

# **Consultation Survey: *Regulating anaesthesia associates and physician associates***

## **Introduction**

The General Optical Council (GOC) is the UK-wide regulator for optometrists and dispensing opticians, student optometrists and dispensing opticians, and optical businesses. We exist to protect the public by raising standards in the optical professions. We are one of the nine health and care regulators that will be directly impacted by the Department of Health and Social Care's (DHSC) reforms as work begins to modernise each regulator's legislative framework.

The GOC welcomes the opportunity to respond to the DHSC's consultation on *Regulating anaesthesia associates and physician associates*. Overall, we are supportive of the reforms and the aim to deliver a more consistent, flexible, and modern system of regulation for health and care professionals across the UK.

In our response we have not commented specifically on whether the draft order will enable the GMC to fulfil its role safely and effectively, as we are not in a position to assess this. We will be content with the changes if the GMC agree with the proposed reforms to its legislation. In this case, we have not ticked the response boxes to signal our agreement or disagreement. As this framework will form the blueprint for the other health and social care regulators, we have instead focussed our response on whether we support the policy intent behind the reforms and whether this will enable the GOC to carry out its regulatory functions effectively and protect patient and public safety.

In relation to the timetable, the GOC is in an excellent position to progress swiftly with reforms to its own legislative framework and looks forward to working with the DHSC as soon as is practicable. There are areas of reform that are specific to the GOC such as business regulation and student registration and we acknowledge that these will be dealt with outside of this consultation. We have already undertaken a public consultation on proposed changes to the Opticians Act and over the next 12-18 months will have finalised our policy position on areas that we wish to reform such as business regulation. This is a crucial area of reform for the GOC as there is an urgent need to improve patient safety and public protection by ensuring that all businesses carrying out restricted functions register with the GOC and adhere to its regulatory standards. We will develop proposals and consult on an updated framework for business regulation and continue to engage with and update the DHSC on progress.

We believe we are well placed to implement the DHSC reform agenda quickly, as many of the reforms proposed, for example in fitness to practise, are building on policies that we have already implemented such as:

- the introduction of case examiners;
- an effective triage system to ensure that only cases where we are satisfied that regulatory intervention is necessary and proportionate are taken forward for investigation; and

- agreed panel disposal which allows cases to be concluded without a contested hearing and is therefore a forerunner for consensual case examiner disposal.

In terms of next steps, we look forward to the DHSC's consultation on reforming the GMC's Medical Act 1983, which will cover the broader governance reforms including the introduction of unitary boards to replace current governance structures. We are supportive of the DHSC's intent to ensure that the transition period will be tailored to the needs of each regulator, taking into account that regulatory and governance functions will have to be managed through this change over a period of time. We will continue to engage with the DHSC in their reform agenda and ongoing communication will be key in ensuring successful delivery of the reforms.

## Consultation questions

### Part 1: General

**1. Do you have any comments relating to 'Part 1: general' of the consultation?**

We agree with the DHSC policy intent that regulators should have consistent grounds for action. Whilst in principle we are content with the two grounds for action as misconduct and an inability to provide care to a sufficient standard, we still have concerns about linking a health condition to an inability to provide care to a sufficient standard and taking a registrant with a health condition via the fitness to practise route. We think this is lacking in compassion and sensitivity and potentially can be seen as punitive.

We think an alternative approach, which we are supportive of, is for the DHSC to revert to its policy outlined in the 2021 consultation (*Regulating healthcare professionals, protecting the public*), where only health cases that were linked to a registrant's conduct or competence were referred to fitness to practise. All other health cases not reaching the threshold for fitness to practise, could be dealt with more sensitively outside this process.

### Part 2: Standards and approvals

**2. 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 think that the powers outlined are sufficient to enable the GOC to fulfill its role safely and effectively in relation to the education and training of its registrants. We think the powers are flexible and broad enough to allow the GOC to determine how it sets standards for, and quality assures, education and training. Although some of the powers go beyond what the GOC currently has (for example, approving examinations and assessments), we appreciate that there are differences between the education and training roles of the regulators and support the powers being discretionary and future proof.

We agree that regulators should continue to have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training. We welcome the additional flexibility that these powers should not be limited to education or training which leads to registration or annotation on the register.

We agree that regulators should continue to have the power to issue warnings to education and training providers and attach conditions to approvals of education and training. This power enables regulators to ensure the quality of education and training courses and drive improvements where necessary. We acknowledge that the DHSC has balanced these increased regulatory powers with increased scrutiny and oversight which will give education and training providers the ability to appeal approval decisions and conditions attached to approvals (with a further right of appeal to the courts). While this will be a new area for the GOC to establish in its rules, we are supportive of the principle that regulators are transparent and accountable in their quality assurance processes.

**3. 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?**

We have no further comments.

**Part 3: The register**

**4. 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.** We think that the powers outlined will give regulators the ability to determine the standards and procedural requirements for registration, and we agree that the detailed requirements should be set out in rules allowing regulators the flexibility to adapt these as and when necessary following consultation with stakeholders.

