General Optical Council (GOC) response: Regulating healthcare professionals, protecting the public

Governance and ops

1. Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above? Please give a reason for your answer.

We agree with this proposal that regulators should be under a duty to co-operate with the organisations outlined in the consultation and that are concerned with:

- the regulation of healthcare professionals;
- the employment, education and training of healthcare professionals;
- the regulation of health and care services; and
- the provision of health and care services.

We already co-operate with these organisations as they play a key role in helping us to carry out our regulatory functions. It may be worth noting any potential conflicts of interest, as we may also regulate some stakeholders that fall within these categories, for example, optical businesses registered with the GOC and education and training providers providing courses in optometry, dispensing optics, therapeutic prescribing or contact lenses that lead to registration / specialty registration with the GOC.

2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and these related duties? Please give a reason for your answer.

We agree with this approach and already carry out our functions and duties in a transparent way, for example, we:

- hold open public council meetings (unless confidential matters are being discussed);
- publish an annual report;
- hold hearings in public (unless confidential matters are being discussed);
- publish minutes of our council meetings and hearings on our website available to the public; and
- carry out public consultations on significant changes to rules and standards.

3. Do you agree or disagree that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced? Please give a reason for your answer

We agree with this approach, and we already carry out impact assessments, as well as public consultations, before making changes to our rules, processes and systems. We agree it is important to assess and evaluate the impact to patients and the public, registrants, and other key stakeholders across the health and social care sector before regulatory changes are introduced.

4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators? Please give a reason for your answer.

We agree with the overall proposal for establishing a modernised governance structure which is consistent across the regulators. In terms of implementation, the GOC currently holds charitable status so we may need to consider any implications that arise from this, however, we will act in accordance with the legal requirements set out by the DHSC in relation to establishing a unitary board.

We think it is important for the board to have a good mix of members and we want to maintain the flexibility to recruit, taking into account specific skill sets needed to run an effective and efficient board. We welcome the continued flexibility to include registrants, both current and former, onto the board. We think registrant members bring a wealth of experience and expertise about their sector to the board, and we want to ensure this approach is maintained.

We are also unclear on whether only the Chair appoints non-executive directors to the board. We can see the rationale for this initially in setting up the board, but on-going appointments should be made by members of the board as a whole rather than one individual.

5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval? Please give a reason for your answer.

We agree with this approach, and we already have the ability to set fees without Privy Council approval. We want to maintain this approach and we support the proposal that this should apply to all regulators. We are funded entirely from registrant fees and agree that this approach makes regulators directly accountable to the registrants for the fees they charge. It is helpful to have flexibility in setting appropriate fees for the regulated professions based on context and have the same consistent powers between the regulators, with the requirement to consult on the approach providing clarity and transparency to the public and registrants on how fees are set.

6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees? Please give a reason for your answer.

We agree with this proposal, and setting out a long term approach to fees would help provide assurance, transparency and consistency to both internal and external stakeholders.

7. Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation? Please give a reason for your answer.

We agree that regulators should be able to establish their own committees rather than having these requirements set out in legislation. Currently under the Opticians Act 1989, we have a statutory requirement to establish a number of committees with specific functions: an education committee; a registration committee; a standards committee; and a companies committee. Whilst we value the input and expertise provided by committee members, setting out statutory requirements in primary legislation is an overly prescriptive and inflexible approach. We would like the ability to choose how and when we obtain lay and expert feedback and ensure that the committees we establish are used in an efficient and effective way.

8. Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate? Please give a reason for your answers.

We agree with the proposal to allow regulators the ability to charge third parties for services on a cost recovery basis. In relation to non-UK providers of GOC-approved qualifications, we already have the power to do this and intend to implement this in the near future.

We think it would be helpful for regulators to publish a clear governance framework on how this policy is implemented and applied to ensure there is consistency, fairness and transparency. The consultation gives an example of a regulator charging for initial assessment of a new application for approval of an education institution or qualification. In terms of implementation, we would need to consider potential impacts to ensure the policy did not create additional regulatory or costs barriers for new entrants to the market, and was applied in a fair and proportionate way. For example, recovery of costs relating to qualification approval decisions and associated evidence-gathering (for example, for an initial assessment) could have an unintended consequence of creating a high barrier to entry, increasing the risks and costs for a provider (such as a university) wishing to enter the market and offer an approved qualification in, say, optometry, thereby reducing competition between providers, reducing workforce supply and potentially concentrating

approved qualification delivery within a small sub-set of universities (for example, post-1992 universities, with a consequential impact on research and academic progression).

The impact of the application of a policy to recover costs relating to qualification reapproval decisions and associated evidence-gathering for existing providers will also require close examination. The key risk here is that current providers, particularly pre-1992 universities and those in the 'Russel-Group', who are already overstretched financially, and who frequently perceive 'high cost' healthcare subjects as not in alignment to, or contributing towards, research-driven strategic objectives, will exit the market due to high cost and high regulatory barriers, if we started charging for services such as quality assurance visits. The consequence of this will be to reduce the range of providers offering approved qualifications, the attractiveness of such courses to high achieving students, the number and diversity of students coming through the system and ultimately negatively impact both quality and quantity of the future workforce within optometry and dispensing optics, to the detriment of patient safety and access to safe eye care services.

9. Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator? Please give a reason for your answer.

We agree with this proposal and think that these powers should be consistent across all of the regulators. We support closer collaboration and joint working where possible between regulators, and support having greater flexibility to potentially create more effective and efficient regulatory processes.

In implementing the powers, a regulator would need to be assured that quality of delivery remains and is not lost in process, and this could be achieved within the proposed framework.

10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above? Please give a reason for your answer.

We agree with the broad principle to give regulators a power to obtain, process and disclose information to or from any organisation or person where it is required to fulfil their statutory objectives. We broadly agree with the groups outlined in the consultation as these stakeholders play a key role in helping us to perform our regulatory functions:

- another regulator (including health and care system regulators) and the Professional Standards Authority (PSA);
- education and course commissioning bodies and providers;
- professional bodies;
- bodies representing students and registrants;

- employers and contractors of services;
- law enforcement bodies; and
- government agencies including those in Wales, Scotland and Northern Ireland where appropriate.

11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which it operates? Please give a reason for your answer.

We agree with this proposal. We are a UK wide regulator and it is important that we are accountable to each of the countries we operate in. However, we think this should be done proportionately and where possible minimise any additional bureaucracy.

12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC? Please give a reason for your answer.

We agree with this approach and think it is important to have consistency across all the regulators in relation to the Privy Council's default powers.

Education

13. Do you agree or disagree that all regulators should have the power to set:

- **standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners;**
- **standards for providers who deliver courses or programmes of training which lead to registration;**
- **standards for specific courses or programmes of training which lead to registration;**
- **additional standards for providers who deliver post-registration courses of programmes of training which lead to annotation of the register; and**
- **additional standards for specific courses or programmes of training which lead to annotation of the register?**

Please give a reason for your answer.

In response to the proposed education reforms in general we would like to make the following points.

We appreciate that education is a complex sector with many of the regulators operating very different systems of regulation and quality assurance. We fully support proposals to reduce the amount of prescriptive detail in other regulators' legislation and allow regulators

greater autonomy and flexibility to set their processes/procedures in rules and guidance which can be changed without parliamentary or Privy Council approval.

Our current legislative framework in relation to our education function is crisp, clear, functional and appropriately light touch in approach. This is beneficial in that it has allowed us to adapt quickly to keep pace with changes within the sector, and in our opinion, develop a world-class, modern and proportionate risk-based approach to determining our requirements for qualification approach and their enactment by our providers.

We understand that the powers proposed will be discretionary and are intended to future-proof regulation, and we agree with the broad principle of increasing consistency across the regulators. However, we note that in the area of education, these powers are more rather than less prescriptive and if enacted, will impose an additional cost and regulatory burden, i.e. proposals for appeals to the regulator, exams/assessments and conditions management. Our concern is that even if not enacted, these additional, prescriptive requirements will inevitably increase the burden and cost of regulation and make our system of risk-based qualification approval less flexible, disproportionate to risks posed and less responsive to innovation. Even where we choose to use our discretion not to implement certain areas, we would still need to draft and consult on the new powers and be able to justify why we chose not to enact them. This may have the unintended consequence of increasing the cost of regulation in this area, which may offset some of the envisaged savings in other regulatory areas.

We also think that the education reforms do not address key risks or contemporary issues where policy / legislative attention ought to be applied. These include reducing the current high regulatory (and cost) bar to entry into the market for new education providers and risk to students/trainees in developing new programmes or qualifications for regulatory approval. Initiating a new regulated healthcare programme or qualification is both costly and risky for new providers in most statutorily regulated professions, including optics, where qualification approval is generally not considered until the first cohort of students have graduated, often four or five years after the programme or qualification has launched. For example, under the GOC's current legislation, we can only approve a qualification in optometry or dispensing optics after the first cohort of students have graduated. This means providers are unable to guarantee to students they recruit that if they successfully graduate, they will achieve a qualification leading to registration with the GOC. The consequence here is that new providers working toward approval often struggle to recruit sufficient students to ensure a programme or qualification's return on investment, and in particular, to recruit sufficient high calibre students who are best placed to secure a positive approval decision. The second consequence is that from a regulatory perspective, an approval decision once the first cohort of students have graduated then becomes 'high stake', in terms of cost and reputation from a provider and student perspective. Students will have invested in their education with an expectation of their qualification leading to statutory registration, and providers will have made significant investment in, for example, built facilities, curriculum, assessment, laboratories, clinics and staff to meet regulatory

requirements. If a provider fails to achieve a positive approval decision, students may have to be compensated, or the cost of study at an alternative provider funded by the university. We think it would be helpful if the proposed reforms gave more flexibility to regulators to approve qualifications at an appropriate and proportionate stage, including permitting regulators to make an approval decision prior to a provider recruiting its first cohort of students.

