation of its audit panel that each auditor demonstrate that they are up to date on developments in the E,D&I sector.

40. To vary its existing approach, the GMC should look for key markers to confirm potential auditors. Based our expertise, some of the following key traits, among others, often identify someone with a solid understanding of E,D&I and governance issues: they have a strong understanding of the governance framework of the company they are auditing, they will be skilled in deciphering where exclusions and barriers might exist within the structure of an organisation, and they are able to influence and manage stakeholder conversations.

RECOMMENDATIONS TO STRONGLY CONSIDER

GMC to build on stakeholder engagement and involvement in external audits

41. We recommend that the GMC build on its efforts to engage more effectively with its stakeholders to encourage greater collaboration and for the profession to have significantly more trust in the GMC. For example, the GMC could use existing channels to communicate with external stakeholders about future audits by using a set method to ensure consistency. In practice, this could mean having an online survey every time an audit is proposed, which gathers stakeholders' feedback and suggestions of auditors and areas of audit to focus on and then having a brief meeting for the GMC to present findings from those responses. This will allow the GMC to demonstrate how it has used or will use the responses in the commissioning of an audit including identifying areas of continuing concern which would benefit from an audit.

SECTION B

ABOUT HOWLETT BROWN

ABOUT HOWLETT BROWN

42. Howlett Brown is a people intelligence company specialising in investigations, culture, E,D&I and people advisory solutions. We exist to support and advise organisations so that they may operate their business in an environment where their people risk is low and their inclusion, integrity and purpose thrive.
43. We are uniquely placed for reviews of this kind. We are the only company in the UK with global, multi-jurisdictional and cross-industry expertise that provides a holistic and blended approach to E,D&I and culture services with legal, governance, compliance, communications, and risk mitigation support. We work by pulling together these various skills and disciplines to provide unique insights and depth to our reviews. Each piece of work is tailored for the specific client and situation that it is for. Each review is bespoke to fit the context and circumstances. We approach the work with care and attention to detail.
44. We are authorised by the Solicitors Regulation Authority (“**SRA**”) which means that we are uniquely placed to undertake reviews of this nature and assess legal, governance, cultural and strategic risks. Because of our status with the SRA, we have regulatory standards and requirements to uphold that surpass commercial standards and expectations unlike other governance or diversity and inclusion providers, ensuring that our clients always obtain the highest standards of service and support.

SECTION C

METHODOLOGY OF HOWLETT BROWN'S
EXPERT REVIEW OF THE GENERAL
MEDICAL COUNCIL'S DECISION MAKING
ASSURANCE WORK

THE STAGES OF REVIEW

45. The detailed public tender document prepared by the GMC (“ITT”) defined our remit, which was to review the GMC’s past approach to auditing fairness in its decision-making and identify and apply any learnings to the future commissioning of external audits across the GMC’s core functions, being its registration, revalidation, and FtP processes.
46. Our review was conducted in the following three stages: (i) Literature Review; (ii) Interview Phase; and (iii) Report Writing, with regular check in meetings with key contacts at the GMC throughout the process.
47. The Literature Review allowed us to gain a thorough understanding of the GMC processes of registration, revalidation and FtP, including its audit process. It involved looking at GMC’s policies, procedures, communications, and any other relevant documents from a governance and an E,D&I perspective. This review had a dual purpose; to deepen our understanding of the structural and procedural aspects of the GMC’s audit process; and to assess whether such documentation and practices meet relevant legal, cultural, governance and E,D&I standards and expected best practices in this regard, while addressing any specific areas of concern, risk and/or potential vulnerabilities within the remit of this review. We also considered the tone and language used in such communications, guidance and processes to determine whether the documents and practices are aligned or in conflict with the aims, the objectives, and purpose of the GMC. We considered information and documentation set out in Schedule 2 of this Report.
48. This review also included the Interview Phase. For this phase, we conducted a series of focus groups and interviews based on four participant category groups, as follows:
 - **Group 1:** GMC staff involved in auditing activities.
 - **Group 2:** GMC staff involved in key processes: Registration, Revalidation, FtP; and the GMC’s Employment Liaison Advisors, who are part of the Outreach team.
 - **Group 3:** Key stakeholders, who are part of the BME Forum and Strategic EDI Forum.
 - **Group 4:** Doctors who have had experiences of GMC’s FtP process in recent years.



49. In relation to Group 1, we held seven individual interviews with GMC staff. For Group 2, we held a mixture of group and individual interviews, covering a total of 13 individuals. For Group 3 and Group 4 interviews, both the Strategic EDI Forum and BME Doctors' Forum, as well as some additional organisations, were invited to interview. These forums/organisations represent over 40 individuals, who were all invited to participate.
50. For Group 3, we held one group interview which was attended by three individuals and held individual interviews with three other stakeholders. For Group 4, we held two group interviews attended by six individuals and individual interviews with three doctors.
51. During our individual and group interviews, we learned about participants' experiences and their perceptions of the GMC. The topics and questions discussed were drawn from information about the GMC's purpose and strategy gathered during our literature review (including any themes that arose from this review) and the ITT. From these discussions we identified any overlapping themes and points that should be raised with the GMC within the remit and mandate of this review. This coupled with the data and analysis from the literature review helped us to build a more robust and detailed picture of the practice, perception and impact of the GMC's approach to decision-making when conducting an audit and the extent to which E,D&I is affected by it.
52. During the third stage of our review, we analysed all the information gathered from the earlier phases. We presented our findings and the key themes that emerged from our review in this Report, answering the following questions:
 - How can the GMC improve its approach to commissioning independent external audits of its decision making? (**Research Question A**)
 - How do key stakeholder view the GMC's previous external auditing work? (**Research Question B**)
 - Do the GMC's key stakeholders perceive differences in the equality risks or sensitivities for our functions and do they believe this should have a bearing on the frequency or need of coverage by an external audit? (**Research Question C**)
 - In light of the answers to questions a, b and c, what would be the key elements of the GMC's

- tendering approach, coverage and frequency for a rolling programme of external fairness audits? (**Research Question D**)
- Do stakeholders believe as to whether there are any gaps in the GMC's assurance activities? (**Research Question E**)

53. In this Report, we have provided actionable and measurable recommendations for the GMC that draw on best practise and our expertise, to assist the design and implementation of the GMC's forward-looking programme of assurance and external audits beyond but also inclusive of the FtP function.

LANGUAGE

54. E,D&I-related language is ever-evolving, and some terms that were acceptable a few years ago now spark tension and debate. Some of the terms used in this Report or in quotes by participants may not be well understood by all readers. Therefore, it is important to explain what these terms mean and the basis on which we have defined these key terms for our review and assessment purposes. The terms have been set out and defined for clarity in Schedule 1, Glossary of Terms.

WELLBEING & SAFETY OF PARTICIPANTS

55. We recognise that some of the topics we discuss in interviews can be difficult or triggering for participants. These include participants sharing their personal experiences and their treatment. We take participant safety very seriously in all our interactions with participants.
56. We explained to each participant that our conversation with them were a safe space to share insights and experiences. We encouraged them to speak freely whilst being mindful of others in the (virtual) room (if relevant) and anyone they mentioned. We shared with participants that identifying themes, findings and recommendations for the GMC may include quotes from individuals on an anonymous basis.

SECTION D

THE GENERAL MEDICAL COUNCIL
IN THE CONTEXT OF E,D&I

THE GENERAL MEDICAL COUNCIL
IN THE CONTEXT OF E,D&I

57. The GMC is the regulatory body for the medical profession in the UK whose powers and duties are conferred upon it by the MA 1983.¹² The GMC’s remit is to “*protect patient safety and improve medical education and practise across the UK*”¹³ by promoting the health, safety and wellbeing of the public, public confidence in the medical profession and proper standards of conduct for doctors. This includes the GMC having the remit to decide which doctors are qualified to work in the UK, oversee UK medical education and training, set the standards that doctors need to follow throughout their career and, where necessary, take action to prevent a doctor from putting the safety of patients, or the public’s confidence in doctors, at risk.
58. From speaking to GMC staff through various interviews, we understand that the GMC’s rolling programme of internal audits are undertaken by staff and aim to evaluate its processes. We also understand that the GMC has developed a Data Explorer dashboard on its website which allows the public to access the GMC’s live data to explore patterns and trends in its data on the makeup of the medical register, revalidation, doctors’ training and fitness to practise. The GMC also produces a yearly report with an overview of trends and patterns of the state of medical education and practice in the UK and much of this data relates to doctors’ demographics.
59. The GMC periodically commissions independent audits and reviews from external parties such as Fieldfisher, Plymouth University and UCL Medical School to evaluate its decision-making fairness which have focussed on the GMC’s FtP function.
60. The GMC aims to implement a structured rolling program of regular audits that includes but also extends beyond an evaluation of the FtP function using the analysis and recommendations from this review. The GMC acknowledge that the Audits have generally provided the GMC with a “*clean bill of health*”, however they are keen to continue efforts to ensure that their audits and future rolling programme demonstrate fairness.
61. The GMC’s Corporate Strategy 2021-2025 details its aim to “*make fairness a central platform of everything they [the GMC] do*”. This strategy establishes the following four areas as priority for action:
- fairer employer referrals to eliminate the disproportionality in terms of ethnicity and primary medical qualifications for fitness to practise referrals from designated bodies by 2026;
 - fairer training cultures to eliminate racial and ethnic discrimination and disadvantage by 2031;
 - encouraging internal inclusivity and engagement;
 - a review of regulatory fairness around how to test the conscious management of bias in regulatory processes.
62. The GMC has set E,D&I targets for 2022 that aim to take “*firm steps to address the disparate experience of ethnic minority doctors*”. The GMC has also engaged with its Strategic E,D&I Advisory Forum and its BME Doctors Forum following concerns from stakeholders regarding the fairness of the audit practices that are the subject of this expert review, and regarding the Employment Tribunal case of Dr Omer Karim which concluded that the GMC had racially discriminated against a doctor in a fitness to practise case.
63. The legal framework governing how the medical profession is regulated, has remained largely the same for some time. The GMC acknowledged that it is bound by this framework and must work within these constraints which affect a range of its functions, including how it investigates complaints. The GMC is currently required to triage every complaint it receives, even if it does not raise a fitness to practise concern. This can cause distress for doctors, as well as diverting resources from supporting good practise and protecting the public.¹⁴ The GMC welcomes the proposed reforms to the MA 1983 to aid it in achieving its E,D&I related goals.

[12] GMC Council 180107 (gmc-uk.org).

[13] About us - GMC (gmc-uk.org).

[14] We’re bound by outdated legislation, now is a chance to change it – Improving medical education and practice across the UK (wordpress.com).

DISPARITIES OF EXPERIENCE

- 64. The quality and effectiveness of the assurances that the GMC takes to evaluate its fairness, are particularly important in light of disparities identified in the medical profession. In 2020, 38 per cent of all licenced doctors were from an ethnic minority background and did *“not have a fair and equitable experience in their medical education and training and have a significantly higher likelihood of being referred into the GMC fitness for practise process by their employer”*.¹⁵ The GMC reports that doctors from ethnic minorities are twice as likely to be referred to them by their employers for fitness to practise concerns than White doctors, and the referral rate for doctors qualifying outside of the UK is three times higher than that for UK doctors.¹⁶ NHS workforce data indicated that White applicants were 1.61 times more likely to be appointed from shortlisting, compared to BME applicants, a number that has not improved since 2020.¹⁷

- 65. COVID 19 has also highlighted the increased risks to doctors who are of ethnic minority background. The British Medical Association (**“BMA”**) reports that they have seen a disproportionate number of BME doctors and other healthcare workers die from COVID 19.¹⁸ Their statistics show that while only 21 per cent of all staff employed by the NHS are BME, BME individuals account for 63 per cent of deaths in the same staff group.¹⁹ BMA surveys have also shown that there are disparities in doctors’ experiences by ethnicity. Doctors from BME backgrounds reported feeling less confident that appropriate adjustments have been made to mitigate risk, less confident about PPE provision and reported higher rates of bullying and harassment during the pandemic. A 2021 NHS report confirmed that the percentage of staff experiencing harassment, bullying or abuse from other staff in the last 10 months was higher for BME staff (28.8 per cent) than for White staff (23.4 per cent), a pattern which has been evident since 2015 and a disparity that has risen since 2018.²⁰



[15] Equality, diversity and inclusion - targets, progress and priorities (gmc-uk.org).
 [16] edi-targets---press-release-86308725.pdf (gmc-uk.org).
 [17] Workforce-Race-Equality-Standard-report-2021-.pdf (england.nhs.uk).
 [18] COVID-19: the risk to BAME doctors (bma.org.uk).
 [19] Exclusive: deaths of NHS staff from covid-19 analysed | Comment | Health Service Journal (hsj.co.uk).
 [20] Workforce-Race-Equality-Standard-report-2021-.pdf (england.nhs.uk).

