Response to the General Medical Council consultation on Changes to the information they publish and disclose about a doctor's fitness to practise

September 2015

1. Introduction

1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

1.2 As part of our work we oversee nine health and care professional regulators (including the General Medical Council or GMC) and report annually to Parliament on their performance. More information about our work and the approach we take is available at www.professionalstandards.org.uk.

1.3 We welcome the opportunity to respond to this consultation. For the most part, these proposals would result in greater transparency and clearer information for the public and employers.

1.4 However, the consultation document does not explain what has prompted this review of its Fitness to Practise (FtP) publication policies – the current version of the *Publication and Disclosure Policy* is not due for review until May 2017. As the consultation document deals with appeals of Medical Practitioners Tribunal Service (MPTS) decisions by the registrant, it is surprising that it mentions neither appeals by the Professional Standards Authority[1], nor appeals by the GMC – a new power which we understand will be coming into force over the next few months.

1.5 The GMC is subject to a number of different pieces of legislation relevant to these changes: the Freedom of Information Act 2000, the Data Protection Act 1998, the Human Rights Act 1998, and the Medical Act 1984. We would have expected the document to make greater reference to the governing legislation to explain and support these proposals.

1.6 The publication and disclosure of information about a doctor's fitness to practise serves three purposes: to protect the public, to maintain public confidence in the profession and to uphold professional standards.

1.7 Some of these proposals put new time limits on the publication of sanctions. Regardless of how long it is fair or legal to publish information that links a doctor to a sanction, it is important that the information about the facts and reasoning underpinning a sanction decision are kept in the public domain – perhaps indefinitely – so that the functions of maintaining public confidence in the

[1] Under section 29 of the National Health Service Reform and Healthcare Professions Act 2002, the Authority can appeal in the High Court any final fitness to practise decisions it deems unduly lenient.

profession and upholding professional standards can be fulfilled. Beyond a certain date, any identifiable information may need to be removed out of fairness to the registrant, but the anonymised decision needs to remain published.

2. Detailed comments

Limiting the length of time that sanctions will be published on the online medical register or disclosed

2.1 Currently, the GMC publishes information about sanctions imposed by a fitness to practise panel or an interim orders panel indefinitely, even after the sanction no longer applies. In our 2010 publication, *Health professional regulators' registers – maximising their contribution to public protection and patient safety*, we recommended that erasure should be published for a minimum of five years. We also suggested that regulators should take a 'proportionate approach' to publishing lesser panel sanctions.

2.2 While the GMC is proposing to reduce the length of time for which all sanctions are published on the register, these publication timeframes remain well above our recommended minimums. It would nevertheless have been helpful to understand what has prompted the reduction, and why the five, ten and twenty year time limits were chosen.

2.3 We would however have concerns if the introduction of these time limits for publication were combined with new limitations on disclosure to employers. When information is taken down from the public facing register, it must continue to be made available to prospective employers for reasons of public protection. We feel strongly that the GMC should continue to disclose information routinely about past sanctions to prospective employers – as well as to current employers and overseas regulators.

2.4 We assume that regardless of the time limits for publication and disclosure, the GMC would keep their own records about fitness to practise sanctions indefinitely.

Question 1: Do you think the time limits proposed above provide the right balance between being transparent and open in the public interest and being fair to the individual doctors?

2.5 Yes. See above.

Question 2: Do you consider that, if time limits are introduced, we should routinely disclose information about sanctions to prospective employers once the time limit has expired?

2.6 Yes. See above.

Publication and disclosure after a doctor has died

2.7 It is not clear from the consultation document why the timeframes for the publication of a deceased doctor's fitness to practise history differ from those for doctors who are still alive. Although there is no longer a risk relating to the

doctor, there are important reasons why the information may continue to be needed: it may be pertinent to an ongoing complaint, investigation or inquiry that the GMC may not be aware of. Even if the GMC continues to disclose information on request, the record that there was a sanction at all is no longer on the register for people to see. In addition, any compulsion to remove information about sanctions under the Data Protection Act 1998 falls away when the subject passes away.

2.8 As we mentioned in our introduction, it is also important that the information relating to a sanction (i.e. the notice of determination) is kept in the public domain so that the functions of maintaining public confidence in the profession and upholding professional standards can be fulfilled. Beyond a certain date, any identifiable information could be removed if necessary.

Question 4: Do you agree with the proposal to stop publication of fitness to practise information after a doctor has died, unless there is a public interest in continued publication?