In addition, due to the nature of our risk-based light touch qualification approvals process, we are concerned that the proposals as outlined create additional requirements for providers, that do not deliver significant improvements to public protection and come with increased costs and burdens which could further deter new providers from entering the market and prompt current providers to exit the market. We have recent experience of a provider withdrawing from providing a course part way through the approval process, which resulted in both costly consequences for them, their students and for us as the regulator.

A more holistic approach to the education reform should include these issues that affect providers, including reducing barriers to entry and securing a level playing field in relation to the funding of regulated courses across each of the devolved administrations. If as a result of these reforms, the number of programmes/qualifications reduces or are concentrated in particular geographic areas or institution types, we are concerned this will: amplify existing workforce supply issues; reduce competition between providers (both of cost and quality); reduce student choice particularly in remote and rural areas; and negatively impact upon the development of the research base that supports contemporary and safe eye-care practice and the diversity and accessibility of alternative routes to registration. Ultimately this will impact on the diversity of students coming through the system, leading to an under-supply of future optometrists and dispensing opticians entering the workforce with consequential impact upon patient care.

We are already experiencing some of these issues in the optical sector, for example, there are currently no courses in dispensing optics for students in Wales or Northern Ireland and just one on offer in Scotland (which is not currently recruiting students).

In response to the consultation question specifically, we agree that regulators should have the power to set all the standards listed above, however, we are alert to the fact that any additional discretionary powers will increase the regulatory burden, and cost, for regulators such as the GOC.

In relation to our current powers as set out in the Opticians Act 1989 (Part II), we assess and approve the quality and content of education provided for those training to practise optometry and dispensing optics in the UK in three ways:

- we set requirements (‘Standards’ and ‘Outcomes’) for qualification approval in optometry and dispensing optics that lead to full registration with the GOC, and for

entry to four specialty registration categories (as a contact lens optician or as additional supply, supplementary prescribers and/or independent prescribers);

- we approve qualifications that meet our requirements; and
- we gather evidence to provide assurance that our requirements are met, and continue to be met, through periodic, thematic and sample based reviews, and annual monitoring. In addition, we also set standards for four post registration qualifications.

14. Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register? Please give a reason for your answer.

We agree that these powers should be available to regulators given the different regulatory models that currently exist. However, our current approach, and one that we would like to retain, is to approve a qualification leading to registration with the GOC. This approval continues indefinitely (i.e. without the need for re-approval) until either the education or training provider ceases to provide the course, or the GOC Council removes approval (for example, if a provider fails to meet any GOC requirements, we can set a condition in relation to this, and failure to comply with a condition could potentially lead to withdrawal of approval by the GOC Council).

We think this is a proportionate approach and any risks are captured via our quality assurance and enhancement process, whereby providers must evidence they continue to meet our requirements.

We would, however, like to change our legislation to allow us to approve courses leading to registration with the GOC prior to a provider recruiting its first cohort of students, rather than after graduation, as mentioned in our answer to question 13. If we had the ability to offer upfront approval then it would reduce the risks for providers in entering the market, which could help to increase the number of courses available, increasing accessibility and ensuring that we have a workforce in optometry that is able to meet future demand.

15. Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.

We agree with this approach, however, warnings and conditions are just part of a suite of remedial actions, and we are unsure why the consultation is focusing specifically on these approaches rather than offering more flexibility for regulators to develop measures appropriate to context of the sector, as in other reform proposals. We have developed a broad, more modern, risk-based approach to quality assurance, which moves beyond issuing warnings and imposing conditions. Our mix of quality assurance activity is broad, and includes periodic, thematic and sample-based reviews, and annual monitoring,

notification of reportable events by providers, risk-based reviews and serious concerns review. We think that this is an example of where uniformity of powers could create additional regulatory burdens for us, and move us away from our current, arguably more modern, approach which works well.

In addition, the term 'condition' can have different meanings to different regulators. Under our current system, we can set conditions on a provider if one or more of our requirements are not met. A condition will identify the unmet requirement and set a deadline for the provider to evidence that the requirement is met. If the condition remains unmet, then this can lead to a serious concerns review which could ultimately lead to withdrawal of approval by the GOC.

16. Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decision-making process? Please provide a reason for your answer.

Currently, providers have the opportunity to provide evidence throughout the evidence-gathering, quality assurance and approval process, which helps ensure that all evidence is considered together with gaps in evidence or inadequacy of evidence, and misunderstandings resolved at an early stage in the formation of recommendation(s) to Council. However, we would question whether any further observations or commentary should be allowed at the point when a qualification approval decision is made by Council. To permit direct observations or commentary to Council at the point when a qualification approval decision is being made would have the practical effect of undermining the thorough evidence-gathering and quality assurance processes that the regulators already have in place (informed by advice from visitors) to reach the recommendations that are presented to Council. Permitting additional commentary from providers at this stage would inevitably lead to Council seeking advice from its appointed visitors on that additional commentary, leading to delays in decision-making and additional procedural complications with consequential additional costs and burden to the process. It may also be detrimental to public protection where the regulator needs to take swift action in regard to a provider approval decision.

