Fòcas Luchd-Caitheimh Alba
Comhairle Luchd-caitheimh na h-Alba

Consumer Focus Scotland
Scotland's Consumer Council

Consumer Focus Scotland response to reform of the fitness to practise procedures at the GMC

April 2011

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Reform of the fitness to practise procedures at the GMC – response

Background

Consumer Focus Scotland welcomes the opportunity to respond to this consultation on proposed changes to fitness for practice investigations by the GMC. The changes proposed are essentially a move away from public hearings being required in all fitness to practise cases, to a situation where, if a doctor agrees with a proposed course of action, eg removing the doctor from the register, then a public hearing would not be necessary. The changes are prompted by:

- an increase in the volume of cases which the GMC has to handle, with public hearings adding significantly to costs and the time taken to resolve cases;
- a desire to reduce the stress and anxiety caused by formal proceedings where a doctor is willing to accept the proposed sanction; and
- a desire to avoid unfounded allegations being reported in the press.

From the consumer perspective, the main issues which are raised by the proposed change are:

- whether holding public hearings contributes significantly to public confidence in professional regulation in general;
- whether holding public hearings contributes to the confidence of those directly affected; and
- whether settling matters without a public hearing would lead to suspicion on the part of the public.

Consumer Focus Scotland position

The GMC acknowledges that this proposed change is prompted by the concerns of doctors about the current system. While it might be of concern to a consumer body that the approach of the regulator is being driven by professional interests, we are content that the intention here is not primarily to protect doctors from the hazards which come with a public hearing. We support the aim of dealing with cases as quickly and efficiently as possible. If a doctor has agreed that action needs to be taken by the GMC, then Consumer Focus Scotland is content that the action is taken without the need for a public hearing. We agree that where a member of the public is seeking some kind of punishment of the doctor, GMC

fitness to practise proceedings is not the appropriate channel, and they should be referred either to the NHS complaints procedure or to litigation if they are seeking financial redress.

Question 1 Do you agree that, where there is no significant dispute about the facts, we should explore alternative means to deliver patient protection other than sending cases to a public hearing?

Yes. This seems a reasonable and proportionate response, where no obvious purpose will be served by a public hearing.

Question 2 Do you agree that it would be appropriate for the GMC to have discussions with doctors in order to foster cooperation?

It is reasonable for the GMC to seek to cooperate with doctors to agree appropriate outcomes of particular cases. It is important, however, that this is not perceived by members of the public as negotiation between the GMC and doctors. It is essential that the GMC upholds its aim of protection of the public with no suggestion that it would be willing to compromise on that. We do however understand that an alternative process for finding out all the facts in a case will be needed, and more communication with doctors is likely to be an essential part of this.

Question 3 Do you think doctors:

- **A should be able to share information on a 'without prejudice' basis?**
- **B should not be able to share information on a 'without prejudice' basis?**
- **C should be able to share information on a 'without prejudice' basis where the GMC cannot directly use that information in a later hearing but can conduct further investigation and use any information uncovered by such investigation?**

We find it difficult to understand the difference between options A and C, and we are unclear about what is meant by the statement in the paper that there is a safeguard in that 'without prejudice' cannot be used as a facade to conceal facts or evidence. We are also unclear from the consultation how many cases are likely to be affected by this.

We would be very concerned if information shared on a 'without prejudice' basis uncovered evidence raising concerns about fitness to practise or patient safety and the GMC was not then able to act on that information. We agree that the system should encourage doctors to be open and reveal as many relevant facts and considerations as possible, but we firmly reject a process which allows the sharing of information on a 'without prejudice' basis. We therefore support option B.

Question 4 Do you agree that we should consider ways to access practical facilitation skills to support constructive discussions with doctors?

We agree that mediation is not an appropriate technique to use in these situations because there can be no suggestion of negotiation of the nature of the outcome or any sanction imposed. But the use of independent facilitators might be beneficial in creating a constructive dialogue between the GMC and doctors.