2.9 No. See above.

Question 5: Do you agree that we should continue to publish the outcome of a public fitness to practise hearing for a period of time after the end of a hearing, even if the doctor subsequently dies?

2.10 Yes, however, six months in our view falls short of what we would expect. See above.

Question 6: If you have answered yes to question 5, do you agree that six months from the end of the hearing is an appropriate length of time?

2.11 No. See above.

Question 7: Do you agree that, where a doctor has died, we should continue to disclose fitness to practise information to enquirers after the point at which we stop publication of the information (subject to our overall time limits) to enable us to deal transparently with queries where there is a public interest?

2.12 Yes.

Transferring onto the online medical register historical data about sanctions that were imposed during 1994-2005

Question 9: Do you agree that, in the interests of transparency, we should transfer information on to the medical register about sanctions imposed on a doctor's registration between 1994 and 2005?

2.13 Yes.

Increasing transparency in the information we publish when a doctor appeals a fitness to practise panel's decision

2.14 As we mentioned in our introduction, it is not clear why this consultation mentions neither the appeals that the Professional Standards Authority[2] can launch under its current s.29 powers, nor the appeals that the GMC will have the power to launch when the relevant sections of the section 60 Order[3] are commenced.

Question 10: Do you agree with the proposal in relation to appeals that are unsuccessful in scenario A?

2.15 No. It is not clear what public interest is served by publishing the record of an unsuccessful appeal for 12 months.

Question 11: Do you agree with the proposal in relation to appeals that are successful in scenario B?

2.16 Yes. It would have been helpful if the consultation had explained what the GMC's policy would be in relation to disclosure (on request) of the original decision after it has been removed from the doctor's record.

Question 12: Do you agree with the proposal in relation to appeals that are partly successful and sent back to the GMC for a new hearing in scenario C?

2.17 Yes.

Question 13: Do you agree with the proposal in relation to appeals that are partly successful and the original outcome is changed by the appeal court in scenario D?

2.18 Yes.

Question 14: Do you agree with the proposal in relation to appeals that are withdrawn in scenario E?

2.19 No. It is not clear what public interest is served by publishing the record of an appeal that has been withdrawn.

Question 15: Do you agree with the proposal in relation to cases where no appeal is made in scenario F?

2.20 Yes.

Question 16: Do you agree our proposed general approach to situations where a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning, is overturned on judicial review?

2.21 Yes, with the caveats set out above.

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[2] Under section 29 of the National Health Service Reform and Healthcare Professions Act 2002, the Authority can appeal in the High Court any final fitness to practise decisions it deems unduly lenient.
[3] The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015.

Clarifying our policy on the information we publish when a doctor appeals an interim orders panel's decision

Question 17: Do you have any comments on our proposed approach to publishing information to publishing information about appeals in interim order cases, as set out in the section above?

2.22 We have no comments on these proposals.

Providing greater transparency and detail in cases where we agree undertakings with a doctor without a fitness to practise panel hearing

2.23 We welcome the proposals to increase transparency in relation to decisions to agree undertakings. As undertakings are only offered if the doctor meets the real prospect test, we would nevertheless expect the information about undertakings to be subject to the same publications policies as conditions or undertakings agreed by a panel. We do not support the extension of consensual disposal to cases where suspension or erasure are the likely outcome, however if the GMC does go ahead with this, we would expect these consensual outcomes to be published and disclosed in the same way as those imposed by a panel.

2.24 In relation to undertakings, it would have been helpful if the consultation document had set out the process for agreeing the summary. The information it contains may be seen by the doctor in question as every bit as damning if not more than the undertakings themselves. If these proposals are to increase transparency and public confidence, the GMC will need to design a process that guards against any bargaining in relation to the content of the summary. It might be necessary for its contents and the undertakings to be agreed as one – i.e. the doctor cannot agree to the undertakings without also agreeing to the publication of the GMC's summary.

2.25 Where health-related undertakings are agreed, we suggest that the fact that a health-related undertaking has been agreed is a matter of public record. It is important for the public and employers (including prospective employers) to know that an undertaking has been agreed.

Question 18: Do you agree that we should give greater explanation of the background and reason for resolving the case consensually when we agree undertakings with the doctor and conclude the case without a fitness to practise panel hearing?

2.26 Yes. See above.

Question 18: Do you think that any of our proposals will affect people with protected characteristics that are covered by equality legislation?

2.27 No.

2.28 Although it is not always made clear, we assume that all the publication policies put forward in this document include exceptions for health cases.

3. Further information

3.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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