SECTION E

FINDINGS

FINDINGS

66. We present our findings in this section in line with the research questions within the ITT. Research Questions D and E are addressed within the recommendations in Section F of the Report. Sub questions within each of the main research questions, as noted on the ITT are also addressed in the Report.

RESEARCH QUESTION A – *How can the GMC improve its approach to commissioning independent external audits of its decision making?*

Sampling techniques

67. The GMC would benefit from establishing a structured approach to sampling that can be applied across future external audits. This includes the following points to support uniformity and consistency going forward:

- An established methodology to setting a percentage-based sample size of the number of cases reviewed; and
- Implementing the use of comparator case analysis.

The two methods are recommended for use in audits. For example, the use of sampling would ensure that an adequate and reasonable sample size has been allocated for review. Following the sample selection, the auditor would review cases in the usual way and also pay greater attention to any comparator cases to assess and compare decisions made.²¹

68. We were provided with two previous audits and a review which had been undertaken in relation to FtP. These are:

- Review of decision-making in the General Medical Council’s Fitness to Practise procedures, December 2014, Plymouth University Peninsula School of Medicine & Dentistry (“**Plymouth Audit**”). The purpose of this audit was to identify instances of bias or discriminatory practice, and more generally to assess the quality of GMC decisions and the decision-making process.
- Fairness of decisions to refer doctors to The

Medical Practitioners Tribunal Service Interim Orders Tribunal, July 2018, University College London UCL Medical School (“**UCL Review**”). The purpose of this review was to review the GMC’s decision-making process around whether case examiners refer or do not refer doctors to the Interim Orders Tribunal (“**IOT**”) and specifically looks at whether there was any bias against over- represented groups. It also investigated the reasoning behind the decision-making process in terms of decision-making theories.

- Audit of the fairness of decisions in the General Medical Council’s fitness to practise procedure, July 2021 compiled by Fieldfisher and The University of Edinburgh, Edinburgh Law School (“**Fieldfisher Audit**”). The purpose of this audit was to consider whether the decisions made by GMC decision makers at key stages of the fitness to practise investigation process were consistent with the publicly available GMC decision making guidance provided to them to help them reach these decisions.

Together (“**Audits and Review**”)

69. A broadly similar approach to sampling cases was taken in the Audits and Review. There were a variety of single case types, and these were reviewed to see whether key decisions were taken within the bounds set by the decision-making guidance, given the evidence available to decision makers. It is understood that the GMC provided the auditors with an initial sampling frame of all cases that passed the relevant decision points in the previous year within which the auditor further narrowed the sample.

70. For example, in the Fieldfisher Audit, three types of decisions were audited:

- Triage decisions
- Case examiner decisions
- Provisional enquiry decisions

For the triage decisions, an individual who was part of the overall independent team but was not involved in the actual auditing of cases, “*using functionality within Excel*”²², selected a sample of 80 from the original sample frame of 11,903

[21] Please see paragraph 72-81 of this Report for more discussion on the evidence behind this recommendation.
 [22] The Fieldfisher Audit, page 12.

decisions to review. The sample represented 0.67% of the original sample frame. For the provisional enquiry decisions, an independent individual randomly selected 15 decisions from the original sample of 892 decisions. It should be noted that although proportionally more decisions were made to close provisional enquiry cases, the auditors decided to select five cases from each of the three decision types (to close; to close and notify RO/employer; to promote) in order to look at a range of each type of decision and the relevant decision making guidance these decisions engaged.²³ The case examiner decisions (representative of 1.68% of the original sample frame), an independent individual randomly selected 25 decisions from the original sample of 2,141 decisions (representative of 1.16%). It should be noted that although proportionally more decisions were made to conclude cases, it was decided to select cases evenly across each of the six types of decision (i.e., four of each decision type, apart from decisions to ‘refer to hearing’ where five decisions were looked at) in order to consider a range of each type of case and the relevant decision making guidance these decisions engaged.²⁴ It is assumed that a function in excel was used to randomly select cases.

71. The Plymouth Audit was similar, with the selection of a narrower sample of cases completed by the auditor’s statistical analyst using SPSS (a statistical software program) which selected a “*random sample at each decision point stratified by outcome decision and PMQ*”.²⁵ The UCL Review reviewed all of the cases (120) within the sample provided by the GMC. However, we which it did understand that the UCL Review was a pilot with the intention to move to a wider sample if it proved

practical, not. The practical difficulties involved “*in redacting and falsifying cases made it impossible due to the resources that would be required to progress to a full study with a large number of cases.*”²⁶

72. *Comparators:* We are aware that the GMC has been unconvinced that the use of comparators is a reliable approach based on the perceived challenge of finding comparator cases that are identical across key variables that extensive analysis (carried out by the GMC and others) have shown to relate to case progression and case outcomes. We understand that the GMC’s use of comparator causes has been extensively debated internally and following the employment tribunal case brought by OK²⁷ against the GMC. In this case, the Tribunal had been satisfied that OK had been treated differently to a comparator, Mr L (a White doctor). The GMC however disputed the use of Mr L as a comparator, explaining:

*“In its ruling the tribunal wrongly concludes that disproportionate referrals to the GMC by employers constitutes evidence of direct discrimination in Mr Karim’s case. In addition, the facts of the comparator case referred to in the hearing differed in key respects from those of Mr Karim’s.”*²⁸



[23] The Fieldfisher Audit, page 14.
 [24] The Fieldfisher Audit, page 15.
 [25] The Plymouth Audit, page 17.
 [26] The UCL Review, page 4.
 [27] Dr O M A Karim v GMC: 3332128/2018.
 [28] <https://www.gmc-uk.org/news/news-archive/statement-on-race-discrimination-employment-tribunal-ruling>.

73. This case demonstrates how the GMC view comparator cases, and in particular its focus on the challenge posed to the use of such cases as a result of the differences which necessarily arise between individual cases. With reference to the use of comparator cases, a Group 1 participant stated that, *“The narrative in this organisation is that no one single case is similar – that is absolute rubbish. There are categories of cases and types of allegations for a reason. Every case has a nuance but to say we can’t look at comparable cases where allegations have been similar makes no sense”* confirming our understanding of the GMC’s views on comparator cases.
74. In order to be able to assess whether an individual has been treated as favourably as another individual (or group of individuals), or whether any less favourable treatment has been applied, it is recommended legal practice to compare the treatment of different individuals. It is in this context that the use of comparators becomes a key feature in assessing the fairness of a regulator’s decision-making. From an audit perspective, sampling must have a comparative element to effectively highlight potential biases and whether certain demographics are being treated differently. Consistent decision making is a legal and cultural best practice approach and recommendation when trying to mitigate bias in workplace and organisational systems. Whilst there are always processes and systems which need to be routinely assessed as to their effectiveness, comparator cases as a methodology, has been tested and relied upon as a practice in law and case determination, for quite some time.
75. As in OK’s case, most direct discrimination claims in the context of employment law require the use of comparators, by virtue of EA 2010. We recommend that the GMC considers this approach in the context of considering its handling and use of comparator cases going forward.
76. In particular, under the EA 2010, an individual (A) with a protected characteristic (age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation) will have been discriminated against by its employer (B) when B treats, or would treat, A less favourably than another person (known as the comparator). Like must be compared with like, except for the existence of the protected characteristic, and so there must be *“no material difference between the circumstances”* of B and the comparator.²⁹ For an individual to show that they have been discriminated against, they must therefore compare the treatment they received with that of someone who does not have the same protected characteristics under EA 2010 but must have been in the same position in all ‘material circumstances’ as the person who suffered the discrimination. The point to note here is that ‘material circumstances’ does not equate to being identical; all that matters is that the circumstances were relevant to the treatment of the person discriminated against and the comparator.
77. A comparator can be hypothetical where an actual comparator cannot be identified, as this will not always be possible in practice. In other words, there is no need to show that there is an actual person with whom individual A’s treatment can be compared (an actual comparator), but a hypothetical competitor can be considered, whose circumstances are not materially different from those of individual A. As there must be no material difference between the circumstances of A and the comparator, an important step to identify the relevant comparator is to establish what are the relevant *“circumstances”*.
78. The comparator does not have to be identical of individual A in every respect except for the protected characteristic. Instead, it is only those characteristics which the employer has taken into account in deciding to treat individual A in a particular way, with the exception of the alleged discriminatory characteristic, that are relevant. An example in this context may be a doctor who claims to have not been approved for revalidation due to their race and religious beliefs, while the GMC argues that its decision was made only on the doctor’s experience and qualifications. The comparator must be another doctor who is of the same experience and qualifications, but who

[29] Section 23(1) EA 2010.

is of another race and does not share the same religious beliefs.

79. The issue of a hypothetical comparator is important to flag in relation to the GMC’s concerns that comparator cases in sampling must be identical across key variables, to assess whether decision making was fair. Under sections 53 and 54 of EA 2010, the GMC is considered a ‘*qualifications body*’ because it is responsible for, amongst other things, registrations of newly qualified doctors and therefore have an essential duty to avoid bias and discrimination when making high stakes decisions against doctors.
80. Based on the above, we find that the GMC would find benefit from amending its approach to commissioning independent external audits by including, as part of its methodology and practice, the use of comparator cases. To achieve this, we recommend that the GMC revisits its approach to sampling and use of comparators. Our recommendation is discussed further at Section F of this Report. This point was also taken in OK’s case where the Tribunal made reference in its judgment, taking account of statistical evidence which shows a higher degree of adverse outcomes for doctors of ethnic minority,³⁰ that the difference in treatment between OK and the White doctor comparator were on the grounds of race. The GMC’s latest E,D&I targets, progress and priorities for 2022 (“**EDI Statement**”), state that in 2020, 38% of all licensed doctors in the UK were from an ethnic minority background and it is likely that this number will have now increased two years on.³¹ Regarding Research Question A, Group 1 participants shared:

“I do think there needs to be a rethink about the methods. How can we judge fairness from decision making if we’re not sampling effectively?”

“I’ve always had a concern that the way we specify audits is looking at “did the way that case progressed follow our decision-making guidance?”. When you look at one case in total isolation this is fine. If you sat it alongside another case (like what is done in the Employment Tribunal) you need to consider the fairness element. We are reluctant to do that in this

organisation.”

81. Based on the evidence collated and as summarised at paragraph 70-80 above, we find that establishing a foundation and approach to setting a percentage-based sample size of the number of records and cases reviewed and implementing the use of comparator case analysis, will further support GMC’s approach to assessing its fairness in decision making. The foundation will also provide guidance and support for external auditors when they assess decision making. There is no defined acceptable practice when determining an appropriate sample size across all manner of assessments, sectors and industries. However, larger sample sizes and where possible consistent decision making on chosen sample sizes, will more than likely, mitigate against margins of error and provides results that are statistically robust and accurate, further strengthening the decision-making audits which the GMC commissions and relies upon. We have therefore recommended a possible option for the GMC to consider when ascertaining its sample sizes for audits below, notwithstanding possible resource and informational governance constraints that may make this approach difficult to implement.
82. When deciding upon a methodology for determining the sample size for audits, we recommend that the GMC consider:
- *the confidence level* (which equates to how certain the population figure is within the sample estimate and its associated precision);
 - *the margin of error* (i.e., the plus or minus figure which represents the level accuracy of any findings);
 - *the population size* (in this case the total amount of decisions being reviewed); and
 - *the standard deviation* (i.e., a decimal value which refers to how much each decision will vary preferably in the range of +/- 2).

Once those elements are deliberated, the sample size can be identified through a calculation which considers the desired confidence level (the

[30] Dr O M A Karim v GMC: 3332128/2018, Judgement, 16 June 2021, paragraph 112.

[31] Equality, diversity and inclusion - targets, progress and priorities (gmc-uk.org), page 3

commonly used confidence level is 95%),³² population size, margin of error (5% is typical) and standard deviation. To increase confidence level or reduce the margin of error, it is recommended that sample sizes should be increased. However, this needs to be weighed against costs and resources, which are likely to increase as a result of a larger sample.

83. Taking the Fieldfisher Audit as an example, the sample of 80 triage decisions reviewed represented 0.67% of the original sample frame, which had originally consisted of 11,903 decisions. If we were to now apply the calculation considering the aforementioned factors (i.e., a confidence level of 95%, a rounded-up population size of 12,000 and a 5% margin of error) the ideal sample size would have been 373 decisions and not 80 decisions. A larger sample size is therefore recommended in external audits which consider the fairness of decision making. Finally, as some of the GMC’s decisions have been linked to, or the focus of, employment tribunal cases, aligning its methodology when assessing fairness to aspects of employment law, will serve and aid the GMC in mitigating its legal risk and resource constraints which are a consequences of tribunal cases. The practical considerations of this recommendation are set out at Section F.