17. Do you agree that:

- **education and training providers should have the right to appeal approval decisions;**
- **that this appeal right should not apply when conditions are attached to an approval;**
- **that regulators should be required to set out the grounds for appeals and appeals processes in rules?**

Please provide a reason for your answer.

We agree that providers should have the ability to challenge a regulator's decision via a clear appeal process and this should include the right to appeal against an approval decision (or a decision not to approve) made by the regulator. We agree that this right should not be extended to a re-approval decision (given the thrust of the legislative change is to give powers to regulators to approve qualifications until approval is withdrawn, or the qualification ceases to exist, thereby ending time-limited approval decisions which require periodic reapproval).

We agree that the right of appeal should *not* apply to when conditions are attached to an approval decision. This could result in a disproportionate number of appeals for a regulator (or Privy Council) to deal with and the provider has a much simpler route of demonstrating to the regulator that the condition has been met. As we mentioned previously in question 15, the term 'condition' can have different meanings to different regulators. It would be helpful as part of the implementation process to have a clear steer on where and when 'conditions' are intended to be applied.

We support the current arrangement that appeals by providers of a regulator's approval (or non-approval) decision are heard by the Privy Council. We disagree that the grounds for appeals and the appeals process should be set out in a regulator's rules. This has the practical effect of limiting the number of appeals to those that are serious and reducing trivial and vexatious appeals. As far as we understand, there has never been an appeal to the Privy Council by a provider within optics of a decision to either approve or not approve a qualification. Although we support proposals to allow regulators the flexibility to amend their rules without first seeking parliamentary or Privy Council approval, on the matter of appeals by providers to the regulator (rather than the Privy Council as at present), we are concerned that such powers will lead to: an increase in appeals requested, with a consequential increase in cost to us as a regulator in drafting, consulting, agreeing and enacting such an appeal process; increased cost to our stakeholders (including providers) in engaging in this drafting and consultation process, and increased cost to registrants (by way of increased retention fee) or providers (by way of an appeal fee) in supporting the administration associated with enacting a fair appeal process by a regulator, rather than the Privy Council.

18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.

Yes, we agree that regulators should retain existing approval and standard setting powers (please refer to our answer for question 13). We think it is important to maintain a proportionate and flexible approach to the regulation of education, as education models, routes to registration and powers do differ between regulators.

19. Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register? Please provide a reason for your answer.

We agree with the approach of giving regulators the power to do this, with the flexibility as to whether they implement this power or not, although we would argue that regulators are not experts in assessment and standard-setting and that expertise rests within our university sector, independently regulated (by, for example, the Office for Students) and quality assured (by the Quality Assurance Agency for Higher Education). We do not currently set or administer exams and to do so would be a significant change of approach for us, with cost and administrative implications. In addition, there could still be cost and resource implications for us in *not* enacting these types of discretionary powers, as we will still need to consult and justify our position on implementation.

20. Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register? Please provide a reason for your answer.

We agree with this approach, as approving the course or programme of training gives the regulator assurance that the regulator's requirements for qualification approval are met (or not met). To approve both a course/programme and a subsequent regulator-set exam would introduce additional barriers for progression and complicate the division of responsibilities as to which body (provider or regulator) is responsible for assessing which (or all) or the required knowledge, skills or behaviours (which we call 'outcomes for registration') required for safe and effective practice. The key risk in this approach is ensuring patient safety and diversity of entrants into a profession and we would question the added benefit of this proposal.

21. Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways? Please provide a reason for your answer.

We agree regulators should have greater flexibility to determine their most appropriate method (or methods) to gather and assess evidence to determine whether their requirements for qualification approval are met (or not met) in a way that is proportionate to context and the stage of development of the qualification applying for regulator approval.

Our modern, risk-based approach to evidence-gathering and quality assurance includes periodic, thematic and sample-based reviews, and annual monitoring, notification of reportable events, risk-based reviews and serious concerns review, all of which provide proportionate and considered methods of gathering and assessing evidence to determine whether our requirements for qualification approval are met, continue to be met or are not met.

22. Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs? Please give a reason for your answer.

We think that this is a question for the GMC and their stakeholders.

23. Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements? Please give a reason for your answer.

We agree with this approach, as the consultation rightly states that regulators operate different CPD and revalidation schemes which are proportionate to the context of healthcare delivery and the specific risks associated with the professions involved. We agree that CPD and revalidation schemes should be set out in rules and guidance by regulators, allowing greater flexibility to adapt the scheme to meet the evolving roles in health and social care without the need for Privy Council approval.

