General Chiropractic Council

Regulating anaesthesia associates and physician associates

Response of the General Chiropractic Council to the Department of Health and Social Care consultation on Regulating anaesthesia associates and physician associates in the UK.

May 2023

Contents

Summary

The General Chiropractic Council (GCC) welcomes the publication of the government's analysis of the 2021 consultation on reform of professional regulation and is pleased to provide its response to 'Regulating anaesthesia associates and physician associates'.

The consultation is focussed on bringing the two professions into regulation by the General Medical Council. It is the government's express intention that

> "*the resultant legislation will provide a template for the subsequent regulatory legislative reforms.*"

This response by the GCC to the proposals is drafted on the basis of how the changes would operate if applied to the GCC.

Approaches to healthcare regulation have changed since the Chiropractors Act 1994 was enacted and so we welcome reform. We have been calling for changes to be made to our outdated legislation and rules for many years. We also know that the healthcare system will continue to evolve, including in ways which cannot be anticipated.

We welcome and support the overall approach taken: the replacement of detailed, prescriptive legislation with rules enabling regulators to be flexible and adapt their rules as requirements change. We are confident this will support more agile, responsive and proportionate regulation in the years ahead for the better protection of people and the promotion of safe, high-quality care. Equally, there must be sustained progress. The publication of the proposals follows many years of slow progress. With no timetable for the reform of GCC legislation the weaknesses in the current system will remain.

Of course, with the increased flexibility given to regulators comes increased responsibility. We fully support the obligation upon regulators to carefully consult on their rules as an important safeguard on the exercising of these new powers.

Fundamentally, the reforms must deliver a framework which will enable the GCC and other regulators to protect the public. In our response to the 2021 consultation, we said any new legislation must equip regulators to be faster, fairer and more flexible; and enable us to:

- Adapt our regulatory approach to the needs and demand of health and care services as they evolve;
- Deliver an approach to regulation which is fair to registrants, supporting chiropractors to deliver the best possible care, and allows us to take proportionate and swift action where that is needed;
- Be accountable to patients, the public and the profession.

In much of what is proposed, the draft order meets those aims.

The proposals address many of the concerns we have with our current powers that we have told government prevents us from doing our job as effectively as we can. The benefits of these proposals include:

- Greater flexibility in the approach we can take to ensuring the highest standards of professional development of chiropractors. The public expect us to ensure chiropractors are up to date with training and their ongoing professional development; to ensure they continue to meet all the standards necessary for registration; and that they are fit to practise. We would also like to see these powers given greater prominence in the draft order, sending a signal to the public that doing so is a regulator's core function (**question 26**).
- Enhanced case management powers, for example in ensuring panels can give clear directions. These powers are absent from our framework meaning that cases can too often be delayed or adjourned. This combined with an ability to impose costs where there has been a failure to meet those directions will incentivise both registrants and regulators to comply with directions made by a panel - bringing greater efficiency to the fitness to practise process. (**question 31**).
- The ability to take decisive action to remove any registrant convicted of a serious criminal offence without the need to go through a costly and time-consuming fitness to practise hearing (**question 24**).
- A power to resolve cases where a registrant accepts their fitness to practise is impaired without the need for a hearing, which can be costly and time-consuming and stressful for all involved. We can see that such an approach could be seen as lacking transparency, but we note and support the requirement for these decisions to be published, and think publication is an important counter-balance to cases being resolved in the absence of a public hearing (**question 13**).
- An ability to revise our fees more easily, taking an approach which is beneficial to chiropractors (for example by way of charging fees on a pro rata basis rather than needing to require payment in full before registration can be granted). Our current inability to do this is a cause of frustration for some chiropractors affected and we believe this reform will attract much support (**question 29**).
- Greater flexibility where someone misuses the title of chiropractor. Being able to do so is a vital tool in regulating to protect the public (**question 20**)

However, we have some significant concerns:

Other regulators have been beneficiaries of rule and other changes. As set out above we have experienced at first hand the adverse consequences of our outdated legislation. We feel that the proposals do not address all of our concerns and that further work is needed in some areas to ensure the reforms deliver on what is intended for the GCC and other regulators. We call for further changes relating to:

- The ability to take a more proportionate approach to the investigation of concerns. This would enable regulators to channel resources appropriately, including the closing of cases straightforwardly at an early stage - where that is the right thing to do. This benefit of reform must be delivered and as proposed we have significant concerns it will not be. Our engagement tells us this is something desired not just by the GCC, but also patients and the profession we regulate. As the government will be aware, the current obligation upon the GCC to refer all allegations to its Investigating Committee has not helped us to regulate in the way we would like. We call for a legal basis for an *initial assessment* stage in the legislation. We think this is government's aim but as currently expressed that aim is not explicit. We expand further on this important point in our response to **question 12**.
- Clarifying what happens when the health of a registrant is affecting their fitness to practise. In our view, within the definition of 'impaired fitness to practise' a reference to a *standalone* health ground is required. As the proposals stand it is conceivable that an adverse event must occur before a regulator can take action. This cannot be the intention. We believe stating that regulators are not required to wait for an adverse event in taking fitness to practise action where there are grounds in relation to health puts that risk beyond doubt (**question 1**).
- Clarity as to regulators' powers of review of interim measures. The GCC takes its duties around interim suspensions very seriously and would emphasise (from experience) our powers in this area must be unambiguous. It is proposed we are given powers to carry out a review, but not by who [a case examiner or panel?] nor the powers available to us having conducted the review. We are also concerned that a limit could be applied on the amount of time a court is able to extend an interim measure (**question 15**).
- Ensuring that as well as determining the standards for registration now, we think it needs to go further so we can continue to do so in the future. We to There may be unforeseeable developments in the years ahead which it is right an applicant demonstrates before being granted registration. Although the draft order gives regulators the powers to set registration procedures in rules, we also think the GCC should be able to set the *requirements* of registration in rules (**question 4**).
- Making clearer provisions around revisions and appeals. As things stand we do not believe they can or will operate effectively. In particular, we are not satisfied they give sufficient clarity on ways in which a registrant may challenge a regulator's decisions; this is unfair. We would encourage the government to engage further, in particular with regulators, to ensure the proposals here are comprehensive and workable (**question 19**).