Provision of files to auditors

84. HB considers that the way in which the GMC currently provides files to auditors presents potential challenges the efficacy of the audit and assessment of the decisions made. The GMC would benefit from a more structured and streamlined approach which simplifies the collation and delivery of such documents. This will help to:
- reduce potential errors in the collation of documents;
 - minimise the need for redacting or summarising key documentation;
 - save time and resource in the delivery of documentation to the auditors; and
 - likely reduce the amount of time required by the auditor to undertake its review, potentially reducing the fees payable by the GMC.
85. We understand that case files are currently stored on the GMC’s internal system, Siebel. Group 1 participants shared that for external audits, the GMC extracts key files related to the decisions being au-

dated and formats the documents to PDF. Following this, the GMC redacts personal data and identifying information to protect confidential and personal patient data, and then creates a file for sharing with the external auditor.

86. We learned that the size of the file shared with the external auditor can vary depending on the focus of the audit. It is not possible to predict how much data each audit generates for review or the number of pages each decision will contain. That said, we understand that this has been known to reach “10,000 pages” in some cases. This approach has presented difficulty for decision makers which was noted by previous auditors. For example, the UCL Review observed:

“The actual GMC case examiners did also suggest that the volume and sequencing of documents was sometimes a hindrance in their ability to review cases efficiently. A high volume of documents made it more difficult for case examiners to select the most relevant information needed to underpin their decision.”³³

87. While the GMC in its approach takes steps to balance risks and standards such as good governance, cyber security, data privacy and confidentiality, the current approach presents time and cost inefficiencies for the GMC, the potential to exacerbate any bias that may already exist, such as within the documentation of decisions made (visible or redacted), in the auditing process or cause certain decisions to be overlooked due to document sequencing. For example, external auditors could find it challenging to consider all available and relevant evidence when making their assessment of whether or not a decision was made fairly if the document volume is extensive, incorrectly sequenced, combined with time requirements to conclude the audit. We understand that the GMC sought legal advice and guidance for aspects of its current approach (such as the use of redaction) in late 2018 to early 2019, therefore we recommend that the GMC review the advice further, taking into account our recommendations and insights in this Report. For example, in commissioning independent external audits, our analysis and expertise recommend that the GMC would benefit from a more detailed assessment to determine all of the documents that are integral to an audit on a consistent basis (and not every document within a case file) so that it may have these files in a more helpful format which can

[32] <https://www.qualtrics.com/blog/calculating-sample-size/>; <https://mathworld.wolfram.com/ConfidenceInterval.html>.

[33] The UCL Review, page 29.

be readily accessed by the GMC and issued to auditors when needed. This over time will likely save the GMC and the auditors a substantial amount of cost and resource in collating and assessing the order and priority of documents relevant to the audit.

- 88. Having a baseline methodology that is consistently applied by the GMC and in turn the auditors, reduces the risk and potential for documents to be missed (either not issued to or reviewed by the auditor), mitigates assumptions inferred and limits bias when reviewing documents in the wrong sequence. This would help the GMC streamline its approach and ensure that no information which is contextually pertinent to the decisions made is removed.
- 89. We consider that the GMC may be able to share documents with external auditors which contain fewer redactions while still remaining compliant with relevant data privacy laws.³⁴ The aim is to assist the GMC and, in particular, its Information and Governance team, in considering how to better support its processes and efficiencies, and appropriately balance safety, security and risk from a personal data perspective.

Frequency of audits

- 90. Whilst a balance will need to be struck between cost and the number of audits commissioned, the GMC would benefit from a structured and consistent approach to the frequency of audits. The Audits and Review, whilst conducted at four years and three years intervals, did not appear to run on a routine basis. For example, the Plymouth Audit was completed in December 2014 and the UCL Review was subsequently completed in July 2018, four years later. The Fieldfisher Audit was then completed in July 2021 three years following the UCL Review. GMC would benefit from an increased frequency of audits, particularly to address aspects of the recommendations in this Report that the GMC decide to implement and the issues raised in recent Employment Tribunal cases. Our analysis was supported by several comments shared during the Interview Phase. For example, one Group 1 participant shared, “I don’t think we have quite clarified how often we undertake these audits or on what grounds we would do them. We have sort of internally said we should do every three years but there is no rationale or frequency”.

- 91. The Audits and Review responded to concerns in the FtP process, such as possible bias and discriminatory practises within decision making, so that the GMC could ensure that its processes were not exacerbating the prior disproportionality of referrals of ethnic minority doctors. Based on our review of the GMC’s internal processes, decision making guidance, and interviews with GMC staff and stakeholders alike, we understand that the GMC are actively working to understand potential issues and address and remedy them when identified, through their regulatory reform work and E,D&I commitments. The benefits of a structured and consistent approach to the frequency of audits are that the internal functions at the GMC are regularly scrutinised, the GMC is able to understand and rectify gaps or failings in their decision making processes quickly to prevent adverse effects on doctors and increase transparency about the GMC’s auditing activities, so that Council members and external stakeholders are reassured and cognisant of why, what and how often the GMC are undertaking work to improve its decision making assurance. In addition, based on the potential risk associated with the FtP process as mentioned above, it is understandable why the previous Audits and Review have focused on this process and why it may attract more scrutiny going forward than that given to the registration and revalidation processes.

- 92. Participant thoughts on the Audits and Review varied but there was a general consensus that the GMC needed to revisit frequency. For example, a number of Group 1 participants shared that external audits are resource intensive initiatives and must demonstrate value for money and provide resolute assurance to the medical profession that gaps are being flagged regularly and the GMC are responding appropriately.

“What I think we don’t do as well as we could is look at the results of audits and monitor carefully if they have impacted what we do over the next few years. We have generally had a pretty clean bill of health from these audits. Tweaks they suggest we make; we make and then we forget about them. We have probably only done three or four of these audits in that 12-year period. We have ramped up EDI consultancies. I guess the frequency could increase. External stakeholders want assurance because the processes are changing. Internal stakeholders are defensive and worry about audits not considering

[34] Please see Schedule 4 of this Report for further information on this point.

things that are difficult to capture. They are worried that it won't be a full and fair reflection of the very complicated things they deal with internally. I don't think that is legitimate because if you audit properly, then that shouldn't be a problem. I am conscious that we change quite a lot of processes and in some cases, three or four years on, things have changed quite significantly."

93. We provide a recommended approach at Section F.

Review of the scope contained within previous external audits

94. The scope of the Audits and Review were limited to whether decisions makers had followed decision making guidance when determining an outcome given the evidence available to them at the point of the decision. The Audits and Review do not appear to have fully assessed:

- the discussions and commentary shared between GMC decisions makers in reaching the final decision;
- whether the guidance was fit for purpose in the circumstances to facilitate a decision grounded in fairness, proportionality and anti-bias practices; or
- whether any cultural and social factors were prevalent which could affect a decision maker's deliberations which were integral to assessing fairness within a decision-making process.

95. We acknowledge that the scope of audits generally is likely under review by the GMC as the ITT for the Planned Audit of the registration process proposed to analyse the fairness of decisions in the GMC's registration procedures with a wider scope. This scope compared to other audits, acknowledged in greater detail the various E,D&I concerns that an external auditor would need to consider when assessing historic decisions. For example, the tender for the Planned Audit contains helpful contextual information about the GMC's registration procedures, including the difference in process for UK medical graduates versus non-UK medical graduates. In contrast to the Audits and Review, this tender contained instructions to the auditor to consider the GMC's decision-making guidance and identify evidence of bias or unfairness. The tender acknowledged that versions of decision-making guidance could change from when the original decision was made, assumedly to mitigate the risk that the auditor would not audit the correct documents.

96. Whilst the Planned Audit shows a refined clarity by

the GMC in its approach and scope of audits, we analysed the Audits and Review and Planned Audit to identify further areas within the scope that could be considered as part of an external audit. These considerations would likely improve and strengthen future audits when assessing fairness in the GMC's decision making. Our observations are categorised below:

(i) Inclusion of GMC decision making guidance within scope of external audit

97. Each of the Audits and Review differ in the way that they consider the GMC decision making guidance within their scope of review. For example, the Fieldfisher Audit did not audit the contents of the GMC's decision-making guidance (however we understand that this was at the direction of the GMC), whilst the UCL Review focused mainly on the GMC Interim Order Tribunal referrals guidance, given it was assessing IOT decisions. Both audits considered whether the decision-making guidance had been followed correctly by decision makers and not whether the guidance was appropriate in the circumstances or if the guidance was a factor in potentially undermining the fairness of the decisions made. Conversely, the Plymouth Audit focused on the decision-making guidance and analysed a selection of GMC's decision-making guidance which may *"contribute to the overrepresentation of some demographic groups of doctors in the FtP procedures, impact upon the progress of doctors through the system, or the eventual outcome of their cases due to their particular demographic characteristics"*.³⁵
98. Whilst the result of the Plymouth Audit confirmed that there was no evidence of bias or discrimination practised in GMC's decision-making guidance, it still recommended the need for greater transparency and for the GMC to explain how the decision-making guidance should be used to determine decisions. In addition, the UCL Review suggests that *"case examiners wanted clear examples to be included in the guidance that would help them resolve challenging cases."*³⁶ This demonstrates that it would be helpful for the GMC to allow external auditors to also review and assess decision making guidance in its pursuit of gaining assurance for fairness in decision making across its processes and better equipping decision makers in making fair decisions.

(ii) Auditors to review and identify E,D&I focuses within decision making processes

99. The GMC in its E,D&I 2022 targets³⁷ focuses on ensuring that it is not contributing to discriminatory outcomes in decision making and its commitment to making its processes transparent and considerate of equality issues. Some of the Audits and Review commented on possible E,D&I concerns when considering the fairness of decision making within the FtP process, as referenced above. For example, the UCL Review noted how *"heuristic"* processing may negatively affect the way decisions are made but concluded that GMC staff used heuristics that were grounded in GMC guidance and were appropriate. The Audits and Review each concluded that there was no evidence of bias in the way that decision makers interpreted the decision-making guidance.
100. To ensure a streamlined approach in determining the scope in future external audits, we recommend that all tenders instruct external auditors to consider E,D&I factors, such as contextual insights, bias and equality and equity risks, when assessing the fitness of decision making. Whilst the GMC has demonstrated this in the tender for the Planned Audit, we recommend that examples of potential bias and unfairness that can occur in decision making are included as guidance to (i) help auditors understand the types of issues they need to identify and notify the GMC of; (ii) assist potential auditors to assess whether they have the capability and specialist expertise to undertake the work required; and (iii) provide context about the specific issues that an audit is trying to resolve.

(iii) Inclusion of discussions and commentary shared between decision makers within scope

101. Our review of the Audits and Review showed that the scope did not include a review of the notes of internal discussions and advice shared between decision makers such as between case examiners or between ELAs and ROs, in order to determine final decisions. The Plymouth Audit identified that:

[35] The Plymouth Audit, page 30.

[36] The UCL Review, page 23.

[37] Equality, diversity and inclusion targets, progress and priorities for 2022, GMC.

“There may be an informal or unrecorded element to the decision-making processes in the FtP procedures in the form of discussions between colleagues which are not fully recorded in case files. Although not unusual or unexpected in a workplace, in a process as high-stakes and contested as FtP procedures, such discussions may raise questions about their impact upon decision outcomes – although none was identified in our review – and about the extent of transparency and accountability of the process.”³⁸

These gaps in the Audits and Review provide vital lessons learned when assessing the fairness of decision making and the recommendations for future audits. By considering the effectiveness of all discussions and commentary shared in decision making processes (incremental decisions or otherwise) as part of the scope of an audit, the GMC should be able to address and mitigate personal biases and/or heuristic processing that may arise in part or aspects of future decision making and audit processes. Where these deliberations are not documented, auditors will be limited in their ability to robustly assess decision making which on balance, will likely undermine its findings and recommendations.

102. The UCL Review also identified that decisions makers tended to rely on authority during the referral assessment and investigations in the FtP process. The UCL Review, in citing the risk of heuristic processing, found that *“where cases included expert reports or documents from the police, these were described as potentially credible pieces of evidence that case examiners would actively hasten to find and review among files.”³⁹* This observation aligned with certain staff participant responses during the interview stage for this Report which stated *“I want all of us – all of the staff to be very alert to the potential of bias and things that come to us. I think we as an organisation and my team suffer from authority bias.”*

103. We were informed by participants that decisions of internal audits or case review meetings completed at team level were not included in the scope of any previous external audits. The Fieldfisher Audit acknowledged that it was *“aware that the GMC has separate audit and quality assurance processes that review this work,”* and focused on the decision making at the end of key stages in the decision-making process. These observations support the requirement for the GMC to ensure that the scope of a future audit must consider decision making fairness, in a manner

that is inclusive of notes of internal discussions and advice shared between decision makers. It is noted that this information may not have been historically recorded in Siebel, however the GMC should consider doing so, going forward.