Registration

24. Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate? Please give a reason for your answer.

We agree with this approach of holding a single register which can be divided into parts for each profession a regulator regulates. We support a more consistent approach across all the health and social care regulators, and believe that this will provide greater clarity for the public on how information is held and accessed.

25. Do you agree or disagree that all regulators should be required to publish the following information about their registrants:

- **Name**
- **Profession**
- **Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants)**
- **Registration number or personal identification number (PIN)**
- **Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules/policy made by a regulator)**
- **Registration history**

Please provide a reason for your answer.

We broadly agree with the categories of information to be published to help achieve a consistent approach across all the health and social care regulators by giving the public the same level of basic information about a registrant's registration status.

We already publish details on: name; profession; qualification; registration number; and registration status. However, in terms of registration history, we only publish the most recent date of registration, not the registrant's entire registration history. We would like more detail on the requirements for registration history and what is meant by this.

We would also question the public protection benefit of providing this information and think that this approach may increase public confusion and concern, if several dates of registration were included in registration history without any explanation to the public as to why a registrant came on and off the public register (for example, due to career breaks, maternity leave etc).

We support maintaining our current position of providing additional information to the public about a registrant's registration history on request.

26. Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data? Please give a reason for your answer.

We agree with this approach. There are differences in some of the data collected and published by regulators and we support an approach that would continue to allow regulators the flexibility to do this in line with their statutory objectives. We currently show information on the GOC's public register on: a registrant's gender; relevant qualifications where the information is held; and contact address (which is shown as the town or city where a registrant lives). We also provide a practice address if this is given by the registrant.

27. Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer.

We agree with giving regulators a discretionary power allowing them to publish specific data about their registrants. This approach would allow for the current differences in regulatory approaches and give regulators flexibility as to what they can publish in line with their statutory objectives.

28. Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection? Please give a reason for your answer.

We agree with this approach giving regulators the power to annotate their register in line with their public protection duties. We currently show whether a registrant has a 'registered

speciality' (i.e. a legislated activity), and we have four categories: additional supply specialty; supplementary supply speciality; independent prescribing speciality; and contact lens speciality.

Our approach would be to minimise annotations to the register to help keep a degree of simplicity and clarity for members of the public. We agree with developing a clear policy on annotations, and we would need to consider further how this power may be applied in terms of identifying which other qualifications might be annotated in the future and how we would ensure the quality of these qualifications. Any additional annotations would inevitably increase the cost of regulation due to the necessity to quality assure the delivery of these and we would have to be careful to balance the benefit to public protection of having further annotations with any additional cost.

29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power as set out above? Please give a reason for your answer.

We agree with this approach to provide consistency across all the health and social care regulators and to help alleviate workforce pressures in emergency situations such as the COVID-19 pandemic.

30. Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation?

We agree with this approach and think that consistency will help provide clarity to the public, and similar protection to all registered professionals.

31. Do you agree or disagree that the protection of title offences should be intent offences or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)? Please give a reason for your answer.

We agree that it would be fair and proportionate for the proposed title offences to require an element of intent:

- falsely uses a protected title;
- falsely claims to be registered as a professional;
- falsely claims to hold a qualification which enables a person to practise as a professional;
- makes a false representation about another person in relation to protected titles (or professional registration or qualifications);
- causes another person to make a false representation about them in relation to protected titles (or professional registration or qualifications); and/or

- fraudulently procures or attempts to procure, the making, amendment, removal or restoration of an entry into a regulator's register.

Our experience is that title misuse often arises from an error, for example, the person did not know that the title was protected, or they incorrectly believed that they had renewed their registration. Most title misuse ceases after we inform the individual of the position and there was no intent to misuse a protected title.

The Opticians Act's 1989 creates strict liability offences concerning restricted activities and offences relating to misuse of a protected title. Protected title offences can be rebutted by the defendant if a belief that the defendant was registered would have been unreasonable from the circumstances in which the protected title was used.

We agree that protection of title offences should be intent offences and welcome the clarity this would give to our legislation. Strict liability offences provide important protection to the public in relation to restricted activities, for example, sight testing, but we agree that it is fair and proportionate to require an element of intent for protection of title offences given the circumstances in which offending may arise.

32. Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist? Please give a reason for your answer.

We agree that regulators should have the ability to appoint a deputy registrar and/or assistant registrar, but it should be at the discretion of the regulator as to how the organisation is structured. Currently, the GOC's Chief Executive is also the Registrar and we operate and delegate decisions via our scheme of delegation. This scheme identifies who has authority to make decisions which are identified under the Opticians Act 1989. It includes functions imposed upon the Council by the Opticians Act 1989 and by rules made under the Act and identifies if these decisions are made by Council or delegated to its committees or the Chief Executive and Registrar.

33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance? Please give a reason for your answer.