- Making the definition of *conditions* and *suspensions*, as both *interim* and *final* measures, more precise. The definition of *final measures*, of *conditions* and *suspension* must be amended to make clear they are conditions upon, and suspension from, registration – that is, we grant registration, make conditions of registration, and suspend registration (**question 1**).
- Fee setting. Whilst we welcome the greater flexibility as to establishing fees, we would be concerned that the prescriptive requirements, including around reserves and the requirement to balance income and expenditure are unworkable and have the potential to undermine the independence of regulators upon which public confidence is built (**question 29**).

These are not abstract concerns but highlighted so that the problems of the past – whereby aspects of regulation which do not serve the interests of the public or registrants become enshrined in legislation – are not repeated. We strongly support the overall direction of the legislation and, with a willingness to revisit specific problems in the current draft, and by moving ahead without delay, we believe it could be a sound basis for healthcare regulation in the decades ahead.

We make additional points:

1. We note, as does the consultation document, that the draft order does not contain all of the governance reforms which were contemplated in the 2021 consultation. Effective arrangements for governance underpin delivery, so further work and engagement will be needed by government to ensure those are delivered.
2. We express, above, our concerns around the length of time that will pass before the benefits of reform will be enjoyed by those we regulate and the public whose interest we seek to protect. We make an additional point, noting the intention to prioritise changes to regulators based upon criteria including the size of the registrant base, the need for reform and regulators readiness to implement the changes. The GCC is realistic. It knows its registrant base is smaller than that of a number of other regulators who may therefore feature higher in government's priority list for reform. However, though we may be a small part of the healthcare system we are also an integral part. The number of registered chiropractors has grown each year since 2007, which is reflective of the view that chiropractic is increasingly perceived as offering solutions to the public health of the nation within or adjacent to the NHS.
3. We hope that the level of engagement throughout our consultation response provides clear evidence to the government of the GCC's willingness, readiness and ability to work with the Department to implement reform.

General Chiropractic Council.

May 2023

Our detailed comments on the draft order follow:

Part 1: general

Q1.

Do you have any comments relating to ‘part 1: general’ of the consultation?

Article 1

The GCC understands the rationale for the commencement timetable in the context of AA and PA regulation contained within Article 1.

We also note the helpful acknowledgement in the consultation that the commencement provisions will need to be kept under review to ensure the GMC has the necessary time to prepare and consult upon its rules. This is a consideration which will need to be kept in mind when delivering reform for all of the other regulators. In the interests of transparency, it is vital that the GCC has the time to consult properly on the rules which will be at the heart of the reformed framework – giving the public and the profession a real opportunity to input into the new regulatory landscape.

Article 2

In respect of the definitions of terms used with the draft order contained within Article 2 the GCC make the following comments:

Final measure

We think the definition of 'Final measure', which provides for the available sanctions at the end of the fitness to practise process, requires amendment.

A final measure of conditions is defined simply as "*one imposed upon an associate*" and a final measure of suspension is defined as a suspension "*from practice*". However, regulators tend to convey registration rather than an ability to practise. It therefore does not make sense that we be empowered to restrict something which is not in our gift to grant. Indeed, defining final measures without reference to registration creates a risk of confusion as to their practical effect. Such confusion cannot be allowed within legislation which has at its heart the aim of protecting the public. We think there would be real patient safety concerns if a chiropractor, whose fitness to practise had been found impaired, was subject to measure of conditions or suspension and there was any doubt about the extent to which their professional activities were restricted. Consequently, the GCC is strongly of the view that the definition of final measures of conditions and suspension be amended so as to make clear they are conditions upon, and suspension from, registration.

Interim Measure

The definition of an interim measure within Article 2 as including both a suspension and condition would be a welcome improvement upon the position in the Chiropractors Act 1994 which confines the GCC to simply interim measures of suspension. This is clearly not in keeping with proportionate regulation and is an

obvious, and easily remedied, gap in our framework. Hence, the introduction of a power for the GCC to impose interim conditions is something which we consider necessary to have the full suite of regulatory tools available to us so we can provide patients and the profession with confidence that we are acting as a proportionate regulator.

However, we would echo our points above regarding the need for the definition of final measures to be tied to registration in the context of interim measures.

Impaired fitness to practise

Of particular note, is the provision in Article 2(2)(a) that fitness to practise may be impaired on the basis of either an "*inability to provide care to a sufficient standard*" or "*misconduct*". The GCC is supportive of the need to harmonise the bases upon which a registrant's fitness to practise may be impaired; these bases vary across the regulators and there is not an obvious rationale for such variation. Indeed, the GCC's legislation is perhaps particularly out of step with others, and in need of updating, in that it does not specifically use the term "*fitness to practise*" but instead speaks of "*unacceptable professional conduct*".

It is certainly helpful that the consultation document confirms the intention that an inability to provide care to a sufficient standard would cover concerns relating to lack of competence, health matters and insufficient English Language ability. We also think that an inability to provide care to a sufficient standard is an improvement upon the previously consulted upon phrase of "*lack of competence*" which appeared overly narrow.