[38] The Plymouth Audit, page 8.

[39] The UCL Review, page 10.

Review of how GMC decision making guidance is provided

104. We understand that the GMC make clear efforts to maintain and update its decision-making guidance, and that such guidance is relied upon by decision makers which is then assessed by auditors in their audits of the decision-making process. It is therefore important that the guidance itself is reviewed to ensure consistency, close gaps (if they exist) and ensure anti-bias practices. As part of this work, we reviewed a selection of the decision-making guidance to better understand the processes and guidance which auditors rely upon when assessing decision making guidance. We provided our further analysis of the decision-making guidance to the GMC, which identified several inaccuracies and potential issues. We recommend that the GMC consider this analysis when instructing auditors on the scope of any future external audit.

The choice of external auditor

105. Further to our review of the Audits and Review, the GMC should consider its existing approach to choosing auditors to ensure that auditors have a breadth of relevant expertise and limit possible questions of independence of the auditors. This would include its continuation of efforts to expand its approach where possible to include auditors that have expertise in E,D&I. This recommendation is evidenced by comments we received from several participants in Groups 3 and 4, with one individual commenting “How can I have confidence in an “independent body” that is paid by the GMC to do the show?” and in Group 1, where an individual commented in relation to external audits, “For the tenders, it is the same firms who apply.”

106. In addition to having expertise in E,D&I, we recommend that the GMC consider the diverse representation of the teams conducting the audits. We noted a lack of diverse representation among the past auditors appointed to undertake the Audits and Review. It has been for some time a recommended E,D&I best practice that clients and supplier of services, pay greater attention to the diverse

representation of their teams. There has been a wealth of research supporting the view that diverse teams outperform homogeneous teams albeit not in the context of audits, however the wealth of research indicates that performance is underpinned by decision making of diverse teams.⁴⁰

107. It is understood that the GMC process of finding and appointing external auditors begins with the GMC’s Research team (which is in addition to publicising the tender documentation publicly), who often try to source appropriate external auditors through desk-based research. However, this is time intensive and due to limited resourcing, there is less of a reach when trying to identify a wider range of external auditors. A GMC staff member commented that it was difficult for an auditor to fathom the complexity of regulatory functions and that auditors must have the specialist expertise in order to audit and advise accordingly, which supports the fact that there a limited range of auditors available to the GMC, thus making the process challenging.

108. Based on the above paragraph and context provided, regarding the range of auditors the GMC has access to and engages, we recommend the GMC consider establishing a panel of auditors over time. This will ensure the selection of auditors is representative and diverse, and that they possess the right combination of expertise and skills to effectively identify the nuanced and multi layered factors that have historically challenged the GMC’s goal of achieving consistent fairness in its decision making (i.e., bias,) and ensure those problematic issues if prevalent, do not go unnoticed or unremedied. Actions taken on this recommendation will likely help the efforts of the GMC to build and improve trust between it and the profession. Whilst the GMC consider in great depth before choosing an external auditor, altering its approach as recommended in this Report has the potential to assist the GMC with sourcing a larger choice of auditors. This will allow for a greater range and access to experienced auditors with a combined set of necessary expertise providing a broader flexibility of choice for the GMC. The practical implementation of this recommendation is further addressed at Section F of the Report.

[40] How diversity, equity, and inclusion (DE&I) matter | McKinsey.

RESEARCH QUESTION B – How do key stakeholder view the GMC’s previous external auditing work?

109. We highlight the main themes of response arising from group and individual interviews with Group 3 and 4 participants for insight when the GMC considers the future of its audits. We have also addressed our assessment of the insights of Group 3 and 4 in the recommendations provided throughout this Report. Please note that where we refer to “stakeholders” this can mean stakeholder organisations that represent doctors, stakeholder organisations that represent patients, doctors themselves and/or all three.

Views of stakeholder groups around the level of assurance gained or perceived by external audits

110. During the Group 3 and 4 interviews, we asked categories of questions around the following themes:

- Personal experiences of GMC’s internal processes and participants’ thoughts about how the internal processes operate and whether they consider E,D&I factors
- Participant awareness and perception of the external audits that the GMC have previously undertaken
- Participant perceptions of the GMC’s wider assurance activities
- Views on the GMC’s engagement with external stakeholders (including stakeholder organisations and doctors)

111. Doctors were generally unaware of external audits that had been performed and those that were aware, had rarely read or known about the content of the Audits and Review. Where there was a perceived lack of awareness regarding external audits, we discussed with stakeholders the benefits of external audits and what they would expect an audit to contain in order to respond to their concerns. We present a summary of the themes arising from the responses received in this section.

(i) Impartiality

“I have read about audits. Anything that the GMC itself arranges to prove it is not doing anything

wrong is just an eyewash process. For example, what you [in reference to HB’s work] are doing.”
“The lack of independence element to these kinds of audits that detract from their messages of fairness.”

“We want people who are a qualified, we want a mixed group of diverse people who have the best interests at heart rather than just scratching the GMC’s back, we want people who are willing and have the power to tell them GMC or ROs that they are doing the wrong thing.”

“Maybe they should have an external government organisation to do the audit - some of the auditors should be from an ethnic minority background.”

“I had a few raised eyebrows where the audit was done by the same law firm year in year out and they paid a lot of money for that, and I just always questioned the level of real independence.”

112. Stakeholders felt strongly about a lack of impartiality in external audits and demonstrated a low level of trust in the GMC as a regulator. Those that were aware of the audits, perceived a lack of “independence” in the audit process, particularly concerning the GMC’s role in the auditing process with the appointed third party. We understand that the GMC have taken steps to improve trust with such stakeholder groups by demonstrating greater transparency through sharing more about the process. We recommend that they continue this dialogue and where possible share further information about the process involved and the selection and assessment of the auditors chosen. This is supported further by illustration of one participant that stated, *“Who is doing these audits? What training do they have? Those reports will be as good as the people who write them.”* As noted above in paragraphs 110 to 113 we have identified that the task of appointing an auditor can be challenging given the limited amount of auditors available with more than the traditional expertise found with auditors. Based on our discussions with stakeholder groups, it would be helpful to increase trust and support, of the GMC engaged stakeholders’ expertise (through its BME Doctors’ Forum or Strategic EDI Forum) to assist with establishing a realistic criterion for auditors.

(ii) Discrepancy between external audit outcomes and lived experiences of doctors

113. The outcomes of external audits (which have all concluded that the GMC is not biased in its decision making) were expressed by participants as having been unrepresentative of their lived reality. Some responses we received from participants were as follows:

“They [GMC] do conduct audits and try to implement things. From news articles and GMC’s own information, it appears that when someone reads one of these documents it says that the GMC is doing great and they are trying to be equal – but that is far from reality.”

“There have been audits in the past but as we discussed earlier, there are issues remaining in terms of how things can be improved. Not much has changed on the ground.”

“The external audit should involve the stakeholders who speak for the doctors. We are half the strength of the NHS workforce. To the best of my information, these external audits have not taken into account or involved stakeholders of doctors’ organisations.”

114. Participants often contextualised their responses with

reference to ongoing concerns among the stakeholder population such as the disproportionality of ethnic minority doctors who are referred and perceptions of systematic failings at local levels of the NHS (such as, reduced staffing, issues with systems and machines, racism faced by doctors at work and from patients). During an interview with one internal GMC staff member, we were told the following:

“They’re too positive [the audits]. We tend to focus on our communication of the positive things they have found and there is a danger that it makes us sound complacent. If you are doing well, you want audits to acknowledge that – it’s a slight weakness that our audits so far haven’t picked up anything bad.”

“One of the reasons that stakeholders are not assured when we do an audit which gives us a relatively clean bill of health, is because they look at outcomes of decisions. If you look at the proportion of BME doctors referred to us, it is much greater than White doctors. They progress to serious outcomes – the data is very transparent –that data is freely available to anybody, and they look at it. They think there is a problem. But then there is an audit which says everything is fine. It makes them not believe the audit.”

iii) Value of external audits

115. External audits commissioned by the GMC are largely funded by the annual fee that doctors pay. The GMC have expressed their commitment to ensure that external audits respond to critical issues and provide the necessary value. Nevertheless, Group 3 and 4 participants, who had awareness of audits, expressed their frustration, in that they did not see value of external audits or more generally, how the GMC supported their professional lives. Some of the comments received were as follows:

“People are in fear of the GMC, they do not see them as there as a support. We pay fees, much more than doctors in America and nothing is done for us.”

“Despite audits I can’t see any changes. They are still quite biased in my views and do not care about ethnic minority people.”

“They do audits and publish but are they doing anything to change? The MPTS legal team are 90% same ethnicity and similar gender. The legal panel is the same gender. They have not changed, what is the point of wasting money to do audits?”

“Another consultant told me very openly, ‘It will take decades before the GMC to ever change and similarly, it will take that amount of time to change

our view on the GMC”.

“They need to show that they have listened to the profession in terms of how they have established those assurance processes so when they come out with findings, it would add confidence. It doesn’t matter how good the assurance processes are, if on the ward floor the doctors have no confidence in that being the case, it’s a waste of time. It’s useful for stakeholders at government but it is not going towards the hearts and minds of the profession.”

116. Stakeholders expressed concern about whether external audits have been fit for purpose to date and remain sceptical that historic issues have been resolved. GMC participants concerningly alluded to an organisational attitude of being “complacent” given the positive outcomes of the Audits and Review and other reviews carried out by the Professional Standards Authority and “defensive” in response to challenges to the outcomes of the Audits and Review as the GMC tends not to approach them “with a spirit of learning”. On this basis, it is imperative that the GMC think about external audits as a tool to help them continuously improve their work as a regulator by understanding the areas where structural improvement is required, so that the experiential aspect of being a doctor, specifically an ethnic minority doctor or IMG, is improved and trust is built for the GMC.





117. We recognise the balance the GMC aims to achieve, in its role as a regulator that works to ensure patient safety and a compassionate regulator which tries to also support the profession. One GMC staff member noted that the GMC keeps “*the profession at arms-length*” when asked about their opinion on how they viewed the GMC’s level of communication with stakeholders. Whilst this feels contrary to the GMC’s aims, we are cognisant that the GMC, among other regulators, have faced accusations historically of operating too closely with the profession. When noting the thoughts shared by participants, it is also important to consider the context in which the GMC is also operating.

Perceived views on how audits provide assurance that the GMC adheres to the law as well as the broader spirit and intent of relevant legislation

118. We heard from internal GMC staff that its “*processes are dictated by law*” therefore preventing major

deviations from entrenched decision-making processes. The GMC, as a regulating body, must comply with set legislation and standards meaning that its decision-making guidance adheres accordingly. The Audits and Review referred to within this Report confirm the GMC’s compliance with the law and decision-making guidance, but despite these assurances, Groups 3 and 4 participants raised concerns about their lack of confidence in the assurance that even these provided, as they did not feel that any significant changes to improve had been made by the GMC. A sample of comments received are as follows:

“Regarding tribunals, we now have legally qualified chairs and the medically qualified chairs have gone. The arguments are all legal – you lose sight of the fact that doctors are working in different systems. System failures and work pressures need to be looked at – if you find there is a difference between medical managers who are not referring equally,

the effects should be as serious as what doctors are put through. At every level, there is a need to look at it critically to show that discrimination doesn't feature in the GMC's processes".

"The adversarial process is looking at ways to trap the doctors."

"I think the way the GMC looks at itself, it likes to present itself as untouchable because it's holding patient safety in its hands and it is protected by legislation. It is dangerous for it as an organisation to be seen as biased. It might make it lean towards communications and risk aversion, rather than assessing its own processes."

"A fundamental issue in the registration process is that routes were determined by nationality which is inherently discriminatory. Just because someone is from another country doesn't mean they're better or less but that is how the legislation has been shaped"

Analysis of stakeholder views as to whether they make or accept any distinction between procedural fairness before referral to the GMC on one hand and the GMC's processes on the other

119. Procedural fairness, specifically in relation to FtP cases, is a concern that has been raised in participants' responses across the Groups that were interviewed. Contextually, this was not surprising, given the strong response to the recent cases of DBG and OK which have had prominent media focus. The current climate around procedural fairness and the GMC's role in cases against doctors is rarely positive, which was clarified in the ITT for this Report, where the GMC acknowledged the medical profession's outrage that it had received, in relation to its decision to appeal to the High Court in respect of the MPTS' decision not to erase DBG from the GMC Register.