We agree with the approach that regulators should have the ability to set out their registration processes in rules and guidance. It is important for regulators to have the flexibility to set out their registration processes for UK and international applicants in guidance that can be amended without parliamentary or Privy Council approval.

34. Should all registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration? Please give a reason for your answer.

We agree with this approach and giving regulators this flexibility. One of our core statutory functions is to maintain a public register of individuals who are competent and fit to practise. We are supportive of giving regulators the discretionary power to turn down an applicant for registration beyond the criteria for registration, as this is an important part of our public protection role. An applicant may on paper meet the regulator's requirements, but the regulator may have concerns, for example, around the validation of their identification documents or where there are unresolved declarations made by the registrant in relation to their health and/or criminal convictions pending charges or disciplinary issues, and so for public protection reasons may want to refuse entry on the register if the issue is not resolved.

35. Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance? Please give a reason for your answer.

We think that this is a question for the GMC and their stakeholders.

36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them? Please give a reason for your answer.

We agree with this approach. We currently have the power to suspend registrants from the GOC register for fitness to practise reasons including any health issues. We support extending this power to suspend registrants in other circumstances (as listed in paragraph 206 of the consultation document), as this would give regulators greater flexibility to deal with issues in a proportionate manner.

37. Do you agree or disagree that the regulators should be able to set out their removal and readmittance processes to the register for administrative reasons in rules, rather than having these set out in primary legislation? Please give a reason for your answer.

We agree with this approach as setting out these processes in rules will allow regulators greater flexibility to change their rules more easily if required.

38. Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.

We agree with the list of appealable decisions outlined in paragraph 214 of the consultation document. The Department may also want to consider including a right of appeal against a refusal to agree a registrant's request to amend their name, gender or other personal information.

We think that further guidance to regulators on the proposed right of appeal against a decision to “remove a person’s entry from the register where registration renewal has not been made in accordance with the regulator’s renewal process”, would be helpful at implementation stage to ensure there is consistency.

39. Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation? Please give a reason for your answer.

We agree with setting out registration appeals procedures in rules rather than governing legislation to allow regulators the flexibility to change their rules more easily if required.

40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers? Please give a reason for your answer.

We agree that regulators should not have a discretionary power to establish student registers. We currently register student optometrists and student dispensing opticians, however, we are the only health and social care regulator (overseen by the PSA) to operate this model, and we plan to remove this requirement.

We agree that there are other more proportionate levers that can be used to regulate students and protect the public, for example, supervision arrangements for students working in clinical practice. We also think education providers are better placed to deal with any concerns relating to students at a local level rather than by the regulator. It will be important for the GOC to consider how best to transition from our current arrangements if student regulation powers are removed and we would work with education providers to ensure that they are supported through this process.

41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers? Please give a reason for your answer.

We agree that regulators should not have discretionary powers to establish a non-practising register. This type of register can cause confusion to the public and is administratively burdensome to implement with little public protection benefits.

42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation? Please give a reason for your answer.

We agree with putting this in rules to allow regulators the flexibility to change their rules more easily if required.

Fitness to practise

43. Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering:

- **1: initial assessment**
- **2: case examiner stage**
- **3: fitness to practise panel stage?**

Please give a reason for your answer.

We agree having a consistent approach to fitness to practise across all the health and social care regulators. Our current approach already aligns with the three step model outlined in the consultation, as we introduced case examiners in 2014 to help deal with cases more efficiently and effectively.

44. Do you agree or disagree that:

- **All regulators should be provided with two grounds for action – lack of competence, and misconduct?**
- **Lack of competence and misconduct are the most appropriate terminology for these grounds for action?**
- **Any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence?**
- **This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?**

Please give a reason for your answers.

We agree that developing a consistent approach across all regulators would be beneficial and provide greater clarity for patients and the public. We think the suggested terminology to define grounds for action could work, however, an alternative suggestion for lack of competence could be ‘inability to provide safe care’. This may better capture lack of the necessary knowledge of English, or a health condition which affects a registrant’s ability to practise safely. Some further definition may be required on implementation to explain these terms clearly to registrants and the public.

Under our current fitness to practise framework we use our acceptance criteria, a case management tool, to decide whether to accept a complaint as an allegation of impaired fitness to practise as defined by section 13D of the Opticians Act 1989. Under our acceptance criteria policy, health is listed as ground of impairment. We agree with your proposal to cover this, and English language, under competence. In relation to

implementation, firstly we think it is important to review the terminology currently used in respect of health matters, as this is arguably outdated and punitive when applied to health cases. Secondly, there will need to be clear guidance for decision makers in relation to whether a health issue meets the threshold for fitness to practise, or if it can (as suggested in the consultation) be dealt with outside the fitness to practise process.

45. Do you agree or disagree that:

- **all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and**
- **automatic removal orders should be made available to a regulator following conviction for a listed offence?**

Please give a reason for your answers.