Nonetheless, we do have some significant reservations about condensing the bases of impairment to these two grounds.

The GCC currently has a standalone health ground of action, expressed at our section 20(1)(d) as someone's ability to practise as a chiropractor being "*seriously impaired because of his physical or mental condition*". We do think there is some merit, given the sensitivity of such cases, in treating them as 'health cases' rather than placing them into the same category as what we would describe in our existing framework as 'incompetence'.

More substantively, we remain concerned that putting health under a competence ground may limit regulators' ability to deal with cases where a registrant's conduct (as a result of health issues) has not yet led to direct evidence of an inability to provide safe care. Bearing in mind the overarching objective for all regulators to protect the public, there should be no room for doubt that the GCC and other healthcare regulators are not required to wait until something has gone wrong before action can be taken. The GCC expects other regulators will highlight this point and would strongly urge that the concerns expressed, which are rooted in ensuring this legislation properly equips regulators to protect the public, are addressed by including a standalone health ground.

In addition, although we envisage the intention is that criminal convictions be considered as misconduct, we think there is merit in the legislation expressly making clear that conduct which has been found proven beyond doubt to meet a criminal threshold is a basis for fitness to practise action. In the event that the government is persuaded to add criminal convictions as a distinct basis of impairment, the GCC would also be supportive of encompassing cautions – as is the position for most

other healthcare regulators. Cautions are not currently identified within section 20(1) of the Chiropractors Act 1994 as being a specific basis for impairment which means we have to go through the process of establishing the conduct that lead to the caution "*falls short of the standard required of a registered chiropractor*".

Part 2: standards and approvals

Q2.

Do you agree or disagree that the powers outlined in 'part 2: standards and approvals' are sufficient to enable the GMC to fulfil its role safely and effectively in relation to the education and training of AAs and PAs?

Note: This question does not relate to the GMC's powers for setting the standards for registration contained in Part 3

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We would defer to those stakeholders involved in the education and training of AAs and PAs as to whether the powers and duties contained in Part 2 are sufficient for the regulation of those two professions.

Below we set out our headline views in the event the framework in Part 2 were to apply to the GCC. Such views may also be of assistance in considering the approach to regulation of AAs and PAs.

Q3.

Do you have any additional comments on 'part 2: standards and approvals' in relation to the drafting approach as it would apply to all regulated healthcare professionals?

Article 3

We are supportive of regulators being required to determine standards in the context of education approvals under Article 4 and registration under Article 6.

We see no issue with being required to consult before determining such standards. Indeed the GCC already has some relevant experience of doing this in the context of its existing framework, with section 19 of our Act obliging us to consult before publishing the Code of Practice containing the standards of conduct and practise expected of registered chiropractors. Where the requirement to consult is caveated with the words "*such persons as the Regulator considers appropriate*" our understanding is the intention here is not to impose a requirement to consult where it would not be proportionate to do so, for example in the event a minor change to a particular standard.

Nor do we see any difficulty in the duty to keep such standards under review as this is something the GCC would need to do whether or not there was express provision in its legislation.

Article 4

The GCC welcomes the powers of approval contained within Article 4(1). We can see how this would allow us different ways to ensure that the educational foundations of chiropractic meet the high standards rightly expected by the public.

We think the ability to impose conditions on approval is a helpful regulatory tool and the power to withdraw approval is clearly a necessary one.

The GCC notes the power in Article 4(3) to "*co-ordinate the stages of education and training*". We welcome the flexibility this would bring and would of course reflect carefully upon how it could be used to advance public protection.

Part 3: the register

Q4.

Do you agree or disagree that the draft order provides the GMC with the necessary powers to determine the standards and procedural requirements for registration?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

Our comments here are focussed on the position were the legislation to be applied to the GCC. We agree that the draft order would enable us to determine the standards for registration now, but think it needs to go further to ensure we can do so in the future.

Article 6(1) and (2)

We see the logic of having standardised requirements for registration. That said, we think it is important that applicants can demonstrate in different ways that they have met those requirements and would welcome confirmation in the government's response to the consultation that it considers that to be the case. This is a particular area of concern for us as the GCC (Registration of Chiropractors with Foreign Qualifications) Rules 2002 are highly prescriptive as to the ways in which those applying for registration must demonstrate they meet the requisite standard of proficiency.

We are supportive of the requirement for regulators to be satisfied of the matters identified within Article 6(2)(c)(i) before granting registration.

The consultation document describes the power at Article 6(2)(c)(ii) as being one to "*set out in rules any other procedural requirements"* for registration which fall outside of the standards specified elsewhere in Article 6(2). The GCC wonders whether the intention of Article 6(2)(c)(ii) was to empower regulators to set further registration

standards/criteria in rules, rather than being confined to procedural matters. This seems like an important means of future-proofing the legislation, acknowledging the fact that there may be unforeseen things in the future which it is right an applicant demonstrates before being granted registration. If the government is in agreement, it would be helpful to recast this provision as being one which goes beyond matters of procedure and encompasses substantive registration requirements. The GCC thinks this is important so that we can protect the public not simply immediately when the new framework comes into effect but also in the future, particularly given our experience that the opportunity to reform our legislation is not one which will occur regularly. Providing us, and other healthcare regulators, with the power to set further registration requirements in rules is an important tool in enabling us not just to regulate effectively when the legislation comes into force but also in the years that follow. Such rules would of course be subject to the important safeguard provided by consultation.

Q5.