120. The general themes arising from Group 3 and 4 participant responses in relation to procedural fairness before and after referral to the GMC were as follows:

- One participant positively shared that their experience of the FtP process clarified to them something which had gone wrong in practice and helped them through retraining and revalidation.

- Stakeholders expressed disdain at how disciplinary processes and FtP referrals were handled at a local level.
- There was low confidence in the ability or impartiality of ELAs given that they are still part of the GMC.
- The FtP referral process did not concentrate enough on identifying and resolving systemic issues before finding fault with a doctor and progressing through the usual process of triage and investigation.
- There is a lack of transparency in the FtP referral process, where the involved doctor often has little to no insight or right of response.
- There is a lack of regard for doctors' privacy and personal lives in the way that FtP investigations are handled (i.e., where a doctor is under investigation but there is yet to be a determination, details about it are publicised on the GMC's Medical Register).⁴¹
- The FtP procedure did not consider cultural differences, nuances and E,D&I factors (such as organisational biases or personal biases from ROs) that may affect a doctor's actions in practice.
- The FtP investigation was prolonged and scattered with delay and miscommunication with no regard for doctors' mental health, livelihood, financial situation, and reputation.
- The GMC had little interaction with doctors going through any stage of the FtP procedure once referred.
- The GMC had an unfair advantage during the FtP process, given it was familiar with it and often doctors were not aware of timelines or knew how to conduct themselves to their best defence. Many participants often felt unsupported and confused about the procedure and expressed views that the GMC were often unclear, manipulative and forceful in its approach, for example not responding to doctors' calls and letters or sending letters late in in the process, therefore leaving doctors with minimal time to prepare an adequate response.

[41] <https://www.gmc-uk.org/registration-and-licensing/the-medical-register#searchTheRegister>.

121. Examples of Group 3 and 4 participant responses in relation to the above themes are as follows:

“The FtP process helped me to understand where things went wrong. I’m not the bad story, I am a bad story turned good. I have reintegrated and retrained. All my results are there, and they have been monitoring me and they know the results are good.”

“There needs to be a serious audit of the medical directors and referral parties to look at whether there is a difference in approach across the Trusts. There needs to be a cross section of referrals which assesses the different types of referrals to identify bias and discrimination.”

“We are still blaming individual doctors but there are systemic failures.”

“I think those are the factors. Especially in the first six months of the process, that is the period when there is most stress. Other than my lawyer explaining what is going to happen I did not have anyone, the GMC just sends out loads of letters to a lay person, it doesn’t really make much sense. If I didn’t have the lawyer, there would be very little interaction with the GMC. At that time, empathy is needed. Why can’t they have, out of the thousands of clerks they employ, someone to pick up the phone and ask doctors if they are okay and to explain the meaning of letters they send?”

“One point to mention is the avoidance of unnecessary media hype – a doctor is publicly humiliated by the national press even before going through the processes of the legal system. That doesn’t take into account the legal perspective of things – it is good to sell a paper but might not be reflective of the need for justice.

The GMC needs to do a bit more diligence and be respectful and conscious of the fact that there are more sensitivities involved. There is a doctor, a family and there are patients who would love and like to be treated by a particular doctor.”

“I have shared a lot of my thoughts with GMC people themselves but they’re hiding behind the 1983 Medical Act but this is an Act which was made nearly 40 years ago – how can it serve us now?”

“What I would like to suggest is that the GMC and all their staff should be trained in EDI and they should also get employees from other backgrounds otherwise they don’t get it; they don’t will never understand other people in the way they need to. Procedure panels should be diverse as well, they should be trained in EDI, and the solicitors should not all be White. When you are dealing with someone’s career, life, and mental health, it’s not about winning the case, it’s about finding the truth and deciding, has a doctor had an intention to harm? Has harm been done? Mistakes will happen. We don’t always work under ideal conditions or textbook medicine. Nobody supports you when things go wrong but you are pushed – it’s not just one person’s fault but a cascade of peoples and things fault. But at the end of the day, only one person is accused, and everyone will point fingers. The GMC want to show to the public that they are there for the patients but are they not there for the doctors who are also trying to ensure patient safety in sometimes, impossible environments?”

“I think that doctors the profession have lost confidence in the GMC. I think for the first time we are now seeing that this lack of confidence in the GMC and its processes are not just in the BME



community but also among our White colleagues. This is perhaps a slightly worrying situation for the GMC. Why are they carrying out a huge review like this for example?"

"EDI has to be paramount not only in the GMC's processes but at a local level and in the workplace. In our everyday life. I think we are very far from achieving that in the general population but at least as professionals, we should apply that to professional lives. The GMC must apply it in their dealings that they have with all doctors."

122. Participant responses demonstrate that stakeholders do not differentiate between who should specifically assume responsibility before and after a FtP referral, but that the GMC should be participating in the referral process at the local level as well internally at the GMC. Whilst the GMC does not regulate employer organisations, it has been suggested by participants and various other sources, including the FTR Report and Williams Review, that the GMC are expected to assist in making the referral process more transparent. In practice this will mean that the process will support identifying bias, systemic issues, and other aggravating factors at local levels which will help to promote fairness in decision making at the inception of any GMC related investigation or process.



RESEARCH QUESTION C - Do the GMC's key stakeholders perceive differences in the equality risks or sensitivities for our functions and do they believe this should have a bearing on the frequency or need of coverage by an external audit?

Key stakeholders' views on whether the GMC's internal functions involve different levels of equality risk or sensitivities

123. We found that most participants in Group 3 and 4, given that many had either had experiences with the FtP process or known a colleague who had experienced the FtP process, shared responses about the FtP process and there were very few thoughts and experiences shared on the registration and revalidation process. Even when prompted, many participants shared their thoughts on a general basis without specific reference to the intricacies of GMC's internal processes, which may have been based on their lack of familiarity with the GMC's processes. We observed that the general attitude across Group 3 and 4 participants was that as doctors and stakeholder organisations members, they felt disconnected to the GMC and that the GMC needed to place a heavier focus on equality risks and sensitivities within its processes.
124. One prominent theme related to concerns about whether local level processes and attitudes had been included in the GMC's decision-making considerations during the FtP process. Participants had strong views on the systemic challenges they faced in their working environments, including being the victims of racism from patients too, and the negative knock-on effect this had on their practice. However, many participants remained unconvinced that the GMC understood this or had enough scrutiny on employer organisations before accepting referrals and beginning their own investigatory process. This will come as no surprise to the GMC, who have been made aware through statistics, reports and stakeholder comments that the systemic organisational and procedural issues within the local level have a direct impact on referral rates to the GMC. Participants also raised concerns around the efficacy and impartiality of the GMC's Outreach Team, which incorporates ELAs. This point was referred to earlier in the Report, given that ELAs are not an independent function advising employer organisations on referrals and ensuring that employer referrals to the GMC are appropriate, but part of the GMC itself. Comments

reflecting our analysis are as follows:

"In the referral process, the GMC can only deal with what gets sent to them. They do have an outreach team and ELAs and they do provide recommendations on whether a referral is appropriate. They could play a significant role. All these disproportionate referrals will come via engagement with an element of the GMC. That element may provide a recommendation which gives confidence to the employers that it meets thresholds of GMC. They are involved right at the start. They are probably more of an influential factor than they want to admit."

"I think there needs to be additional checks but sometimes they make a lot of reliance on what the health board is saying. Not all health boards are inclusive or asking the right questions and many have systemic problems. Obviously, there is a problem – can the GMC not see the patterns? Why are certain health boards referring disproportionately every year? The GMC are pretty good at going after doctors but not going after the health boards. There has to be a three-way process. When a referral comes through – why can't you ask the question about whether the internal process has considered"

"What I don't like is when the GMC are being asked to judge a person without looking into the whole thing – it is a system failure. It's a common pattern. What they need to do is go back and dig deep with the health boards. Why are the referrals happening? I think the GMC also needs to understand system failures and the only way they can understand that is to look at internal process and to look at the health board. They are not focusing on the system failures, but they are focusing on the individuals. The best example is aviation – they start from the other way round; the plane did not take off, let's look at system. How can we support the crew the pilot, the whole plane? A big drawback for the GMC is not to recognise that the system is a failure."

125. Another concern raised was the GMC's lack of understanding towards the needs of IMGs and ensuring that they are well equipped to work and understand the UK healthcare system. We note the GMC's awareness of the disparity in treatment that is felt by IMGs in comparison to UK educated doctors, especially during the registration process; this is referred to earlier in the Report. Participant comments have also clarified that a lack of

familiarity and understanding of the GMC’s processes can put IMGs at a disadvantage in how they conduct themselves during any formal process, for example an FtP investigation which is an example of perceived discrimination in the eyes of stakeholders. This evidently poses a risk to their career and livelihood, but participant comments suggest that the GMC is either not aware of this or these considerations are not factored in when either making decisions or those decisions are being audited for fairness.

126. We were also given the opportunity to review a set of doctor complaints to the GMC at GMC’s London office. One of these complaints originated from an IMG who had tried to book their PLAB 2 test in the UK, however, given the disruption of the covid pandemic, had not managed to secure a booking. This issue was exacerbated by the impending expiry of the IMG’s PLAB 1 test and the IMG had therefore asked the GMC to consider granting an extension. The GMC granted this (in its discretion) to allow the IMG to book their PLAB 2 test on the next available date. However, the GMC noted that this would be the final attempt for the IMG and if they did not pass, they would need to re-sit their PLAB 1 test again (despite already having passed it). It is understood that the GMC’s decision went against usual conduct of allowing candidates four chances to sit the test, with the choice of being able to apply for a fifth attempt on the basis they could evidence they had received additional learning over a 12-month period.

127. Based on the information available to us, we viewed this decision as potentially having overlooked the contextual factors the IMG was experiencing. This example highlights difficulties that IMGs face concerning the GMC’s processes. Comments from participants receive to reflect this analysis are as follows:

“There is no organisation that hasn’t got bias. I think that the FtP processes are too weighted towards the employer in terms of evidence. I think they are biased but – not necessarily racist. But there is weighting in the voices that are heard and who gets opportunities to put across evidence. If you are an IMG you are always at a disadvantage because you don’t understand the system that you are negotiating with, you are going to be at a disadvantage. People won’t engage and then they are at a disadvantage and then they get to the hearing and they have to present case in a legalistic way they find it difficult. Those people tend to be from certain groups. There is bias written into the system to a certain degree.”

“I don’t think they do incorporate EDI into their decision-making process – so many FtP decisions are harsh and they [the GMC] don’t think about doctors who have trained overseas and about our specific struggles. Perhaps they are trying, there are induction programmes. I think they are trying to recognise it.”

“More than 50% of FtP referrals are BME. The NHS figures show BME doctors are 40% of the workforce so why do they account for over 50% of referrals? Should they not look into it further than they have? Do we, as international medical graduates and foreign qualified doctors, need extra training and support or attention?”

“When we look back at the various high profile FtP cases, for example Dr Karim’s, how seriously have the GMC understood the Judge’s comments about how racist they are? They don’t. The GMC turn around and say the judgment is flawed instead.”

“When I first came here, even though I was a qualified specialist, I was only given limited registration. The process for changing that limited registration to permanent registration used to be horrendous. Now because there are more and more overseas doctors, all those processes have gone. Now you pass the PLAB and are granted a permanent registration. I don’t think it’s to make the process easy for IMGs or make it equal with local graduates, it all depends on the need of doctors. If you need more doctors, you need to relax the standards. Once you have sufficient numbers, you can heighten rules and regulations and make it harder. I’ve only had a long career, because I didn’t dare to speak about my career until now.”

“[When you want to speak up, there is the fear that] in the end no one will be on your side, everyone will desert you. Once that fear is there, there is no room to speak. IMGs feel this the most.”

“Internal practices are better for the local medical graduates. IMGs are disadvantaged and discriminated against.”

128. Another theme highlighted among responses related to the GMC’s conduct within internal processes. Participants often shared their experiences and observations about the GMC’s conduct throughout the FtP investigation process and more heavily on the MPTS Tribunal process. Whilst focus on the MPTS Tribunal process is out of scope for this Report, these comments provided helpful context about the perceived legalistic and process driven attitude within FtP cases and the perception of a general lack of empathy towards doctors. A selection of participant responses under this theme are as follows:

“Even if you are represented by solicitor – they warn you not to contact the GMC. Nobody wants to even question their actions, but they are the real threat to the public.”