We agree with the DHSC's policy intent that regulators will be required to assess registrants against standards of skills, knowledge and experience relevant to each profession, including English language proficiency and ensuring they have adequate indemnity insurance. We also agree that it is helpful for regulators to have discretionary powers to set out any additional requirements in rules.

**5. 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.** We agree with the DHSC's policy intent for restoration to the register for registrants previously removed due to a final measure imposed through the fitness to practise process, and this largely reflects the GOC's current process.

**6. 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.** We agree with the DHSC's policy intent in relation to restoration to the register for all other applicants (i.e. those not removed due to a fitness to practise final measure). We agree with the policy that a registrant must meet the standards and requirements for registration and declare that their fitness to practise is not impaired. This largely mirrors the GOC's current process.

We agree with giving regulators the power to set out in rules any other procedural requirements for registration that fall outside of the registration standards and requirements i.e. identity, insurance or indemnity cover, and the regulator's standards of education, training, knowledge, skills, experience, conduct, performance, ethics, and English language.

**7. 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.** We agree with the DHSC's policy intent requiring all regulators to publish a consistent set of data about their registrants, to help ensure there is clarity and transparency for members of the public. We agree with the dataset requirements (name, profession and part of the register they are registered in, PIN number, registration history, and registration status of registrants).

We also agree with the DHSC that registration history should not cover all past events, but rather should cover the most recent date of last registration and any current fitness to practise measures. We think this is important so registrants are not unintentionally penalised or discriminated against for past actions that have now been resolved. Public protection is maintained by publishing any current fitness to practise measures.

Finally, we support giving regulators discretionary powers to publish any additional information, including post registration qualifications, where it will aid public protection. The GOC currently approves four post registration specialties leading to specialist entry on the GOC register. We think this flexibility is important as scopes of practise continue to evolve and expand, and it will allow regulators to determine if and how to reflect additional information on the register. We note the intention that before regulators consider publishing any additional information, they must first assess the impact on equality, diversity, and inclusion factors, and how they will comply with data and privacy regulations.

**8. 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 are content with the DHSC's revised policy on giving regulators the power to establish different categories of registration and conditions that may apply to these categories in Article 7 of the draft order, either restricting or enhancing practice.

**9. 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 agree that the draft order provides regulators with the necessary powers in relation to removing a registrant from the register. We note the circumstances in which removal is a duty and where removal is discretionary. We agree with the DHSC's policy intent for regulators to have discretionary powers as to whether to remove a registrant who requests voluntary removal. We support the policy intent for regulators to have the discretion to decide whether to grant voluntary removal to a registrant where fitness to practise concerns have been raised or are being investigated. We think this strikes the right balance between the rights of a registrant and upholding public protection and confidence in the professions.

**10. 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?**

We have no further comments.

**11. 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 that it is helpful to give regulators consistent powers in relation to temporary registration during a period of emergency as declared by the Secretary of State. These powers will better enable regulators to respond swiftly and effectively to manage future emergencies and ensure the UK fully utilises its workforce capability to protect patients and the public.

#### **Part 4: Fitness to practise**

**12. 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 agree with the three stage fitness to practise process outlined in the consultation, bringing consistency across the regulators. We also support the DHSC's policy intent to give regulators greater discretion over how to implement the initial assessment stage. However, we still have concerns about whether the drafting matches the policy intent. We would like greater clarity and suggest the following amendments to the draft order:

- reference to the initial assessment stage in Article 9 as part of the three-stage process being introduced as a key part of the reforms; and
- amending Article 9 to ensure that regulators have clear powers to decide what to investigate (the threshold) and how to investigate concerns. We are happy with the detail of this being laid out in rules.

There is a risk that a lack of clarity in this area could result in regulators applying different thresholds at initial assessment stage, and regulators lacking the necessary powers to, for example, gather evidence and close a case before case examiner stage and to directly refer to a panel for interim order consideration. This would impact significantly on our ability to effectively triage cases and focus our resources on the more serious cases that require regulatory intervention. It would also impact on our ability to manage cases in a timely way and unnecessarily prolong the process for registrants and patients.

**13. 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.** We agree with the DHSC's policy intent in relation to the powers given to case examiners, including the full suite of sanctions and the ability to conclude cases via the accepted outcomes route. We think these powers will help resolve cases more quickly, rather than referring them to a fitness to practise panel. This would lead to efficiency and cost savings for the regulator. It is also beneficial for registrants, complainants and witnesses, as cases can be resolved quicker, without the need for a stressful and adversarial hearing.

**14. 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 agree with the DHSC's policy intent in relation to fitness to practise panels. We agree that regulators should be able to determine in rules the details of how the panel stage will operate.

**15. 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 agree with the DHSC's policy intent on reviewing interim measures. We also agree that case examiners should have a role in reviewing interim measures and agree with the timeframes outlined in Article 10 of the draft order. However, we note that the proposed two grounds for the imposition



of an interim measure that were set out in an earlier draft do not appear in this version. Although we note the duties that are imposed on the regulator by Schedule 1, para 3, we consider that the grounds upon which an interim measure can be imposed should be expressed in the order.