We agree that all measures should be made available to both case examiners and fitness to practise panels/committees, as this would help expedite cases. Currently GOC case examiners can only issue warnings, and must refer cases to the GOC's fitness to practise committee to consider imposing conditions, suspension orders or removal orders. This adds to the length of time taken to resolve a case, increases costs and potentially causes more stress to both the registrant and complainant. Although the GOC currently has a process (agreed panel disposal) for our fitness to practise committee to determine cases by agreement, this still requires a formal fitness to practise committee hearing. Delegation to case examiners by way of agreed outcomes is a more expeditious and economic proposal.

We agree with the proposal for automatic removal orders following a registrant's conviction for a listed offence. This is an important element of a regulator's public protection role given the degree of seriousness of offences outlined in schedule 3 of the Social Work Regulations 2018. We agree that this should be applied consistently across all the regulators.

46. Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.

We agree with this approach and setting out the process for review in our rules. Again, it is more efficient and expeditious for case examiners to review measures where possible.

47. Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process? Please give a reason for your answer.

We agree with this approach and setting out the process for notification in rules. Regulators must always be seen to 'own' cases, but it is an important principle of open justice for referrers to be kept informed regarding the action that regulators have taken.

48. Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern? Please give a reason for your answer.

We agree with this approach and giving regulators consistent powers at the initial assessment phase with the discretion to decide whether to investigate and how this should be done. This is consistent with our current structure which we have evolved over the past couple of years through the introduction of acceptance criteria. We implemented these criteria as our case examiners were at one stage closing 84% of cases. This highlighted that too many referrals were entering the formal investigation process that were never going to amount to misconduct/impairment. There must be a filter in place at initial assessment stage as higher investigation caseloads will impact on regulators' ability to swiftly process the more serious cases. Regulators will, though, need to be clear in rules and/or guidance as to the tests they are applying at initial assessment stage.

49. Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than five years after they came to light should be removed? Please give a reason for your answer.

The GOC does not currently have a five-year restriction. However, we agree with this proposed approach generally. The ability for all regulators to be able to investigate concerns made more than five years after they came to light is an important part of a regulator's public protection role.

50. Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as "adverse inferences"? Please give a reason for your answer.

We agree that regulators should be provided with a separate power to address non-compliance. The power to draw an adverse inference is contained within our current rules in respect of failure to comply with a performance or health assessment, but this does not provide the immediacy of the power that the GMC currently has, to potentially refer non-compliance to the fitness to practise committee. That type of specific power is more meaningful when it comes to non-compliance that could indicate an immediate public protection concern. Such a power may be considered draconian so it will require careful handling in guidance for decision-makers.

51. Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage? Please give a reason for your answer.

We agree with this approach. Onward referral to case examiner stage is logical if the regulator considers that there is a fitness to practise concern. The power to refer for interim measure consideration is crucial for meeting public protection objectives.

52. Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the Register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations? Please give a reason for your answer.

We agree with this approach and giving regulators consistent powers in relation to listed offences. This will improve public protection by removing the need for a fitness to practise process, provide greater clarity and reduce the regulatory burden of investigating this category of offence.

In relation to offences that fall outside of a listed offence, currently if a GOC registrant has received a criminal conviction which resulted in a custodial sentence (whether it is immediate or suspended), the Registrar can refer the case directly to the fitness to practise committee. This is known as 'direct referral' and is set out in rule 4(5) of the General Optical Council Fitness to Practise Rules 2013. Complaints/allegations which fall into this category will not be considered by the case examiners or investigation committee. Although this power has enabled us to progress these cases more expeditiously, as case examiners would have accepted outcome powers under these proposals, we recognise that direct referral to the fitness to practise committee would become redundant.

53. Do you agree or disagree with our proposals that case examiners should:

- **have the full suite of measures available to them, including removal from the register?**
- **make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?**
- **be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure?**
- **be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days?**

Please give a reason for your answers.

We generally agree with the approach outlined above. This would increase the remit of powers that GOC case examiners currently have, for example, by giving them the power to conclude cases via an accepted outcomes route. We think these additional powers would help resolve cases more quickly, rather than referring them to our fitness to practise committee. This would be beneficial from a regulatory point of view and lead to efficiency

and cost savings. It would also be beneficial for the registrants, complainants and witnesses, as cases could be resolved more quickly, at an earlier stage, without the need for a stressful and adversarial hearing by the fitness to practise committee.

For case examiners to be able to propose sanctions, it must follow that they should have the power to determine impairment.

As an aside, we observe that there will need to be absolute clarity in rules/guidance that case examiners must be satisfied that the regulator has gathered all the information/evidence that is relevant to the allegation, before they can propose an accepted outcome.

We generally agree that case examiners should have the power to impose a decision if a registrant does not respond to a proposal, but it must (a) be explicit that regulators must satisfy case examiners that the accepted outcome proposal has been properly served on the registrant and (b) that the registrant has a right of appeal as per our response to question 56.

54. Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.