“If you keep taking months and months for everything in an investigation, how can we, the doctors, make progress? How can we trust the GMC?”

“They agree next steps in the investigation, but then take 4/5 weeks to do [anything], that too without any communication - they are silent. It’s like bullying or harassment.”

“Things are being dragging on for three years. I had an allegation against me, the Trust did not give me relevant notes. When we asked GMC they said they will provide me the notes, but they still haven’t. They sent details within a short time frame; my lawyer is on leave and I have to find time to read 1,000 papers - we pay subscription to be looked after by the GMC and yet we are bashed by the GMC.”

129. The final theme we observed throughout Group 3 and 4 interviews, were participants’ disbelief in the GMC’s intentions or efforts to date to ensure that E,D&I factors, such as bias, had been considered at the internal process level and within decision making stages of those processes. Whilst we are aware of the GMC’s ongoing actions to progress and improve its E,D&I related goals, which include increasing diversity and representation within its own staff, the comments received at present and outlined below demonstrate the pressing urgency for these goals, our recommendations and those recommendations outlined in the FTR Report to be implemented.

“The case managers need external input and

advice from people who have experience and have ethnic diversity experience”

“[In terms of changes to the process] I think they should do a survey for doctors going through the FtP process and they should get their views collectively. They should collate information on race, gender, age, sexual orientation and get it fed back to the GMC so they can make the changes. They should have action plans and make changes.”



Participant views on whether the GMC's internal processes should be subject to different degree of independent audit activity

130. We found that most participants in Group 3 and 4 shared responses about the FtP process, particularly about their own experiences, experiences of colleagues or in relation to the widely known context surrounding the FtP process i.e., disproportionate referrals of ethnic minority doctors, the profession's outrage about the sanction imposed in a recent high-profile FtP case and a general feeling that IMGs are less favoured in comparison to UK medical graduates. There was no specific participant commentary around whether the GMC's internal processes should be subject to a different degree of independent audit activity. However, the findings in this Report indicate that there is further significant work to be done to remedy ongoing challenges, such as disproportionality of referrals, a lack of procedural transparency (including concerns raised by participants around potential impartiality), which have been entrenched within the FtP process for some time. However, we would note that as planned by the GMC an external audit should be performed for the registration and revalidation processes as this has not previously happened. Based on some of the concerns that a number of participants have raised during interviews, it is possible that future audits will highlight gaps and possible challenges for the GMC to consider and this will inform how often audits for these processes will need to be performed. We address our recommendations in respect of how often audits should take place for the processes at Section F.

SECTION F

RECOMMENDATIONS

RECOMMENDATIONS

131. We suggest a number of recommendations for the GMC to consider in its future approach to commissioning regarding the coverage and frequency of a rolling programme of external fairness audits. Some of our recommendations are applicable to the FtP process and are based on likely gaps that we identified in the Audits and Review. That said, many of our suggestions are important to consider in the context of any decision-making processes across the GMC in either the registration or revalidation processes. In order to provide more clarity on which recommendations would be advisable to consider first, we have categorised our recommendations into three areas:

- (i) critical recommendations;
- (ii) essential recommendations; and
- (iii) recommendations to strongly consider.

The critical recommendations represent those that the GMC should and can implement immediately to ameliorate its approach to commissioning external audits. The essential recommendations are those that we find necessary but can be implemented over time. Finally, the recommendations to strongly consider are those that do not require immediacy but, over time, can be reviewed and implemented taking into account time, cost and practicality.

CRITICAL RECOMMENDATIONS

Establish and agree a wider scope when commissioning future external audits

132. This recommendation builds further on the GMC's existing approach to help:
- improve the accuracy of GMC's external audits;
 - ensure that critical issues which can negatively impact decision-making fairness are flagged promptly; and
 - provide greater transparency about the effectiveness of the decision-making processes for each function and the improvements that can be made to strengthen the fairness of decision-making and ameliorate doctors' experiences.

The guidance provided to auditors concerning the scope of the audit must be clear and include the following elements (where applicable):

- **Consideration of day-to-day decision-making discussions.** For example, conversations between and advice from ELAs to ROs during the FtP referral process or discussions between case examiner at case review meetings that could possibly affect the outcome of final decisions. We are aware that the GMC maintains high standards in record keeping in respect of decisions that are made, so the GMC could make it mandatory that these discussions or the commentary shared between decision makers are recorded on Siebel through a summary

note. This summary note should clearly state (i) the name of the case; (ii) the nature of the conversation between decision makers; (iii) what advice, if any, was provided in respect of the final decision; (iv) any deliberations with detail regarding the weight and balance applied to such considerations; and (v) what the final decision was. This will ensure that each case file is up to date and allows for a clear selection of decision-making notes to be sampled and included in future audits.⁴²

- **Checks and balances in external audits.**

An EQIA's purpose is described as having four pillars, one being that “*decisions are transparent and based on evidence with clear reasoning*”.⁴³ EQIAs are completed for three main reasons which are to (i) to eliminate discrimination; (ii) to advance equality of opportunity; and (iii) to foster good relations. The EQIA template asks a range of relevant questions, including one on identifying bias, and prompts the person undertaking the EQIA to self-assess and provide detail about equality considerations. Whilst it would be impractical for an EQIA to accompany every decision made, we would encourage the GMC to consider the inclusion of additional checks and balances to be built into the decision-making process to further support fairness in decision making. This could be achieved in practice with the inclusion of two or three questions (known as “decision equality checkpoints”) that are considered in every decision and that probe whether E,D&I or cultural factors have been considered when making a decision and what those were. The responses to the questions should be included within the audit scope to ensure auditors can thoroughly assess whether E,D&I factors were considered appropriately by decision makers.⁴⁴

- **Consideration for local level processes.**

In relation to FtP referrals from employer organisations, a sample of the referral forms should be routinely analysed for gaps, issues of bias or lack of consideration around E,D&I factors or systemic issues which go beyond the control of the doctor in question but have a consequential effect on their practice and actions. This would serve to improve the GMC's understanding of whether the local level referral process is a possible cause of unfair decision making and if so, which employer organisations are involved. If a pattern or trend emerges, it equips the GMC to scrutinise the process further and think of possible solutions to resolve this problem.⁴⁵

133. Some additional points we also recommend including in the scope of external audits which specifically add an E,D&I and capability lens to the process are as follows:

- **Consideration of E,D&I factors.**

Auditors should be instructed to consider how well E,D&I is factored into decision making processes across the GMC's internal functions. An example of how this can be achieved is to scrutinise the GMC's decision-making guidance and its practical application for potential inherent biases or a low level of consideration from an E,D&I perspective.⁴⁶

- **Role of ELAs.**

The GMC should review its approach to auditing the controls around fair decision making in respect of the provision of advice to ROs to further support the mitigation of bias and ensure fair decision making. External auditors should also review whether the GMC guidance is adequate to enable ELAs to operate and assess a case in an unbiased manner. This can be assessed by speaking to a sample number of ELAs throughout an audit period to ensure that this part of an audit is cost and time effective.⁴⁷

[42] Please see paragraph 101-103 of this Report for more discussion on the evidence behind this recommendation.

[43] EqIA Draft Template (internal GMC document), undated.

[44] Please see paragraph 100-101 of this Report for more discussion on the evidence behind this recommendation.

[45] Please see paragraph 113-114 of this Report for more discussion on the evidence behind this recommendation.

[46] Please see paragraph 100-101 of this Report for more discussion on the evidence behind this recommendation.

[47] Please see paragraph 120 of this Report for more discussion on the evidence behind this recommendation.

Undertake a review of the drafting of GMC decision making guidance and referral related documents and ensure the guidance documents are grouped practically for accessibility and consider frequency of future reviews

134. We outline the steps to be considered under this recommendation below, which offers the GMC the benefit of creating a more streamlined approach in ensuring the GMC decision making guidance is clear and free from inherent biases and is comprehensible and accessible to decision makers. We recommend that a full suite of decision-making guidance together with clear explanatory and troubleshooting notes is prepared at the time a future external audit is commissioned. We outline a clear process of providing decision making guidance at the time a future external audit is commissioned and provide other experiential and practical considerations that the GMC should think about in the context of its decision-making guidance. This recommendation explains how the GMC can improve its decision-making guidance so that auditors can more effectively assess decision making fairness when assessing and navigating decision making guidance:

- The GMC should explain what guidance auditors should assess in relation to certain decisions that are audited. This explanation should be provided in tandem with what the GMC usually provides external auditors, such as the relevant resources, inductions at the outset of any external audits and report requirements.
- All decision-making guidance should be audited on a routine basis to ensure it is up to date, devoid of any potential inherent biases and inconsistencies, is not ambiguous in meaning and is maintained with any changes in law, practice or social issues prompting bodies to adjust language or practice. The GMC should take responsibility to provide periodic and informational updates to doctors and decision makers about the audits and such other relevant information. This can improve the way in which employer organisations run themselves, the way in which doctors practice or how decision makers approach decision making. These updates could account for societal issues, health endemics etc.

- For accessibility purposes and to remove potential disadvantages across the internal processes, the GMC could also consider audio versions and different language versions of its decision-making guidance (based on any applicable data it has which details the most spoken languages of doctors in the UK). In an independent report not commissioned by the GMC, which assessed the proficiency of students who were non-native speakers of a language,⁴⁸ it was found that the non-native speakers of English generally underperformed compared to native speakers. Therefore, having audio versions of the decision-making guidance in addition to the Good Medical Practice would specifically benefit doctors (such as IMGs) whose native language is not English and who are familiarising themselves with the UK medical system and GMC for the first time. It would also support other diverse and intersectional demographics of doctors, as well as showing an awareness of the advancement of technology and how society accesses and consumes information.
- We note that several of the decision-making guides we have seen include case studies. These are imperative as they provide an understanding of the GMC’s decision-making in context. The routine review of decision-making guidance mentioned as a recommendation above will allow for lessons to be learned and therefore case studies should be updated for learning. The GMC should also develop an archive of case studies on its website, for reference with guidance on assessment attached for all three categories of the groups that should receive packs. These case studies should also add cultural context for assisting decision makers and auditors who may be unfamiliar with specific examples. This would have to be balanced with demonstrating potential legal risks within examples (for example direct discrimination or whistleblowing). The GMC would benefit from a glossary of terms and definitions to be prepared and updated annually, so that future auditors, doctors and decision makers are clear on what terms mean to the GMC and the benchmark and weight applied to them.

[48] Fleckenstein, J., Leucht, M., Pant, H.A. et al. Proficient beyond borders: assessing non-native speakers in a native speakers’ framework. Large-scale Assess Educ 4, 19 (2016). <https://doi.org/10.1186/s40536-016-0034-2>

- Should the GMC undertake the review of decision-making guidance, we invite it to also routinely review such guidance alongside any additional documentation relevant to the process at stake (such as the Referral Form).

Set a consistent frequency for commissioning external audits

135. This recommendation will support the standard practice which the GMC can follow to assist it with identifying any potential systemic problems or challenges which may cause disproportionate referrals and unfair decision making.⁴⁹ Setting a consistent frequency for commissioning external audit will over time likely reduce costs and save time and resource in commissioning audits in the future. We suggest the following timetable of audits to take place:

- That, as planned by the GMC, audits of the registration and revalidation functions take place within a reasonable time period as determined by the GMC, given that no external audit has yet taken place for these processes. We would suggest that the GMC consider 2023 as a reasonable period to conduct the combined audit.
- Following this, we recommend that the GMC conduct an internal review of each internal process, lessons learned and insights from the audits, including the FtP, revalidation and registration functions, to allow the GMC to level set across the processes and review them in a consistent manner all at the same time ("**Initial Audits**"). This does not mean a re-auditing of those functions but a review to level set across each and ensure consistency of practice where relevant to support fairer decision-making processes and mitigate bias where relevant in each of these functions.
- Subject to internal costs, practicalities and logistics, the GMC could conduct follow-up reviews at reasonable intervals that it determines and manages. We suggest a biennial frequency to its audits of the decision-making processes ("**Biennial Audit/s**"). This suggestion is based on our expertise, particularly for processes that have not been routinely and/or regularly assessed; this allows for the balancing of resources, cost, time and stakeholder perspectives. The scope of the

Biennial Audits could possibly be informed by issues raised in recent cases, so that the GMC is able to keep on top of and rectify any potential challenges or lessons learned to the fairness of decision making, rather than a full end to end audit every two years.

