To consider

GMC consultations policy

Issue

1. Good practice around conducting and responding to consultations has developed significantly since the last GMC consultation protocol was developed in 2008.

2. A new policy, together with supporting tools, is required to ensure our approach continues to be consistent with best practice in this field.

Recommendations

3. The Strategy and Policy Board is asked to:

   a. Approve the draft consultations policy, at Annex A.

   b. Note and approve our proposal for developing an implementation plan, including our proposal to conduct an internal consultation and bring a revised final policy back to the Board in mid-2015.
GMC consultations policy

Issue

4 We last reviewed our corporate approach to consultations in 2008, when we published a consultations protocol to provide guidance on designing and administering consultations.

5 Since 2008, we have begun to consult more frequently and on a greater number of issues. Similarly, we have witnessed a considerable increase in the number of external consultations that relate to our areas of key strategic interest.

6 Given this, and the growing case law around successful, and unsuccessful, legal challenges to public consultations, it is essential that we have a robust and consistent position on when and how we consult.

7 Furthermore, we also require a consistent position on how and when we respond to consultations to mitigate both the reputational risk of failing to respond on an issue that directly affects us, and the delivery costs of responding to an issue when this is perhaps unnecessary.

8 This will ensure we are using our resources effectively and efficiently, as well as upholding our commitment to both evidence based policy making and to making our model of regulation as responsive and proactive as possible.

9 It is important that this position is informed by best practice principles and the latest published thinking in this field.

Why we consult

10 We consult our stakeholders for a number of reasons, of which the most significant is the improved rigour, credibility, and external support that consultation brings to our policy making. In addition, we are required, by statute, to consult when amending specific regulations and we have a public duty to consider whether proposed changes to our functions provide equality of opportunity (for example, between those who share a protected characteristic and those who do not).

11 Good consultation practice will also reduce the risk of successful legal challenge that our processes and policies are unfair.

Why we respond to consultations

12 Responding to external consultations allows us to influence proposed changes within the health sector, changes which may, for example, affect doctors’ practice. Over the last year we have responded to almost 30 consultations covering a range of issues
from the draft proposals for a Mental Health (Scotland) Bill to the proposed Statutory Duty of Candour in England.

13 By responding formally, we are setting out our opinion and helping to ensure that any changes further the core purpose of the GMC – to help protect patients and improve medical practice across the UK – and in the process support, rather than contradict or hinder, the professional duties set out in our guidance. Above all, by responding to consultations we support others in making better policy.

The current situation

14 Although individuals and teams involved in consulting have already amended and updated their approach to take into account recent developments in case law (and good practice) these changes have not been formally documented in a way that can easily be shared across the organisation. As a result, this knowledge, together with associated skills and expertise sits in a small number of individuals across the organisation.

15 While these teams continue to share their knowledge and expertise with colleagues across the organisation on an informal basis, as the volume of consultations increases, a more sophisticated means of defining and socialising this information (with regard to when and how to run a consultation) is required, drawing on the accumulated experience and expertise within those teams.

16 Without a consistent, up to date policy position, we face the following risks:

a An inconsistent approach to determining when and how to undertake consultations, thereby undermining our policy development process, damaging our credibility among key interest groups, and limiting the effectiveness of any proposed change to our policies or ways of working.

b We miss the opportunity to influence an external development which has the potential to adversely impact upon our ability to regulate effectively.

c A lack of shared knowledge on good practice principles is likely to increase the burden on those individuals with the relevant expertise in this area.

d The absence of a clear policy risks the erosion of this expertise through turnover of staff.

Proposed project

17 To address these risks, facilitate knowledge transfer, and promote consistency in how we undertake, manage and respond to consultations, we have developed a draft consultations policy, at Annex A, (incorporating decision flow charts) to provide clarity to staff across the organisation.
To promote the policy and guidance, and facilitate knowledge capture and transfer, we plan to develop supporting tools to help individuals understand how to apply the policy. The supporting tools may include for example, interactive case studies and consultation checklists to ensure that the good practice principles have been applied.