We agree with the proposed powers and setting these out in rules. It is an important part of a regulator's role to have the ability to consider whether an interim order is necessary at any point in the fitness to practise process in order to protect the public. Although our Registrar, case examiners and investigation committee currently have the power to refer to a fitness to practise committee for interim order consideration, giving interim measure proposal powers to case examiners and the Registrar power to convene an interim measures committee adds efficiency to the process.

Clarity will be required in respect of when case examiners would consider proposing an interim measure (rather than referring to a fitness to practise committee to potentially *impose* an interim measure).

55. Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates? Please give a reason for your answer.

We agree with the proposal for regulators to set out the details of their fitness to practise panel stage in rules as clarity is essential for all. The proposed power for regulators to change their rules if required will also provide flexibility if rules need to be amended.

56. Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel? Please give a reason for your answer.

We agree with this approach and registrants must have the right of appeal against decisions by a case examiner, a fitness to practise panel/committee and an interim measures panel, as this is an important element of any legal process. As case examiners would have the power to impose serious sanctions by way of accepted outcome, it follows that their decisions should also be subject to a right of appeal (and particularly so if they have the power to impose an outcome in the absence of a response from the registrant).

57. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? Please give a reason for your answer.

We agree with the route of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. This aligns with our current approach, i.e. that a registrant may appeal a decision by our fitness to practise committee to the High Court (within 28 days of the date of decision by the committee).

58. Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases? Please give a reason for your answer.

Although we generally agree that regulators should have the flexibility to incorporate their restoration process within rules, we suggest that there should be clarity in terms of who will have the power to make these decisions (paragraphs 352 and 353 are unclear in this regard) to ensure consistency across regulators.

59. Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register? Please give a reason for your answer.

We agree that there should be a further right of appeal against a refusal to restore. Assuming the restoration decision is made by either case examiners or the fitness to practise committee (see our response to question 58), a further right of appeal would be consistent with the right of appeal proposed in question 57.

60. Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? Please give a reason for your answer.

Please refer to our answer given to question 59. If appeal is against a decision of the case examiner or the fitness to practise committee, then we agree it should be to the courts listed in the question.

61. Do you agree or disagree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners (including accepted

outcome decisions) to protect the public? Please provide any reasons for your answer.

We agree with the proposed registrar review power. We think that giving regulators the power to review case examiner decisions (including accepted outcome decisions) is a proportionate approach, which is sufficient to protect the public. However, we are aware of concerns around giving regulators this power and whether there will be a sufficient level of scrutiny and transparency. The GOC will need to give further thought to how this would operate in practice to help alleviate some of the concerns and ensure that there is public confidence in the process.

62. Under our proposals, the PSA will not have a right to refer decisions made by case examiners (including accepted outcome decisions) to court, but they will have the right to request a registrar review as detailed above. Do you agree or disagree with this proposed mechanism? Please provide any reasons for your answer.

We agree with the proposal to allow anyone, including the PSA, to request a registrar review. We think that it would be a disproportionate approach for a court to review case examiner decisions (including accepted outcome decisions), as these can be more effectively dealt with by the regulator. Should a case by reopened (following a registrar review), and referred to the fitness to practise committee, the PSA will continue to have the right to appeal this decision via their section 29 powers, which will provide sufficient oversight.

63. Do you have any further comments on our proposed model for fitness to practise?

Overall, we support the proposals in relation to the fitness to practise framework and ensuring that there is a more consistent approach across all the health and social care regulators. We are fully supportive and welcome measures that will give regulators greater flexibility to adapt their fitness to practise rules without parliamentary or Privy Council approval. This will allow regulators the ability to adapt their processes more quickly to meet challenges such as the COVID-19 pandemic. Resolving cases more quickly and reducing the adversarial nature of the fitness to practise process will not only help to protect patients and the public, it will also benefit those individuals going through the process including the complainant and registrant.

Regulation of Physician Associates and Anaesthesia Associates

We do not have any comments on this section.

Impact Assessment and Equalities Impact Assessment

68. Do you agree or disagree with the benefits identified in the table above? Please set out why you've selected your answer and any alternative benefits you consider to be relevant and any evidence to support your views?

We agree with the benefits identified in the table. We have also outlined the benefits of reform in our consultation response.

69. Do you agree or disagree with the costs identified in the table above? Please set out why you've chosen your answer and any alternative impacts you consider to be relevant and any evidence to support your views.

We agree with the costs identified in the table, however, please refer to our answers in questions 8 and 13 as the impacts of reform may have broader cost implications for other external stakeholders, such as education providers. We welcome a full impact assessment on cost following this consultation.

70. Do you think any of the proposals in this consultation could impact (positively or negatively) on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by Section 75 of the Northern Ireland Act 1998?

• Yes – positively

• Yes - negatively

• No

• Don’t know Please provide further information to support your answer

We believe that these reforms may impact positively on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by Section 75 of the Northern Ireland Act 1998, however, we welcome a full impact assessment following this consultation.