- The GMC should also build in a mechanism into the Initial Audits and Biennial Audits, by which decisions that are concerning will be flagged for escalation outside of the usual review process ("**Red Flag Mechanism**"). For example, a Red Flag Mechanism should pick up nuanced or bespoke cases or ones that are challenged by the profession. These red flag decisions will inform smaller discreet assessments that can take place to succinctly assess vulnerabilities that have been highlighted by the larger audit. Based on this Report, we envisage that external audits for separate stages of decision-making across the processes where there is risk that fairness is challenged or compromised could be helpful. These more focused audits can be carried out on an ad hoc basis to allow the GMC to have flexibility in responding to issues, insights and reflecting how these might impact the auditing processes. The issues at each stage will likely become clearer following a full review but as an example, we anticipate that a stage specific audit may scrutinise the referral stage, more specifically the relationship between ROs and ELAs and the advice shared between them, how this influences the decision to make a referral to the GMC and whether this has contributed to the wider issue of disproportionate referral rates of ethnic minority doctors.
- The Red Flag Mechanism will not erode the need or ability to have the Biennial Audits if necessary, but it provides the GMC the opportunity to be flexible on how large scale the Biennial Audits may need to be. It is likely that the Red Flag Mechanism will work to narrow the scope of audits because there will likely be fewer issues that the GMC will need to rectify each year. Additionally, where decisions are flagged, they could be escalated to the GMC's preferred panel of auditors to be scrutinised further whilst an audit is ongoing, without having to commission a separate Biennial Audit. This approach considers the balance of associated costs and practicality.

[49] Please see paragraph 91-93 of this Report for more discussion on the evidence behind this recommendation.

- If the GMC finds that there is an increase in the number of times it needs to escalate concerns using the Red Flag Mechanism, the GMC can revisit whether it needs to change the scope of Biennial Audits on decision making or frequency as necessary, until it sees a decrease in decision making challenges which have the potential to be underpinned by issues in the process.
- Increasing the frequency of audits where necessary, choosing the right auditors, implementing the correct guidance and enforcing the Red Flag Mechanism mean that information and infrastructure become consistent. This consistency, which is likely lead to narrower and less intensive biennial external audits, will more than likely achieve greater cost and time effectiveness, better transparency in the decision-making process and a more reliable auditing system for the GMC to rely on as a checkpoint for itself.

Review the method of sampling used in external audits

136. Where audits look at fairness in decision making or consistency in decision making, the two methods of sampling⁵⁰ and comparator cases should be used in audits. For example, the use of sampling would ensure that an adequate and reasonable sample size has been allocated for review. Following the sample selection, the auditor would review cases in the usual way and also pay greater attention to any comparator cases to assess and compare decisions made. Consistent demographic data and insight from previous decisions should be used as markers by auditors to check where there is consistency across sanctions, across demographics. The GMC should take the legal approach used in Employment Tribunal discrimination cases and the Equality Act 2010 as an example of how a comparator is used to assess fairness in employment law and build that into the methodology of the audit itself. This will help to futureproof process and mitigate bias.
137. We recommend that the GMC determine for each type of audit, the baseline protocol expectations on sample data and the methodology in which that data is provided to the auditor by the GMC and assessed by the auditor; this will ensure bias is challenged at each stage. Additionally, supporting guidance

in identifying a comparator based on employment law, will aid the auditor in looking back at previous decision making to ensure that decisions are consistently assessed and determined. In relation to our suggested approach in determining an appropriate sample size in external audits, please see paragraphs 85-88 of this Report. In relation to the recommendation for ascertaining a sample size, given that there is no set method for doing so, our recommendation should be viewed as a possible option for the GMC to consider, notwithstanding possible resource and informational governance constraints that may make our recommended approach difficult to implement.

Assess its data privacy position and ensure that it is fully compliant in collecting special category data

138. Ahead of commissioning the next external audit, we understand that the GMC prioritises its compliance with data privacy law and manages sensitive personal information with caution and care. This recommendation is to build on our explanation provided earlier in the Report and to reiterate that it would help the GMC to understand the flexibility afforded to it by virtue of data privacy law when handling “special category data” as defined under Article 9 of the UK GDPR basis with auditors legally. This will undoubtedly improve and streamline that way in which information is provided to auditors and external audits are organised and managed in future.⁵¹



[50] Please see paragraph 68-84 of this Report for more discussion on the evidence behind this recommendation behind this recommendation.
 [51] Please see Schedule 4 of this Report for more discussion on the evidence behind this recommendation.

To adjust the audit process for more ease, transparency and efficacy

- 139. This recommendation, which will be based on the legal advice obtained in relation to data privacy and handling, will reduce errors in the collation of documents, reduce the need for redacting or summarising key documentation, save time and resource in the delivery of documentation to auditors and likely reduce the amount of time required by the auditor to undertake its review, potentially reducing the fees which the GMC pay in respect of external audits and errors.
- 140. We have understood that all documents required by auditors are located on the GMC’s secure system, Siebel. Subject to Siebel being used in the following way, we would recommend that the external auditors are granted access to a secure ring-fenced area of Siebel. This would create a confidential space on the system so confidentiality would not be an issue and the GMC could electronically transfer or copy the relevant documents for auditors into this space with ease.

Remove restrictive word counts on external auditors

- 141. This will have the effect of creating a more flexible approach for auditors, assist them in doing their work, allow their expertise to be utilised properly and ensure that an audit is as thorough and complete as possible. We were provided with GMC’s Guidelines for research reports,⁵² which prescribed a 15,000-word limit. Word limits often limit auditors’ demonstration of its in-depth analysis that may be required and can hinder their work. Audits should be undertaken thoroughly and properly and removing restrictions on auditors will help to achieve that first time round, therefore meaning that subsequent audits may be narrower, shorter and less intensive because the initial audits already drew out major issues. In support of this recommendation, we observed that the Audits and Review were clear but could have possibly explored themes in greater depth and there been less restriction on the word count.



ESSENTIAL RECOMMENDATIONS

Choose the external auditor based on their specialist expertise and create a panel of auditors over time

142. This recommendation will assist the GMC in building relationships with a range of auditors, becoming familiar with their work and vice versa and provides a solution to the challenge in finding suitable auditors to undertake audits for the GMC specifically. Whilst we have noted that full independence is perceived to be difficult to achieve given audits must be commissioned from the GMC as a starting point, being transparent about a panel of auditors who have the relevant expertise can potentially demonstrate how the GMC is trying to be fair and reasonable in its choice of auditor⁵³. The steps which we propose the GMC takes to conduct this recommendation are as follows:

- We recommend that the GMC are consistently clear on the purpose of any audit before finding and selecting an auditor – this will make it easier to identify who can respond to the need of the audit best, especially in the context of E,D&I considerations. The tender should reflect their aims and be put out to organisations who can demonstrate to the GMC that they have the capability to undertake the audit properly with due consideration to E,D&I related concerns, and recommend remedial steps to the GMC. Based our expertise, we have found that the following non-exhaustive list of key traits and markers often identify someone with a solid understanding of E,D&I and governance issues:
 - Has a strong understanding of the governance framework of the company they are auditing.
 - From an inclusivity perspective, they automatically aim to consider the importance of casting their net wide which provides context on how decisions are made, cascaded and communicated to thoroughly assess the effectiveness and fairness of the process and final decisions.
 - They understand the need to consider EDI and governance issues when assessing the

GMC’s internal processes and scrutinising the fairness of historic decisions.

- They will have strong governance skills to understand and deconstruct existing frameworks.
 - They will be skilled in deciphering where exclusions and barriers might exist within the structure of an organisation.
 - They will unveil where there are ineffective structures.
 - They will have EDI data analytical skills
 - They are able to influence and manage stakeholder conversations.
- Once any tender is finalised, the GMC should also send a concise summary of the proposed audit to the BME Doctors’ Forum and Strategic EDI Forum, to consult with and encourage stakeholder participation in respect of external audit (perhaps the stakeholder groups could be a part of the assessment process or panel which decides the core panel of auditors); this helps to achieve transparency about what the GMC is planning to audit. Organisations such as BAPIO or the BMA may be aware of auditing organisations that are appropriate for the GMC to consider which would be a cost effective, collaborative but a balanced and measured way of working with stakeholders to achieve a common goal.
 - The preferred panel of auditors should be a selection of firms who have capabilities across auditing, governance and E,D&I. A preferred panel of auditors (like a “preferred supplier” framework) will help ensure the GMC has access to auditors who have generally been assessed to meet the GMC’s standards and have the relevant expertise, so that when external audits are commissioned, the GMC faces less difficulty in securing an appropriate auditor in a timely manner. The auditors should be able to demonstrate how they are able to meet the demands of the GMC and how they would balance governance, law, E,D&I, culture and addressing controls challenges or failings

[53] Please see paragraph 105-108 of this Report for more discussion on the evidence behind this recommendation.

to varying degrees that are bespoke to the particular needs and practices of the GMC. The GMC could also consider the mandate in the creation of its audit panel that each auditor demonstrate that they are up to date on developments in the E,D&I sector.⁵⁴ For those auditors that have potential but do not quite meet the threshold of what the GMC requires, the GMC could consider whether training can help to close the knowledge and experience gap.

RECOMMENDATIONS TO STRONGLY CONSIDER

GMC to build on existing stakeholder engagement and involvement in external audits

143. We are aware that the GMC make a strong and intentional effort to engage with their stakeholders and this recommendation looks to build on the existing work to encourage greater collaboration and for the profession to have significantly more trust in the GMC. We have suggested an additional way that this recommendation could be implemented:

- The GMC have confirmed that the Chair of the BME Doctors’ Forum and an appointed barrister will lead a review into a recent high-profile FtP case. This important work will help to further identify the profession’s concerns, provide transparency about the GMC’s intentions as a regulator and encourage collaboration and trust between the GMC and stakeholders. It is important that the GMC use existing channels to communicate with external stakeholders about future audits using a set method (i.e., having an online survey every time an audit is proposed, which gathers stakeholders’ feedback and suggestions of auditors and areas of audit to focus on and then having a brief meeting for the GMC to present findings from those responses.) This will allow the GMC to demonstrate how it has used or will use the responses in the commissioning of an audit including identifying areas of continuing challenge or concern which would benefit from an audit.

[54] Please see paragraph 108 of this Report for more discussion on the evidence behind this recommendation.

SECTION G

SCHEDULES

SCHEDULE 1

GLOSSARY OF TERMS

- “**Bias**” is being prejudice against one group or in favour of another, in a way that disadvantages a particular group. It can be conscious or unconscious and can have influenced the design of processes that have been around for a long time.
- “**BMA**” is the acronym for British Medical Association.
- “**E,D&I**” is the acronym for Equality, Diversity and Inclusion.
- “**EA 2010**” is the acronym for the Equality Act 2010.
- “**ELA**” is the acronym for Employer Liaison Adviser, a member of GMC’s Outreach team who works directly with designated bodies and employer organisations during the fitness to practise referral process.
- “**Employer Organisation**” describes an organisation who employs doctors, such as a NHS Trust or GP medical practice.
- “**Ethnic Minority**” refers to all ethnic groups except the white British group within the UK.
- “**FtP**” is the acronym for Fitness to Practise.
- “**ICO**” is the acronym for Information Commissioner’s Office.
- “**IMG**” is the acronym for international medical graduate.
- “**MA 1983**” is the acronym for the Medical Act 1983.
- “**MD**” is the acronym for Medical Director.
- “**Microaggressions**” describes the broad range of acts or remarks that make a person feel insulted, denigrated, offended or treated differently, unfairly or inappropriately because of their gender, race or ethnicity, disability, sexual orientation or another protected characteristic. Microaggressions are often indirect or subtle actions or statements. It is often the case that microaggressions are unintentional and have no negative intent. However, regardless of intent, they can have, over time, a material impact on a person’s health, wellbeing, and overall experience of the environment they are in or a part of. Accumulative microaggressions can also be viewed as forms of bullying, harassment, and overt racism, depending on the issues and circumstances involved.
- “**RO**” is the acronym for Responsible Officer.
- “**Siebel**” is the GMC’s internal secure system.
- “**UK GDPR**” is the acronym for The UK General Data Protection Regulation

SCHEDULE 2

LIST OF DOCUMENTS

We conducted an extensive review of the documents provided to us as part of this review. We have set out below the most relevant of the documents as the full list would be lengthy.