**Implementation**

We know that we’ll need to carry out further work to socialise, test and embed these principles across our functions. Subject to the Board’s approval, we propose to:

- **a** Consult (internally) on the policy to test that it is both accessible and helpful, and that the supporting tools are useful.

- **b** Develop an implementation plan to build awareness of, and help embed, the policy.

To help develop our capability and capacity in this area, we will consider establishing a network of consultation champions across the directorates. These champions will provide coverage across the directorates and, through identifying and sharing best practice, promote continuous improvement in this area.

We will consult on the draft policy now and bring back to the Board a final, revised policy in the first half of 2015, following roll out of the implementation plan. Furthermore, we envisage that the policy and supporting documents will continue to develop over time in the light of experience and developments in best practice.
Supporting information

How this issue relates to the corporate strategy and business plan

22 This paper supports strategic aim 5 of the Corporate Strategy: to work better together to improve our overall effectiveness, our responsiveness and the delivery of our regulatory functions.

How the issues support the principles of better regulation

23 Consultation is a fundamental element of robust, credible policy development. Good consultation (and engagement more generally) ensures that we actively seek and consider stakeholder views on the perceived risks, issues and equality and diversity considerations of our proposals at a formative stage and mitigate adverse effects, where possible, based on the evidence we gather.

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

24 Our proposed approach draws heavily on the input of our expert reference group, convened to provide oversight and scrutiny to the development of this policy, and consisting of internal experts on consultation practice (Farkhanda Maqbool, Policy Manager – Standards; Paula Robblee, Policy Manager; and Rachel Martinez, Policy Manager).

25 To allow the draft policy to be tested through internal consultation and piloting, we do not propose to publish this on our website. However, we will publish an updated, final iteration of our policy in quarter 3 of 2015.

What equality and diversity considerations relate to this issue

26 Recognising our obligations under the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998, the consultations policy and supporting tools will ensure that the particular needs of individuals with protected characteristics are taken into account when formulating consultations. This will include ensuring that any tools produced guide teams to consider equality and diversity issues which may arise. More broadly, principles 1 and 3 of the policy document at Annex A address the issues of accessibility and targeting of consultations to different groups.

If you have any questions about this paper please contact: Meera Chindooroy, Policy and Planning Officer, mchindooroy@gmc-uk.org, 020 7189 5289.
How we conduct and respond to consultations

1. This policy explains the value that well-run consultations, and consultation responses, can bring to the General Medical Council. It provides guidance on how to decide whether consultation is the right approach for your needs, and together with the supporting tools, a process for conducting and responding to consultations.

2. This policy is divided into two parts. Part one focuses on undertaking consultations with Part two addressing why and how we respond to consultations.

What is consultation?

3. Consultation is one of a range of ways in which organisations can engage with their stakeholders. The Consultation Institute defines consultation as:

   ‘... a dynamic process of dialogue between individuals or groups, based upon a genuine exchange of views, with the objective of influencing decisions, policies or programmes of action.’[DN: Reference to be added]

4. It is only appropriate to use consultation when those being consulted have a genuine opportunity to influence the policy or processes being discussed. Consultation cannot take place when a decision has already been made and there is no scope to revise it.

If the decision has been made, then you should use a different type of engagement, more suited to your purposes (see figure 1). [DN: Reference to be added]

Figure 1 The Engagement Continuum
Part 1: Undertaking consultations

Why do we conduct consultations?

5 Consultation is a fundamental element of strong, credible policy development and operational change. It provides a platform to actively seek and consider stakeholder views on the perceived risks, issues and equality and diversity considerations of our proposals at a formative stage. Through doing this, we can reduce adverse effects, where possible, based on the evidence we gather. In short, effective consultation supports good policy making.

6 By involving stakeholders in this way, and by testing how our policies and processes might be interpreted in the ‘real world’, we can better understand the factors that might make the implementation of our proposals more or less likely, as well as increase support for their adoption.