We think it would be helpful to have the grounds in the draft order for the following reasons:

- it will bring consistency across the regulators and support them in striking the right balance between public protection and the rights of a registrant by ensuring that sanctions are only imposed if they meet the required threshold; and
- it will result in greater clarity to registrants and the public as to when an interim order will be imposed.

**16. 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?**

We have no further comments.

## **Part 5: revisions and appeals**

**17. 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.** We acknowledge the DHSC's policy intent that decisions made by a regulator should be subject to review and appeal and we are fully supportive of this, however, we still think that the drafting in Articles 11 and 12 of the draft order could be clearer. Regulators need appeals processes for decisions made about education and training, registration and fitness to practise. It is important that the appeals processes are as clear as possible so that there is transparency in decision making.

**18. 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.** We refer to our response to question 17 - the drafting needs to be clearer as to the revision and appeal routes that are available to regulators and to registrants.

**19. 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?**

We have no further comments.

### **Part 6: Miscellaneous**

**20. 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 offences covered in Article 14 are sufficient to protect the public and have no further comments.

**21. 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 have no further comments.

### **Schedule 1: the regulator**

**22. 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.** We have no further comments at this stage and await the DHSC's consultation on reforms to the Medical Act 1983 which will cover changes to the broader governance framework.

**23. 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?**

We have no further comments on the operational aspects outlined in Schedule 1.

### **Schedule 2: listed offences**

**24. Do you have any comments on 'Schedule 2: listed offences'?**

We agree with the DHSC's policy intent behind Schedule 2 and agree that it is important that regulators have the ability to automatically remove registrants who have been convicted of a listed offence. We agree that automatic removal will benefit public protection as registrants are removed swiftly. We have no further comments on Schedule 2.

### **Schedule 3: evidence gathering, notifications, publication and data**

**25. 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.** We agree with the DHSC's policy intent to strengthen regulatory powers in relation to gathering, processing and sharing data where it is necessary to fulfil a regulator's statutory functions. We agree with making these powers consistent across all the regulators and in line with data protection laws. We note that these powers are not unlimited and regulators must have a clear auditable justification for collating, processing data and publishing data, and must ensure data is stored safely.

**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?**

We have no further comments.

#### **Schedule 4: rule-making powers**

**26. 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.** We agree with the DHSC's policy intent to allow regulators to prescribe in rules the form and keeping of the register, which includes powers to make rules about the entry, alteration, and removal of information in the register.

**27. 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 do not agree with the DHSC's policy intent which allows regulators to set out in rules the consequences of non-compliance with an interim measure, or a final measure involving the imposition of a condition or a suspension from practice.

We are concerned that it is left to regulators to come up with a set of non-compliance measures as this goes against the stated intention to achieve uniformity across regulators. We are also concerned that costs are punitive, which goes against the intentions of a fitness to practise process. We consider that non-compliance provisions should be included within the order.

**28. 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.**

We agree with the DHSC's policy intent giving regulators the power to set registrant fees without parliamentary or Privy Council oversight. The GOC already has this power, and we agree it should be consistent across the regulators. We acknowledge that this is a contentious area and we agree that regulators must demonstrate that they are operating in a way which is transparent and must be held accountable in their approach to fee setting. We agree with the DHSC's expectation that regulators should consult on any fee changes and have the discretionary power to set a longer-term framework for fees should they choose to.

In relation to Article 7(2), we would like the DHSC to amend the language used in the current draft order which requires a regulator to ensure that its fee income does not exceed its expenses (taking one year with another). We think this could be interpreted in a way which prevents regulators having the ability to build, hold and use reserves which would have a significant and detrimental impact on, for example, a regulator's financial resilience and its ability to invest in strategic projects to improve its efficiency. In addition, this approach is inconsistent with the Charity Commission's reserves policy which the GOC, as a registered charity, must comply with. We understand this is not the policy intent of the DHSC and we welcome further discussions around more suitable terminology.

We are supportive of the DHSC's policy allowing regulators to charge for services undertaken on a cost recovery basis, including for activities outside of the UK. However, while we agree with reducing the financial burden on registrants, in terms of education and training we must also be mindful of creating any additional regulatory or costs barriers for new entrants to the market which could impact on workforce supply. We agree that this power must be exercised fairly, proportionately and transparently and be underpinned by clear criteria and a methodology for the application of the policy.

**29. 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.** We have no further comments, other than the concerns raised in response to questions 27 and 28.

**30. 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?**

We have no additional comments.

### **Schedule 5: consequential amendments**

**31. 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?**

We have no comments on Schedule 5 outlining the consequential amendments to other Acts of Parliament.

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

We have no further comments.

### **Costs, benefits and equalities analysis**

**33. 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 2010 or by section 75 of the Northern Ireland Act 1998) from the legislation as currently drafted?**

Whilst we welcome the reform agenda and note the potential for longer term cost and efficiency savings, initially there are likely to be cost implications for regulators, for example, in consultation activities to develop rules and implementing changes to internal processes and procedures to comply with new legislative frameworks.

In relation to the impact on those with protected characteristics, we are not aware of any further issues but welcome the DHSC carrying out its own full equalities impact assessment.