Question 5 Do you agree with the approach outlined for communicating with complainants about our discussions with doctors?

There is not much detail provided about how the GMC would communicate with the complainant about the outcome of discussions with the doctor. The GMC states that it would write to the complainant before the proceedings and afterwards, and that this communication would be "accessible and easily understood by the complainant". It is worth bearing in mind that communicating in writing may not be accessible for some complainants, for example, those with visual impairments, low literacy levels, or people who do not speak much English (this can include Deaf people). It might be useful to supplement this method of communication with face to face meetings or phone conversations with people, if it is easier to communicate with them in this way. It may be necessary to make sure that an interpreter or other communication support is available to support this conversation. Any written information should provide contact details for sources of independent advice and support.

Question 6 Do you think the term 'by mutual agreement' correctly reflects the outcome of discussions with doctors?

This language seems acceptable.

Question 7 Do you think that publication of the sanction accepted by the doctor will maintain public confidence in the profession? If not, are there other steps we should take?

Question 8 Do you believe we should publish a description of the issues put to the doctor? What other information (mitigation taken into account etc) should we publish?

We agree that it is important that information about the sanction and the issues involved are in the public domain. If there is to be openness about the reasons for the sanction it is important that any mitigating information is also published so that members of the public can understand the reasons for the nature of the sanction. We also agree that the existence of an independent audit of the GMC decision making process is an important part of ensuring that sanctions are consistent and appropriate.

Question 9 Do you think our proposals above are a reasonable way to deal with any risk of deterioration of the evidence? Do you have any other suggestions?

The suggestion to ask doctors to sign a statement of agreed facts seems reasonable.

Question 10 How do you think we might ensure that unrepresented doctors fully understand the implications of signing a statement of agreed facts?

This is a matter for the BMA and others to consider. However, the onus should be on the GMC to ensure that unrepresented doctors understand the implications of signing a statement of agreed facts.

Question 11 Are there cases which should be referred for a public hearing even where the doctor is willing to agree the sanction proposed by the GMC? If yes, what types of cases and what criteria should the GMC apply to identify such cases?

We do not think there are any particular categories of case which should always have a public hearing.

Question 12 Do you agree that there are some convictions that are so serious that the behaviour is incompatible with continued registration as a doctor and that there should be a presumption that the doctor be erased?

We agree.

Question 13 Do you agree that the convictions we have identified are convictions which fall into this category?

Yes.

Question 14 Are there any other convictions you think should fall into this category?

We do not have any other suggestions.

Question 15 Do you agree that doctors within our fitness to practise procedures who refuse to engage with our investigation, where we have made every attempt to seek their engagement , should be automatically suspended from the register?

We agree with this proposal. Without a proposal such as this, the GMC is unable to fulfil its primary duty which is to protect patients. Where a doctor refuses to cooperate with an investigation, the GMC is not able to demonstrate that it is ensuring that patients are being treated only by doctors who are fit to practise.

Question 16 Do you think that these proposals will benefit or disadvantage any groups of people who are involved in our fitness to practise procedures?

We agree with the suggestion that one of the groups to benefit will be vulnerable witnesses who might find the hearing procedure stressful, adding to the stress already caused by the alleged unfitness to practise. We also agree that it will be important for the GMC to monitor the impact of the proposed change on different groups.

Question 17 Do you think these proposals will impact on the confidence in our procedures of any particular groups of people? If so, which groups and why?

There will be a danger that there may be a public perception that doctors who are unfit to practise are escaping public censure, and that cases are being dealt with behind closed doors. This is why it is important that a full record of the reasons for the sanction and any mitigating factors are clearly in the public domain. It is also why we are uncomfortable with the idea of discussions with doctors taking place on a 'without prejudice' basis. It might also maintain public confidence if there were a clear route through which decisions of the GMC can be reviewed or challenged.