Do you agree or disagree that the draft order provides the GMC with proportionate powers for restoring AAs and PAs to the register where they have previously been removed due to a final measure?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

Article 6(1)(a)

The GCC agrees that the Registrar, that is via delegation to suitably experienced and knowledgeable members of a regulator's staff, is the correct decision maker to determine whether an applicant has demonstrated the standards in Article 6(2). We add that it is imperative that the order is watertight such that delegation to a panel is permitted, and we have some concerns that, as it stands, that is doubtful.

Where a chiropractor has been removed by way of a final measure following a fitness to practise process, we agree that the GCC needs to be satisfied their fitness to practise is not impaired before they can re-join the register. As the removal would often have been by a Panel, having assessed a registrant's fitness to practise to be impaired, we can see some logic in the requirement for the fitness to practise question upon restoration to be determined by a Panel. However, this would not always be the case – removal could take place by way of an accepted outcome following a case examiner's determination.

Hence, we do not support this being a fixed requirement in the legislation. From the perspective of not cementing procedures into the legislation which cannot then be easily changed, we would suggest it not require the involvement of a Panel. Instead, we would suggest that the procedure as to a restoration application ought to be left to regulators to determine in their rules. Such rules would of course be subject to the important safeguard of requiring consultation before coming into force.

On that basis, the GCC proposes the approach in Article 6(1)(b) – which allows the decision maker to be "*a person prescribed in rules under paragraph 2(1) of Schedule 4*" – be extended to restoration following removal by a final measure.

Q6.

Do you agree or disagree that the draft order provides the GMC with proportionate powers for restoring AAs and PAs to the register where the regulator identifies in rules that it is necessary for the applicant to satisfy the regulator that their fitness to practise is not impaired?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Article 6(1)(b)

The GCC welcomes the approach taken in this provision and the flexibility which it gives to regulators to determine the restoration process in such circumstances.

Q7.

Do you agree or disagree that the powers in the draft order relating to the content of the register and its publication will enable the GMC to effectively maintain a register of AAs and PAs who meet the standards required to practise in the UK?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Article 5

All of the matters identified in Article 5(3) appear to us ones which it is proper to require a regulator to record within a register entry.

The GCC considers Article 5(4), expressly empowering regulators to record other information in the register, is a helpful instance of the legislation providing regulators with the ability not just to regulate appropriately now but also in the future.

Q8.

Do you agree or disagree that the draft order provides the GMC with the necessary and proportionate powers to reflect different categories of registration and any conditions that apply to the registration of people in those categories?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We have provided comments in respect of Article 7 in response to question 10.

Q9.

Do you agree or disagree that the draft order provides the GMC with proportionate and necessary powers in relation to the removal of AA and PA entries from the register which will enable it to operate a safe and fair system of regulation that protects the public?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We have provided comments in respect of Article 8 in response to question 10.

Q10.

Do you have any additional comments on 'part 3: the register' in relation to the drafting approach as it would apply to all regulated healthcare professionals?

Article 6

As is noted in the consultation document, one of the core functions of a regulator is to hold a register of professionals. However, that function does not clearly appear within the current drafting with first registration being referred to as "*any other case*" (i.e. not restoration) in Article 6(1)(c).

We also cannot see the logic for first registration appearing after the restoration provisions as this does not reflect the registrant 'journey'.

Accordingly, we would invite the government to: (a) reorder the provisions in Article 6(1) so that first registration appears before the restoration provisions; and (b)

amend the drafting to use language which more clearly expresses the provision's purpose.

Article 7

From the GCC's perspective, we welcome the ability to effectively create different types of registration which we understand to be the intention of this provision.

Article 8

The GCC supports the powers in Article 8(1) or Article 8(2). which, were the legislation extended to other regulators, it would possess to remove registrants. We are unclear as to why the order proposes that the right to automatic removal applies to offences committed after the date of the order and submit it should apply regardless of when that offence was submitted.

Q11.

Do you agree or disagree that the draft order provides the necessary powers to enable the GMC to implement an efficient and safe system of temporary registration for AAs and PAs during a period of emergency as declared by the Secretary of State?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

We agree with the draft order making provision for emergency registration and would welcome its inclusion within an amended framework for the GCC. In respect of whether the provisions in the draft order are specifically suitable for the purpose of AA and PA regulation, we have no comments.

Part 4: fitness to practise

Q12.

Do you agree or disagree that the powers in the draft order enable the GMC to implement a 3-stage fitness to practise process for AAs and PAs proportionately and sufficiently?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We set out our views on this provision here because we think our comments are of general application. In that context, whilst the GCC is supportive of a three-stage fitness to practise process, **we disagree** that the powers in the draft order would enable us to implement such a process.

We note what the consultation says regarding the lack of need for an initial assessment stage to be "*prescriptively set out*" in the draft order and its pointing to the power in Schedule 4 paragraph 3(1)(a) to provide for an initial assessment stage process in rules.

As a technical point, the GCC would highlight that Schedule 4 paragraph 3(1)(a) requires a regulator to prescribe in rules the procedure for, amongst others, Article 9. Article 9 is very clearly characterised as being the case examiner and panel stages, i.e. stages two and three of the proposed three-stage fitness to practise process. Whilst anyone reading the consultation document could be in no doubt that the intention is to empower regulators to provide for an initial assessment process in rules we would query how clearly the drafting delivers on that intention.

Although we support an initial assessment process not being prescriptively set out in the legislation, we do not think including an express provision to acknowledge that regulators are empowered to create rules for an initial assessment process would be prescriptive or risk unhelpfully fossilising the legislation in years to come.