7 In addition, we also consult our stakeholders for the following reasons:

a In some cases, we are statutorily obliged to consult.

i The Medical Act requires us to do so before amending certain regulations.

ii We are a public body, subject to the public sector equality duty in England, Scotland and Wales, and Section 75 of the Northern Ireland Act, with a duty to advance equality of opportunity between people who share a protected characteristic and those who do not.

b Our stakeholders have a legitimate expectation to be consulted when we are developing a policy, process or operational change which will affect them.*

c Good consultation practice will reduce the risk of successful legal challenge that our process was unfair.

8 Consultations are not, however, a substitute for engaging stakeholders more broadly and less formally on a regular basis about our work, for example through the Liaison Services or stakeholder forums.

How will we know if a consultation is needed?

9 Consultation is not always the most appropriate method for engagement, so it is important that we carefully consider whether it is the right option. Figure 2 will guide you through the questions to ask to help make our decision. [DN Case studies to be provided in supporting tools.]

* See Clive Sheldon QC, Consultation and legitimate expectations (Jan 2012).
Figure 2 Deciding whether you need to consult

Will the proposed change significantly affect the ability of doctors / employers / educators to conform with the GMC's regulatory requirements?

NO  

Will the proposed change significantly change the way in which we interact with patients and the public?

NO  

Is the proposed change likely to require support from our key interest groups to implement / adopt (and therefore needs to demonstrate how their views / concerns have been identified and taken into account)?

NO  

Will undertaking a consultation be a proportionate response to the anticipated scale and impact of the proposed change?

NO  

Will the proposed change exert a differential impact upon individuals from diverse groups and/or those with protected characteristics?

NO  

Will undertaking a consultation be a proportionate response to the number of individuals likely to be affected?

NO  

Does a failure to consult carry a strong risk of either causing reputational damage and/or undermining the trust of doctors/other stakeholders?

NO  

Is there a clear legal obligation to consult?

NO  

Consider another form of engagement

Conduct a consultation
These questions are intended to serve as a guide only. If you are still not sure, seek advice from your Assistant Director.

When we will not consult

Where we are making changes that are necessary to fulfil statutory requirements, for example, an aspect of European Commission law, it may not be necessary to consult because stakeholders’ views cannot influence the outcome. However, you should consider whether to consult on the implementation methods.

Similarly, we may not want to consult on issues which stakeholders would not legitimately and reasonably be able to take a view on, for example, changing the fees paid by registrants. It may not be reasonable to consult stakeholders about the level of a proposed increase or decrease in fees. We might, however, want to consult if we are proposing to change the principles by which the fees are calculated and administered.

When it is not appropriate to consult, this does not mean that we should not engage on the issue. The Relationship and Campaigns Team in the Strategy and Communications Directorate should be consulted to explore other possible options.

The timing of the consultation and other considerations

In planning, you should consider when would be best to launch the consultation, for example, does it fall at an appropriate time with regard to other relevant projects and how does it fit (in terms of sequencing) with the wider context of the GMC’s programme of work for the year?

You should also consider other planned engagement activities across the organisation. Our stakeholders often cross many of our functions. By promoting a more coordinated approach in this way, we will ensure individuals aren’t repeatedly subject to similar requests for information within a short period of time. The Relationship and Campaigns Team will be able to advise you on this. If a clash is unavoidable, you should seek advice from your Assistant Director.

All proposed consultations will need appropriate sign off from the relevant directorate. You should discuss with your Assistant Director whether the consultation will need to be approved through our existing governance procedures, for example, the Strategy and Policy Board or Council - this will largely depend on the nature and scope of the consultation.

As part of your planning process, you should also remember to account for the time required by Strategy and Communication to review consultation documents,
What are the GMC’s principles for consultation?

This policy draws on the ‘Gunning principles’, which have recently been articulated and applied in related judicial review cases. These principles have been adapted using the lessons we have learnt from our collective experiences in this field.

**Principle 1:** Relevant key interest groups (including but not limited to any group affected by the proposed change) should be included in the consultation across all four countries of the UK (provided the proposed change is not country specific).