GMC decision making guidance

- Draft of GMC Decision Making Principles (January 2022)
- GMC guidance for case examiners on making restoration decisions following voluntary or administrative erasure
- GMC guidance for decision makers on allegations of low-level violence and dishonesty
- GMC guidance for decision makers on assessing risk in cases involving health concerns
- GMC guidance for decision makers on closing criminal cases at triage
- GMC guidance for decision makers on deciding whether an investigation is needed
- GMC guidance for decision makers on referral to an Interim Orders Tribunal (IOT) GMC Making decisions on cases at the end of the investigation stage: Guidance for the Investigation Committee and case examiners
- GMC principles of good investigation guidance
- GMC RO referral guidance
- GMC the meaning of fitness to practise guidance
- GMC thresholds guidance
- Guidance for decision makers in applying the five-year rule
- GMC insurance and indemnity guidance

Documents

- A fair experience for all: Closing the ethnicity gap in rates of disciplinary action across the NHS workforce (NHS Workforce Race Equality Standard (WRES) strategy - July 2019

- Audit of the fairness of decisions in the General Medical Council’s fitness to practise procedure, compiled by Fieldfisher and The University of Edinburgh, Edinburgh Law School, July 2021
- COVID-19: review of disparities in risks and outcomes- June 2020
- Fairness of decisions to refer doctors to the Medical Practitioners Tribunal Service Interim Orders Tribunal - UCL Medical School Report July 2018
- GMC Equality, diversity and inclusion targets, progress and priorities for 2022
- GMC fitness to practise referral form, undated
- GMC Governance Handbook, 10 December 2021
- Good Medical Practice Guide - 2018
- NHS Staff from overseas: Statistics - 20 September 2022
- NHS Workforce Race Equality Standard 2021 data analysis report for NHS trusts, March 2022
- Proficient beyond borders: assessing non-native speakers in a native speakers’ framework; Fleckenstein, J., Leucht, M., Pant, H.A. et al. Large-scale Assess Educ 4, 19 (2016)
- Review of decision-making in the General Medical Council’s Fitness to Practise procedures, Plymouth University Peninsula School of Medicine & Dentistry, December 2014
- Williams Review into Gross Negligence Manslaughter in healthcare – GMC written submission, undated

Online Sources

- About GMC - <https://www.gmc-uk.org/about>
- Apply for Registration - <https://www.gmc-uk.org/registration-and-licensing/join-the-register/registration-applications/application-registration/>
- COVID-19: the risk to BAME doctors - <https://www.bma.org.uk/advice-and-support/covid-19/your-health/covid-19-the-risk-to-bame-doctors>

- Exclusive: deaths of NHS staff from covid-19 analysed - <https://www.hsj.co.uk/exclusive-deaths-of-nhs-staff-from-covid-19-analysed/7027471.article>
- The Medical Register - <https://www.gmc-uk.org/registration-and-licensing/the-medical-register#searchTheRegister>
- GMC targets elimination of disproportionate complaints and training inequalities - <https://www.gmc-uk.org/news/news-archive/gmc-targets-elimination-of-disproportionate-complaints-and-training-inequalities>
- We're bound by outdated legislation, now is a chance to change it - <https://gmcuk.wordpress.com/2021/05/05/were-bound-by-outdated-legislation-now-is-a-chance-to-change-it/>
- Sample size calculator and complete guide in 2022- <https://www.qualtrics.com/blog/calculating-sample-size/>
- Wolfram MathWorld – sample size calculation explanation - <https://mathworld.wolfram.com/ConfidenceInterval.html>

Legal cases

- Dr O M A Karim v GMC: 3332128/2018

Legislation

- Medical Act 1983
- Equality Act 2010

SCHEDULE 3

MEANING OF E,D&I

1. We realise that for the GMC, protecting, promoting and maintain the health and safety of the public is paramount. We also understand, that ensuring medical professions within communities are working in safe and equitable practices are also paramount. To ensure that this is maintained, for the good of health practitioners and patients, we recognise that the audit process must be a fair, equal process, too. For the latter to be achieved E,D&I must be a consideration for the GMC to consider in terms of its own organisation, how it is incorporated into its processes and decision making and how it presents itself in the profession itself (i.e., within employer organisations).
 - learn if bias is embedded within GMC’s processes;
 - assess if the organisation is structurally set up to achieve the E,D&I and positive culture related aims, objectives, and values; and
 - how the components of the structure, influence the procedural practices (as further described below).
2. Diversity and Inclusion, or E,D&I describes the culture that affects the way individuals and groups experience and feel part of an organisation or body through the way it functions (its operations and decision making) and through interactions with others in the organisation. For employers, E,D&I is often framed as a philosophy or a strategy. However practically, organisations that lack E,D&I on a structural and procedural level, rarely find that their staff experience E,D&I in a positive way. Often the culture of an organisation that is lacking in a E,D&I strategy is experienced by staff poorly, giving rise to a negative workplace culture and a varied range of risks. Individually, it manifests in whether a person feels able to speak up, bring all aspects of their personality and experience to the workplace, and feels accepted and valued. It includes whether the person has the same opportunities as other individuals and feels that they and their contributions are valued in the same way as that of other individuals, regardless of differences in their gender, race or ethnicity, disability, sexual orientation, or other protected characteristics.
3. To ensure E,D&I thrives and passive and active behaviours and attitudes which destabilise E,D&I are resolved, we have considered E,D&I on a structural, procedural, and experiential level whilst writing this Report.
4. Structural considerations in this Report will focus on the GMC’s strategy, internal processes, operations and goals. From assessing the structural aspects of an organisation, we:
 - understand the historical contexts and influences;
5. We also learn how the structural aspects of the organisation shape and affect the opportunities of the workforce through an E,D&I and intersectional lens.
6. When we analyse procedure, we look at how the organisation runs, its initiatives and processes and how strategy is put into action. As with the structural assessment, we review the procedural aspects of an organisation to see whether there is bias in their design and how the organisation’s procedures build up or hinder positive E,D&I work. Included in this review will be the GMC’s decision-making guidance and E,D&I targets.
7. Experientially, we review how staff and groups, think and feel about what is happening and what their experience of working at GMC , or being subject to it as a regulator is like. The experiential element shows some of the effects of the structural and procedural elements of an organisation and how they play out in practice. The experience of staff and leaders also serves to highlight some of the intended and unintended consequences of the organisation’s strategy and process. It also highlights some passive and active behaviours affecting E,D&I in the organisation, especially those that are common. In addition, as part of this review, we have also considered stakeholder perceptions of the GMC as a regulator, their experiences and perceptions of the GMC’s decision making and their experiences in relation to the GMC’s internal processes.
8. Accordingly, our review assessed the GMC’s approach to E,D&I across all three levels and across all levels of the organisation that participated and contributed to the review in the context of commissioning audits on decision making fairness.

SCHEDULE 3

MEANING OF E,D&I

9. In conducting a review into the GMC's past approach to auditing fairness in its decision making, the climate and tensions caused by the COVID-19 pandemic that society has experienced over the last two years cannot be overlooked. Additionally, how the socio-cultural and intersectional tensions which have overlaid the stresses of the pandemic for society and in particular, the medical profession, must also be taken into consideration. The last two years have seen multiple socio-cultural moments that have greatly impacted society, and these have affected expectations regarding E,D&I strategies and resolving E,D&I related issues, rendering them very different to expectations from just two years ago. All these socio-cultural moments have challenged people in multiple and overlapping ways. The strain on wellbeing is a result of each person's identity and experiences and overlays other experiences of workplace culture and E,D&I issues. We took this into account as the societal background of our review. Finally, we are aware of the challenging dialogue around recent employment tribunal decisions concerning doctors who have been associated to fitness to practise concerns, stakeholder organisations' views on the GMC's approach to decision-making and the wider issue that has been recognised by the GMC around the disproportionate referral of ethnic minority doctors for fitness to practise concerns and differential attainment. This was considered as contextual background for our Report, and we have considered it within our findings and recommendations.

SCHEDULE 4

FURTHER ANALYSIS IN RESPECT OF DATA PRIVACY

1. The UK General Data Protection Regulation (“**UK GDPR**”) and the Data Protection Act 2018 (the “**Data Privacy Laws**”) set the standards and requirements for processing personal data in the UK. As the GMC may already be aware:

- In order to share personal data with external auditors, the GMC will be required to meet relevant requirements under the Data Privacy Laws, including: (i) it must have a lawful basis for sharing the data; (ii) it must have informed the data subject that their personal data is being shared and the details of the sharing; (iii) the amount of personal data shared has been minimised to what is necessary; (iv) the sharing is for the minimum time; and (v) the sharing is secure and documented.
- In this context, the third-party auditor is likely to be the ‘data processor’ for the GMC when processing personal data relating to its audits, as it will act on the GMC’s instruction and in accordance with its contractual terms of engagement with the GMC. The GMC, meanwhile, is likely to be the ‘data controller’, as it will determine the way in which the data is processed. As a data controller, the GMC must enter into a written contract, known as a data processing agreement, when it engages a data processor. Such document sets out key responsibilities and liabilities of both controller and processor and must include terms such as that: (i) the processor must only act on the controller’s documented instructions, unless required by law to act without such instructions; (ii) the processor must ensure that its staff processing the data are subject to a duty of confidence; (iii) the processor must take appropriate measures to ensure the security of the processing. Whilst processors do not have the same obligations as a data controller under applicable data protection laws, there are direct obligations under the UK GDPR that apply to them, and the GMC can, through its contractual engagement as described above, set out the responsibilities, bolster the expectations of the processor and provide further security for the

GMC when sharing unredacted records, where appropriate.

- Certain data shared by the GMC in order to assess the fairness of its processes may qualify as ‘special category’ data and additional considerations will apply under the Data Privacy Laws. In particular, data relating to a person’s racial or ethnic origin, political opinion, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health or a person’s sex life or sexual orientation, are defined as ‘special category’ data. To lawfully share this type of data, the GMC must identify both a lawful basis under Article 6 of the UK GDPR and a separate condition for processing under Article 9 of the UK GDPR. These do not have to be linked.
- Under Article 9 of the UK GDPR, there are ten conditions for processing special category data, one of which is obtaining express consent from the data subject (in this case, a patient, doctor or employee). Consent means offering those individuals a real choice and control, and genuine consent requires a positive opt-in (un-ticked consent box with clear, expressly stated guidelines regarding what the person is consenting to). Additionally, consent can be withdrawn at any time and there is a continuing discussion regarding whether consent (particularly in an employment relationship) can be freely given. The Information Commissioner’s Office (“**ICO**”) recommends that there is not an over-reliance on the use of consent.
- Taking into consideration the limitations that consent provides, HB considers that the most relevant conditions to support the processing of special category data by the external auditor is as follows:

DATA CATEGORY	ARTICLE 6	ARTICLE 9 (AND SUBSEQUENT CONDITIONS RELIED UPON)
Racial or ethnic origin data	Article 6(1)(f) For our legitimate business interest (to ensure the company is a fair place to work and inclusive)	Article 9(2)(g) reasons for substantial public interests (with a basis in law) ⁵⁵ Condition 8 – Equality of opportunity or treatment
Sexual Orientation data	As above	As above
Religion/Philosophical Beliefs	As above	As above
Health (includes information about physical or mental health, including any disabilities)	<p><i>Article 6 (1) (c) Legal Obligation</i> (Duty of care to assess fitness and requirements to make reasonable adjustments etc.)</p> <p><i>Article 6 (1) (b) Contract</i> (Performance of our contract with you such as to monitor and manage sickness absence and to administer benefits including statutory maternity pay, statutory sick pay, pensions and permanent health insurance)</p> <p><i>Article 6 (1) (f) Legitimate interest</i> (to manage health and safety risk and support, ensure inclusive workplace culture/diversity of staff and thought)</p>	<p>Article 9(2)(b) employment, social security and social protection law; Condition 1 of Schedule 1 DPA 2018</p> <p>And</p> <p>Article 9(2)(g) reasons for substantial public interests (with a basis in law)</p> <p>Condition 8 – Equality of opportunity or treatment</p>

[55] For reliance on Article 9(2)(g), one of the 23 specific substantial public interest conditions set out in the Data Protection Act 2018, Schedule 1 must be complied with. These conditions allow the processing of special category data for a variety of specific purposes. The detail of the condition must be carefully considered and any reliance on a condition must be demonstrated. In some instances, there is a requirement to explicitly demonstrate the substantial public interest. However, according to the ICO, this is assessed on a case-by-case basis and some of the conditions already have the substantial public interest built in the condition. The GMC must also have in place an appropriate policy document (a template provided by the ICO) and undertake a Data Protection Impact Assessment (“DPIA”).

2. Provided that the GMC complies with applicable Data Privacy Laws and its privacy policy and privacy notice outlines its approach to sharing data with third party auditors, the GMC should have greater comfort in disclosing the personal data (including sensitive personal data) to external auditors without applying redactions, with the exception of personal data which is unnecessary for the purpose of the audit.
3. We recognise that the GMC's approach to redaction is based on legal advice. While we recognise that a more detailed review of this advice is outside the scope of this project, we recommend that it is reconsidered to assess whether a more pragmatic interpretation of the application of the Data Privacy Laws is feasible in this context, which would also allow additional information to be shared.

HOWLETT BROWN 

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