A significant concern with the current legislation, expressed multiple times over many years, is that it makes our approach to dealing with complaints inflexible, bringing more of those into a formal system than is ideal. Not only does that have resource implications, it is simply not good regulation. One of the major benefits which we, and other regulators, need to see delivered by reform is a more agile approach to the handling of complaints. Indeed, this has been the promise made throughout the reform journey. To deliver this, it must be established beyond doubt that we do not have to investigate everything that comes through our door and can close cases without them needing to go before a case examiner. This is essentially the very problem we are seeking to be addressed in our existing legislation which requires the GCC to refer any allegation to our Investigation Committee. On that basis, we would urge the government to consider whether the draft order as currently constructed matches the clear, and welcome, intention expressed in the consultation document. Does the draft order provide regulators with the utmost flexibility in having

and designing an initial assessment process which is fair, proportionate and protects the public?

A specific difficulty the GCC has noted is Schedule 3, paragraph 2(1)(b)(i) and 2(1)(c) requires any decision under Article 9 to be notified to the registrant and, other than a decision to refer to a Panel, any employer, known other regulator or complainant. Such obligations may be appropriate where a case has been 'promoted' for consideration at the second stage, but is entirely inconsistent with the aim of providing a more flexible and proportionate fitness to practise process whereby cases can be straightforwardly closed at any early stage. Hence, the GCC considers that the draft order needs to make it clear that cases can be closed before being considered by a case examiner.

Q13.

Do you agree or disagree that the powers in the draft order enable case examiners to carry out their roles appropriately and that the powers help to ensure the safe and effective regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

Subject to a few points of detail, we agree that the powers given to case examiners will help to ensure the safe and effective regulation of AAs, PAs and, in due course, chiropractors. The GCC does not have case examiners within its legislation, but we have noted their use by other regulators and would very much welcome their introduction to our framework.

Currently we have no express power to issue warnings, so the ability of a case examiner to conclude that a registrant's fitness to practise is not impaired but nevertheless issue a warning would be a helpful improvement on our existing fitness to practise powers.

We support the power in Article 9 for case examiners, where they consider a registrant to be impaired, to dispose of cases by way of a final measure without a hearing. This seems to us to be in the interests of both registrants and the public, neither of whom are served by the time, resource and stress of a hearing where one is not required. We note that there is a requirement at Schedule 3 paragraph 4(2)(c) for such decisions to be published which we think is an important counter-balance to cases being resolved without a public hearing.

We also welcome the power in Article 9(2)(b) for a measure to take effect where there has been no response from a registrant to a case examiner's proposal. That said, we are concerned that this provision taking effect where a registrant fails to provide a "*reasoned response*" imparts an unhelpful level of subjectivity – requiring a judgment by a regulator as to whether a response is sufficiently reasoned or not. We would suggest a more objective test would be appropriate, perhaps with the power

being engaged where a registrant has not confirmed whether they accept the case examiner's findings.

However, we are concerned that the reference in Article 9 to "*where a question arises as to whether a person's fitness to practise is impaired*" is too low and will result in cases being unnecessarily considered by a case examiner, resulting in the aforementioned notification requirements. We would ask this aspect of the drafting to be reflected upon in the course of making amendments to the legislation so as to provide for an initial assessment process which empowers regulators to deal with cases proportionately – including an ability to close concerns quickly where that is the right thing to do.

Q14.

Do you agree or disagree that the powers in the draft order enable panels to carry out their roles appropriately and that the powers help to ensure the safe and effective regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

We generally agree that the powers given to panels will help to ensure the safe and effective regulation of AAs, PAs and, in due course chiropractors.

Q15.

Do you agree or disagree that the powers in the draft order on reviewing interim measures are proportionate and sufficient for the safe and effective regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

We do not agree that the powers for reviews of interim measures in the draft order are adequate for AAs, PAs or, in due course, chiropractors. The GCC takes its duties around interim suspensions very seriously and emphasise our powers in this area must be unambiguous.

Although Article 10(1) imposes a requirement upon a case examiner to review an interim measure, it is silent as to their powers upon review. The GCC notes that Article 11(2) provides for an ability to revise interim measures, but this is vested in

"*the Regulator*". As such, it is not clear that it provides a basis for a case examiner to take action upon a review under Article 10.

Nor can we see there is provision for Panels to review interim measures. Although the GCC would envisage the majority of reviews being conducted by case examiners, it will be necessary for Panels to also be empowered to conduct such reviews.

The consultation document asks for views on a maximum time limit of 12 months for which a court may extend an interim measure. The GCC does not support this. We do not think there is anything objectionable about a court being confined to extending an interim measure by 12 months on a single occasion. However, if our reading of the consultation document is correct, the proposal is for a total time limit for interim measures of 30 months. There might be rare cases which, for valid reasons, take an exceptionally long time to investigate (for instance if awaiting the outcome of a coronial or judicial procedure). For that reason, we think it is important the legislation does not limit a court to only being able to extend by 12 months. A court is independent of a regulator and so will be able to judge whether an extension to an interim measure it the right thing in a particular case. Failure to be able to have in place an interim measure during an ongoing investigation where a healthcare professional may not be safe to practise raises serious public protection concerns.

Q16.

Do you have any additional comments on ‘part 4: fitness to practise’ in relation to the drafting approach as it would apply to all regulated healthcare professionals?

No, but the GCC would emphasise the concerns we have expressed above regarding initial assessment and reviews of interim measures were the provisions to be applied to the regulation of chiropractors.

Part 5: revisions and appeals

Q17.

Do you agree or disagree that the powers in the draft order provide the GMC with proportionate and sufficient powers in relation to the revision of decisions concerning the regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

Please see our comments in respect of question 20, where we flag issues relating to revisions were the current drafting of Article 11 to be extended to the GCC.

Q18.