Consultations should be targeted towards those groups likely to be affected by the proposed change. This may include individuals with protected characteristics under the relevant equality legislation. †

Some of the key interests to consider may include:

- registered doctors who may be affected by proposed rules, standards or guidance (including consideration of those who may be differentially affected – speak to the Equality and Diversity Team in the Strategy and Communications Directorate for advice)
- medical students (including those who may be differentially affected)
- patients (including those who may be differentially affected)
- patient representative organisations‡
- employers of registrants and commissioners of services
- medical education and training managers and providers
- professional representative organisations (e.g. British Medical Association, Academy of Medical Royal Colleges)

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* Regina v Brent LBC ex parte Gunning 1985
† Equality Act 2010 in England, Scotland and Wales; Section 75 of the Northern Ireland Act 1998.
‡ Consider how representative these groups may be, and whether you will need to engage with other individuals or groups to take into account the views of those who may be differentially affected.
- other regulators (systems and professional)
- governmental bodies
- civil society organisations (for example, health charities, organisations advocating on behalf of specific groups who may be differentially affected by the proposed changes)
- the public.

For each of these key interest groups, consideration should be given to the specific subgroups that are likely to be affected by the proposal. Where organisations that represent a specific audience are selected (as opposed to the relevant groups or individuals themselves), we should consider the extent to which they are truly representative of that audience.

The Relationships and Campaigns team will be able to advise on the groups we should consider involving.

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<tr>
<th>Principle 2: Consultations must be undertaken when proposals are still at a formative stage.</th>
<th>There must be scope to influence the change being proposed or policy being developed. If the decision has already been made, a consultation is not appropriate (see figure 1). In some cases, a decision may have been made in principle and should be identified as a preferred option. If other possible proposals are left out, the risk of carrying out an unlawful consultation, which could be overturned on judicial review, increases.</th>
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<td>Principle 3: Consultations should be accessible, clear, coherent and understandable to our key interests (stakeholders).</td>
<td>We must take reasonable steps to make information available and accessible in alternative formats, to choose the most appropriate methods to engage stakeholders and to meet the public sector equality duty. Methods may include structured conversations with individuals, workshops, focus groups, social media, online or written consultation questions, public events with interactive options to contribute.</td>
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* Consider how representative these groups may be, and whether you will need to engage with other individuals or groups to take into account the views of those who may be differentially affected.
† Equality Act 2010 in England, Scotland and Wales; Section 75 of the Northern Ireland Act 1998.
tailored to the target audience, should be provided to those who are being consulted.

During the design stage, it may be useful to engage some key stakeholders or critical friends to seek their input on how the questions should be phrased and the appropriateness of methods for engagement.

We will publish information in Welsh in accordance with the GMC’s Welsh Language Scheme, which we prepare under the Welsh Language Act 1993.

**Principle 4:**
Consultations have to provide sufficient information to enable those consulted to provide an informed response.

Standard consultation documents should include:

- a clear explanation of how the consultation will be used and how the final decision will be made
- clear and relevant background information setting out why the change has been proposed and how it has been developed, without which those responding would not be able to make an informed decision
- meaningful, non-loaded questions which are free of bias and do not prevent respondents from expressing a contrary view.

**Principle 5:** Adequate time must be given for consideration and response.

Unless required by statute, consultations for new or major policy changes should run for a minimum of 12 weeks. All other consultations should run for a minimum of six weeks (provided the shorter duration is proportionate to the scale and nature of the proposed change).

Where we propose running consultations for a shorter period, we must be able to justify this, for example, we may already have consulted extensively on the substantive issues, but need to consult on a subsidiary matter arising from this. We must not run a shorter consultation merely for internal business requirements, for example, to fit with an internal policy deadline.

Longer periods may be required if the period of consultation falls over a major public holiday or season (although care should be taken to avoid overlaps where possible) or where the consultation addresses an issue that is either highly technical, requiring a more considered response, or is likely to
gain considerable public interest.

