

## **MSC Response to the consultation on the reform of the fitness to practise procedures at the GMC**

April 2011

**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? If you disagree, please give reasons for your answer.**

The Medical Schools Council is supportive of the suggestion that, where there is no significant dispute about the facts, alternatives to a public hearing should be explored. We agree that in many cases it would be speedier and reduce costs, and perhaps be less punitive towards the doctor, than automatically proceeding to a public hearing. This would require full cooperation from the doctor, and a contract clearly outlining sanctions, conditions, and undertakings.

In the event of erasure from the register, there should be clear indication about right to appeal.

**2. Do you agree that it would be appropriate for the GMC to have discussions with doctors in order to foster cooperation? If you disagree, please give reasons for your answer.**

We agree that it would be appropriate for the GMC to have discussions with doctors in order to foster cooperation.

**3. Do you think that 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?**

This question divided our members, suggesting that a detailed analysis of the issues is required. On balance there are possibly stronger arguments in favour of (b). Doctors should not be able to share information on a 'without prejudice' basis at any stage of the investigation or adjudication process, as this undermines the principle of transparency and puts the investigator in an invidious position of sharing a secret with the doctor. It is important that practitioners accept that they must give an undertaking to provide full and complete information, and that information withheld cannot be subsequently used in mitigation. If unfavourable information is subsequently found to have been withheld, then the case may proceed to a public adjudication.

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

We agree that contracting external facilitators would be likely to be prohibitively expensive. If affordable GMC trained facilitators could be explored. GMC training could also be provided to internal investigators to act as facilitators.

**5. Do you agree with the approach outlined for communicating with complainants about our discussions with doctors? Please give reasons for your answer.**

We support the approach outlined in the document. The purpose of the investigation is to protect the public, not to provide redress to the complainant. In this circumstance, the complainant's relationship is with the GMC which has the authority to establish and maintain professional standards.

Furthermore we support the three strategies to bolster public confidence.

**6. Do you think the term 'by mutual agreement' correctly reflects the outcome of discussions with doctors? If not, what term would you prefer and why?**

Whilst we have no strong view on this particular wording, 'Voluntary erasure' or 'mutual agreement' could both be seen as overly euphemistic, 'erasure accepted' could be a more acceptable alternative.

**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?**

We agree that publication of the sanction is an important step in maintaining public confidence and encouraging compliance with any conditions or undertakings.

**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 believe that, in general, publication of the issues put to the doctor is reasonable, provided that they have been upheld at the investigation. However, in some cases it is not appropriate to include full information of the issues or of the content of the mitigating circumstances, for example, when another person's privacy is breached, or when the doctor offers a justifiable reason that mitigating circumstances should not be publicly detailed. In these cases there should be a public acknowledgement that mitigating circumstances have been taken into account, possibly with mention of a broad category, such as 'health'.

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

We agree that it is reasonable to ask a doctor whose name is being removed from the register to sign a form to outline what is 'agreed fact'.

We propose that this document might also include an outline of whether, and under what conditions, the doctor could return to the register.

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

If a doctor is unrepresented, then his /her competence to consent should be evaluated (as in a clinical situation).

**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 would expect that there would be cases that should be referred for a public hearing even where the doctor is willing to agree the sanction proposed by the GMC. We would suggest that these would fall into two main categories:

- Cases for which there is no precedent, to ensure full documentation and availability of the process to inform future practice.
- Cases where there is demonstrable benefit to the public in having full transparency.

**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 that there are some convictions that are serious enough to presume that the doctor should be erased.

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

In general we agree with the list of offences to be classified as 'serious and incompatible with continued registration. 'Sexual assault' might require a more detailed definition/ explanation due of the range of behaviours that might fall into this category.

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

We also suggest that fraud could be considered incompatible with continued registration and lead to erasure.

**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 that doctors who refuse to engage with GMC investigation should be automatically suspended from the register.

**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 believe that these proposals do not disadvantage any group. However we would emphasise the importance of auditing the impact of any changes made.

**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?**

We believe that these proposals will not disproportionately impact any particular group's confidence in GMC procedures. We would hope that the proposals would increase public and professional confidence.