Do you agree or disagree that the powers in the draft order provide individuals with proportionate and sufficient appeal rights in respect of decisions made by the GMC and its independent panels relating to the regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Please see our comments in respect of question 20, where we flag issues of relating to appeals were the current drafting of Article 12 be extended to the GCC.

Q19.

Do you have any additional comments on 'part 5: revision and appeals' in relation to the drafting approach as it would apply to all regulated healthcare professionals?

The GCC's impression is that in Article 11 the government is trying to provide a means for a regulator to revisit its decisions, and then in Article 12 for redress to a court in certain instances.

We think this is an aspect of the drafting which is quite difficult to follow. Although we understand the need not to use unnecessary language in legislation, we wonder if this might be an instance where brevity has come at the expense of clarity. The drafting appears to take a very generic approach rather a tailored one to particular functions. We understand that the Department has heard much from regulators about the need to avoid too much prescription in legislation and appreciate the efforts which have been made here to avoid such prescription.

However, clarity is vital for those seeking a regulator to revisit its decisions or make an appeal to the court. Particularly in respect of appeals, fairness demands that a registrant be left in no doubt both as to the decisions which can be challenged and the basis upon which they can be challenged.

The GCC appreciates that drafting this is technically challenging, but the following observations may be helpful:

- A way in which the drafting might be improved would be to provide for an express power for final measures to be reviewed by the Regulator and a Panel.
- Linked to this, we wonder if the legislation should separate out routine reviews of final measures from the regulator's ability to correct/readdress previous decisions.
- As we have expressed above in our response to question 5, we do not support the legislation requiring the assessment of an applicant's fitness to practise (following removal by a final measure) being vested in a Panel. If

the government is persuaded by that point, then there would be no need to make a specific exception to Article 6(1)(a)(ii) in Article 11(1)(b).

- We also query whether the word "revise" is sufficiently clear as to what specifically a regulator is empowered to do where it reconsiders a previous decision. It is a real issue of public protection that a regulator's powers be clear.
- We are unsure as to the rationale for someone who has agreed to the imposition of a final measure under Article 9 then being able to appeal that decision under Article 12(1)(e)(i).
- Conversely, the ability to appeal a decision of a Panel to impose a final measure is not clearly expressed in the legislation. It may be that it is intended to be provided for at Article 12(2)(b)(ii) but this is not obvious to the ordinary reader. We would suggest that a registrant's rights in this regard ought to be far more clearly expressed.

That said, we would note that we do support the ability for an education provider to appeal a regulator's decisions. Without such provision, judicial review may be the means of challenge which is an unnecessarily onerous route of redress for all concerned.

Part 6: miscellaneous

Q20.

Do you agree or disagree that the offences set out in the draft order are sufficient to ensure public protection and to maintain public confidence in the integrity of the AA and PA professions?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

We agree that the four behaviours identified in Article 14(a) – (d) capture the types of behaviour which a purported registrant might engage in which ought to make them liable for prosecution.

The GCC takes protection of title seriously. It does, and will continue to, take private prosecutions where someone misuses the title of chiropractor. Being able to do so effectively is a vital tool in regulating to protect the public.

However, we would also highlight section 7(3) of the Chiropractors Act 1994 which provides: "*Any chiropractor whose registration has been suspended shall, for the period of his suspension, cease to be a registered chiropractor for the purposes of section 32(1).*" We cannot see an equivalent provision in the existing draft of the order which confirms that the effect of suspension is that someone is to be treated as not being registered. This is an important provision in the context of prosecuting protected title offences as those who are suspended are perhaps a cohort more

likely than others to hold themselves out as being registered. It is important that doing so would amount to an offence is put beyond doubt.

Q21.

Do you have any additional comments on ‘part 6: miscellaneous’ in relation to the drafting approach as it would apply to any regulated healthcare professionals?

We can see the rationale for Article 13(1) requiring the person who sought approval under Article 4(1) having a right to make representations before a regulator may attach a condition to that approval or withdraw it. Likewise, the bases for removal under Article 8 which are identified in Article 13(1)(b) all seem ones where it would be fair for the registrant to be able to make representations before the removal power is exercised. Though Article 11 may be one which is subject to some redrafting, the GCC agrees with the basic principle that a registrant ought to have a right to make representations before a regulator changes a decision it has previously made.

Schedule 1: the regulator

Q22.

Do you agree or disagree with the proposed powers and duties included in schedule 1 the regulator in relation to AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

The powers and duties contained within Schedule 1 all seem ones which would be necessary for the purpose of regulating AAs and PAs.

However, we have set below some observations if Schedule 1 as drafted applied to the GCC.

Q23.

Do you have any additional comments on schedule 1, the regulator, in relation to the drafting approach as it would apply to all regulated healthcare professionals?

The GCC notes that as a result of the decision to introduce regulation of AAs and PAs without reforming the framework for doctors, the draft order does not contain some of the governance and operating reforms which featured in the 2021 consultation. Given those omissions, as the government will appreciate, the existing draft order cannot serve as a complete template for reform of other regulators' legal

frameworks. By way of example, we would expect the GCC to be given a power to create committees which does not appear to be present within Schedule 1 of the draft order.

We note comments in the consultation explaining why the objective has been framed as it has. When the time comes to reform the GCC's legislation we would keen to ensure that its overarching objective of protecting the public and the three objectives, set out in section 1(4A) and (4B) of the Chiropractors Act 1994, are retained.