We should also consider external factors which may affect the ability of stakeholders to contribute, for example, doctors’ rotations, the timing of the academic year, scheduled examinations and other major consultations.

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<th><strong>Principle 6:</strong> Responses must be taken into account and used to inform the final decision.</th>
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| During the early planning stages, we should consider the methods that will be used to analyse the responses. This will help to ensure good design of the questions and the analysis methodology, which will strengthen the consultation overall.

The collated responses, together with our final decision and the justification for this, should be captured in a summary document and published on our website.

Our final decision must take account of the consultation feedback we have received. Where the decision appears at odds with that feedback we must clearly document the reasons for this.

Failure to incorporate feedback may indicate that we did not consult at an appropriate stage in the development process or it may reflect that our consultation questions were poorly defined. If we do not take full account of the views of those consulted, our consultation process is at risk of legal challenge. |
Part 2: Responding to consultations

Why do we respond to consultations?

19 By responding to consultations we can help others to make good policy. Responding to external consultations offers us the opportunity to set out our response to proposed changes within the health sector, changes which may, for example, affect doctors’ practice and therefore have an impact on standards of care.

20 In this way, we alert policy makers to possible unintended consequences of proposals, and explain the expected impact on patients, the public our registrants and other key interests. We are able to explore how the proposed changes fit with our professional guidance to doctors, medical students and medical educators and the impact of proposals on the way we regulate.

21 Our responses help to influence policy development in other organisations and provide an opportunity for us to raise any factual inaccuracies. By responding, we are also able to share our expertise and suggest alternative approaches based on our experience and the anticipated impact of the practical implementation of the proposals.

22 Finally, and complementary to the above, responding to consultations provides a means of encouraging and influencing others to take action in a way that is complementary to our strategic priorities, as set out in our Corporate Strategy 2014 – 2017.

When will we respond to an external consultation?

23 Due to the large number of consultations we receive or become aware of, it is important that we carefully consider whether it is appropriate for us to respond. The questions set out in figure 3 provide a guide to help inform your decision.
Figure 3 Responding to a consultation

Is the issue one of strong public interest, where we feel we have a duty to advise in the interest of protecting/promoting the health of the public?

NO

Is there direct mention of the GMC in the proposal and a recommendation that we should act or respond?

NO

Would failing to respond damage the GMC’s reputation, credibility or relevance?

NO

Would the proposal affect doctors’ ethical obligations, doctor/patient relationships or the conduct expected of doctors?

NO

Does the proposal conflict with, misunderstand or misrepresent GMC guidance?

NO

Is there other added value in getting involved? For example could it help us to:

- build relationships that are critical to the development, review and promotion of our guidance and learning materials?
- develop our understanding of emerging and evolving issues that will contribute to our ongoing assessment of the accuracy and relevance of our guidance?

NO

Can the potential added value justify the time and resource commitment?

NO

NO

YES

NO

YES

YES

YES

Recommend nil return

Prepare a response to the consultation
We are asked to respond to a number of consultations, often crossing different parts of our organisation. How will we make sure our responses are comprehensive and coordinated?

24 A central consultations log is held by the Regulation Policy team in the Strategy and Communications Directorate. It’s important that we keep track of any upcoming and past consultation responses through this log, so the Regulation Policy team should be notified when a consultation arises.

25 The Regulation Policy team will also provide regular updates to the Performance and Resources Board who will continue to play a role in monitoring our consultations activity (both with regard to those consultations that we undertake and those that we respond to).

26 The Regulation Policy team will discuss with colleagues which teams across the organisation are best placed to respond to the consultation, and the level of sign-off required for the response.

27 Consultations requiring a cross-directorate response will be coordinated and, in some cases, drafted by the Regulation Policy team, with subject matter input commissioned from the relevant directorates.

Next steps

28 Further advice on how to apply the principles and the guidance set out within this policy is available within the consultations toolkit. For further assistance, please contact your directorate consultation champion. [DN - Toolkit and consultation champion network to be developed]