However, the GCC reiterates its support that it and other regulators be subject to express duties to co-operate and be transparent. As we noted in our response to the previous consultation, regulators work within a system and the duty of cooperation is vital to ensure the best possible standard of regulation for patients and the public. In terms of the bodies identified with whom the GCC would be required to cooperate, we would suggest other regulators be added to the list in Schedule 1 paragraph 3(1)(d). In terms of transparency, our starting point is how best we can be transparent as to our activities not whether we should be transparent. In this sense, the transparency duty would make express something which is already at the heart of how we go about performing our functions.

Schedule 2: listed offences

Q24.

Do you have any comments on schedule 2, listed offences?

No, save to note that the GCC welcomes the ability to take decisive action to protect the public by automatically removing registration from those who are convicted of serious criminal offences.

Schedule 3: evidence gathering, notifications, publication and data

Q25.

Do you agree or disagree that the powers in the draft order enabling the GMC to gather, hold, process, disclose and assure information in relation to the regulation of AAs and PAs are necessary and proportionate for meeting its overarching objective of protecting the public?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

The GCC does not have specific comments in the context of AA and PA regulation but we have set out below some reflections in the event the draft order were applied to other regulators.

Q26.

Do you have any additional comments on schedule 3, evidence gathering, notifications, publication and data, in relation to the drafting approach as it would apply to any regulated healthcare professionals?

Information sharing

The GCC welcomes the broad power in Schedule 3 paragraph 1 for regulators to disclose information about any matter relating to their functions. This is a power which we think is entirely appropriate and necessary for regulators to possess, particularly as the health service becomes more joined-up whereby sharing information is a vital means by which different agencies promote patient safety.

Notification

In our response to question 12, we have identified concerns regarding how the notification provisions in Schedule 3 paragraph 2 might operate in the context of cases closed at an early stage under Article 9.

Publication – former registrants

The GCC notes the express power in Schedule 3 paragraph 3(1)(f) to publish information concerning former registrants which it welcomes.

Publication – decisions of courts

As drafted, paragraph 4(2)(d) would appear to require a regulator to publish decisions of the County Court and High Court. As these are not decisions of the regulator we would be surprised if this is intended.

Publication – guidance on impaired fitness to practise

The GCC notes the obligation in Schedule 3 paragraph 5(1)(e) to publish "*guidance as to what amounts to impairment of fitness to practise*". We are not convinced there is a rationale to impose a specific obligation regarding fitness to practise guidance and would suggest this could safely be removed.

Continued competence / professional development

We welcome the broad power in Schedule 3 paragraph 7(1) to design our own processes for assessing whether a chiropractor continues to meet the standards required to be registered and that they are fit to practise. This is in significant contrast to the framework we currently work under within the GCC (Continuing Professional Development Rules) Order 2004. That order is overly prescriptive, for example prescribing a CPD cycle of 30 hours a year and prescribing the four stages which must be undertaken during a review cycle. There is also no power for the GCC to direct a particular type of CPD be undertaken by a chiropractor, which would often be a proportionate means of addressing specific concerns.

That said, we are concerned that this provision is buried within the draft order. Assessing the continued competence of registrants is a core function of regulators and so when a version of this draft order is applied to the GCC would like that function to appear more prominently.

Disclosure of information

The GCC welcomes the power in Schedule 3 paragraph 7(4) for regulators to require the production of material which is relevant to the exercise of their functions. The consultation document is helpful in confirming the deliberately broad nature of the power so as to effectively capture the range of individuals and organisations a regulator may need to require information from in order to discharge its statutory duties. This, in our view, is an essential regulatory tool.

Disclosure – enforcement powers

We query the enforcement powers allied to the disclosure provisions in the draft order. Paragraph 7(6) empower a regulator to seek a court order, including against a registrant, where information has not been provided. This is of course a vital provision which needs to exist in the order. However, Article 8(2)(ee) empowers a regulator to remove a registrant where they have failed to *"[provide] information in accordance with a requirement under [the order]"*. We doubt it is the policy intention that a regulator be required to seek a court order against a registrant prior to exercising the removal power in Article 8. It would be helpful if the government could confirm this to be the case.

Reflective practice material

We do not oppose the exclusion of material produced for the purpose of reflecting upon professional development from the scope of information which a regulator may require production of in the context of fitness to practise proceedings. The clarification in the consultation document that the power does not prohibit a registrant from voluntarily disclosing such material in the course of fitness to practise proceedings, which they may wish to do in order to demonstrate insight and remediation, is a helpful one.

Schedule 4: rule-making powers

Q27.

Do you agree or disagree that the draft order provides the GMC with sufficient and proportionate rule making powers to enable it to effectively maintain a register of AAs and PAs who are safe to practise?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

Though we would defer to those involved in the regulation of AAs and PAs as to the rule making powers' sufficiency for that purpose, subject to some specific observations and modifications, we would generally consider the rule making powers to be sufficient and proportionate if expanded to the GCC.

Q28.

Do you agree or disagree that the draft order provides the GMC with proportionate and sufficient rule making powers to address non-compliance of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

We comment here on the basis of these powers being expanded to chiropractors and **disagree** the powers here are sufficient in that regard.

In the first instance, the GCC notes that the non-compliance powers regarding breaches of rules during proceedings appear to be limited to fitness to practise. This is because paragraph 6(4)(a)(ii) empowers a regulator to make rules prescribing the consequences of non-compliance with *"a direction under rules under paragraph 10(4)"* which in turn refers to directions given in fitness to practise proceedings. In the GCC's view, the power should be extended to rules made across our functions. For example, non-compliance powers ought to be available where someone makes an appeal against a registration decision.

We also query whether the power to draw adverse inferences should be expanded to include case examiners as well as Panels, given they will also be making factual assessments based upon evidence.

However, we welcome increased powers to take action to protect the public where a registrant has not complied with our investigation processes.

Q29.

Do you agree or disagree with the provisions set out in the draft order for the setting and charging of fees in relation to the regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

Though this question is directed at AA and PA regulation, we comment on the basis of the provisions being applied to the GCC's regulation of chiropractors and **disagree** the powers are sufficient in this regard.

We welcome the power to provide for our fees in rules according to a framework which must be consulted upon. This would address a number of deficiencies in our current framework including:

- The requirement for the Privy Council to approve changes to our fees;
- An inability to offer pro-rata payment of registration fees, with our legislation requiring payment of the fee before registration can be granted;
- An ability to offer pro-rata fees for those taking maternity or paternity leave.

However, we have significant concerns regarding the current drafting of paragraph 7(2) which provides "*The rules must require the level of any fee to be set with a view to ensuring that, so far as practicable, the Regulator's fee income does not exceed its expenses (taking one year with another).*" We do not think it is right that the GCC be under an obligation to ensure our income not exceed our expenses. Given the consultation acknowledges that regulators may need to hold reserves, we are not sure what function this provision serves. This is particularly so in the context that any framework for setting fees would be subject to the safeguard of consultation. An unintended consequence may also be a perception of an undermining of the independence of regulators upon which public confidence is built. As such, we suggest this provision could be safely removed from the draft order.

Q30.

Do you agree or disagree that the rule making powers set out in the draft order will enable the GMC to deliver the safe and effective regulation of AAs and PAs?

- Agree
- Disagree
- Neither agree nor disagree
- I don’t know

Please explain your answer.

The GCC does not have specific comments to make on the extent to which the rule making powers in Schedule 4 will be sufficient for the GMC's regulation of AAs and PAs.

Please see our comments below regarding Schedule 4 in the event it applied to the regulation of chiropractors.

Q31.

Do you have any additional comments on schedule 4, rules in relation to the drafting approach, as it would apply to all regulated healthcare professionals?

Fundamentally, the GCC is very supportive of the approach taken in Schedule 4 – empowering regulators to do more by way of their own rules rather than being constrained by processes set out in legislation which cannot be easily changed. We

know from our own experience that fossilising processes in legislation can lead to ways of regulating which are sub-optimal in meeting current demands. Moreover, we think that the requirement to consult on proposed rules is an appropriate safeguard for the increased responsibility which rule-making places upon regulators.

In particular, the GCC welcomes the discretion for regulators to prescribe in rules the period of time which must have elapsed before someone is able to apply for registration having previously been removed. In the case of those removed following a fitness to practise investigation, section 8(2) of the Chiropractors Act 2004 allows an application to be made after 10 months of the removal. We do not consider this to be appropriate in the most serious of cases and so welcome the ability to consider what an appropriate period of time might be and set that out in rules. Likewise, we think the power in paragraph 2(2)(b) for regulators to limit the number of restoration applications an individual may make is a helpful one in terms of assisting regulators to manage their finite resources.

As a minor point, paragraph 3(1)(a) requires a regulator to prescribe in rules the procedure for the purposes of "*articles 4, 6(1), 9, 10 and 1*". We assume the reference should be to Article 11 rather than Article 1.

We very much welcome the provision in paragraph 6(5)(a) empowering Panels to award costs as a result of a failure to comply with procedural directions given in fitness to practise proceedings. This is not a power which the GCC has within its current framework and so we are pleased to see regulators' case management powers being given appropriate teeth. Incentivising both registrants and regulators to comply with such directions is something which we think will bring greater efficiency to the fitness to practise process.

That said, we would raise the following issues with the current drafting:

Paragraph 6(4)(a)(i) and (ii) respectively empower regulators to prescribe in rules the consequences of non-compliance with "*rules made under paragraph 3(2)(b)*" and "*a direction under rules under paragraph 10(4)*". However, paragraph 6(5) only refers to rules made "*under sub-paragraph (4)(a)(ii)*" which would suggest costs cannot be awarded where there has been a failure to comply with rules made under paragraph 3(2)(b). We would be surprised if this is the intention as we cannot see a rationale for confining the power to award costs to breaches of case management directions. Indeed, doing so would appear to reduce the ability of the threat of costs to incentivise compliance with the process. Accordingly, we would ask the government to look again at the drafting in this area so as to ensure that costs may be awarded where there has been a failure to comply with rules.

Given the approach the legislation is proposing to take regarding flexibility, we wonder whether the factors to be taken into account by a Panel in awarding costs might sit better in guidance rather than rules.

Schedule 5: consequential amendments

Q32.

In relation to schedule 5, consequential amendments, do you have any comments on how the draft order delivers the policy intention in relation to AAs and PAs?

No.

Q33.

Would you like to provide any further comments on the draft order?

No.

Q34.

Do you think there are any further impacts (including on protected characteristics covered by the public sector equality duty as set out in the Equality Act 2020 or by section 75 of the Northern Ireland Act 1998) from the legislation as currently drafted?

We have considered the comments within the consultation under the heading 'Costs, benefits and equalities analysis'. The points raised therein all seem valid ones.

As a regulator, we have a significant role to play in promoting equality and diversity. The significance of that role will only increase under this framework which places greater operational responsibility into the hands of regulators. In order to comply with our public sector equality duty, we would envisage conducting equality impact assessments before consulting upon our rules. When analysing consultation responses we will have particular regard to any fairness concerns which are raised. We already have an Equality, Diversity and Inclusion working group so conducting such assessments is something which we think we will not only be able to do, but do well.

The GCC is committed to social equality, diversity and fairness and it looks forward to reflecting upon how it can best advance those values within this more autonomous and flexible framework.