Council of Deans of Health

The voice of UK university faculties for nursing, midwifery and the allied health professions

# Department of Health and Social Care: Regulating healthcare professionals, protecting the public

## Council of Deans of Health written submission – June 2021

The Council of Deans of Health welcomes the opportunity to contribute to this consultation. The Council represents 100 UK university faculties engaged in education and research for nursing, midwifery and the allied health professions.

## Key messages

1. Healthcare higher education is regulated by both professional healthcare regulators and higher education regulators. The sector is in danger of burdensome and duplicative regulation from both healthcare professional and higher education regulators. Too often education regulation impinges unnecessarily on healthcare professional regulation and healthcare professional regulation impinges unnecessarily on education regulation. There is a need to reduce the regulatory burden placed on education providers considering the robust regulation provided by healthcare professional regulators. Regulation should be outcome-focused, risk-based, data driven and agile.

2. We strongly oppose any powers to allow for charges for educational quality assurance. Healthcare professional education is already high-cost, resource intensive and relies on public subsidy to supplement student tuition fees in England. Universities are already charged for quality assurance by higher education regulators across their provision, including healthcare. Additional charges may have unintended consequences, such as causing some institutions to rethink existing provision, including in vulnerable disciplines. This would be problematic for the UK Government's ambitious NHS workforce growth targets. Instead, we urge governments and regulators to look at options to reduce the high costs of registrant fitness to practise (FtP) activities.

3. The regulation of education is a key function of healthcare professional regulators. Standards of education and training are as important to public protection as FtP standards. Healthcare professional regulators should explore and develop a regulatory approach which has an increased focus and investment in the 'upstream' of the registrant journey to reduce the impact and costs of registrant FtP issues during professional practice.

4. Education providers should have the right to appeal approval decisions. This should also be the case when conditions are attached to an approval. Providers need the right to appeal approvals with conditions, as there is unwarranted variation in the decisions made by quality assurance teams within regulators across the UK. A condition could be out of step with contemporary

evidence and practice and local needs or it could be so prohibitive that it would mean that the programme was de facto refused approval.

5. We support the introduction of student registers. This would enable universities to know if applicants have been removed from another healthcare programme at another provider due to fitness to practise or misconduct issues. Alongside this, there is a need to reset the relationship between regulators and healthcare students via increased positive engagement with these future registrants.

6. Healthcare professional regulators should rebalance their focus to see the healthcare higher education sector as central across all their workstreams. Universities could play a more strategic role for regulators through harnessing sector expertise to advise across all their functions and assist with evidence-based interventions, output-focused delivery, and strategic performance.

7. We need to consider the opportunity that Brexit provides for reform to nursing and midwifery education. We welcome the Nursing and Midwifery (NMC's) current review of the EU Directive. Any changes must assure public protection from both a regulatory and educational perspective. We have an opportunity to develop a more fully competency-based rather than hours-based requirement within the continued context of degree-level programmes.

8. The pandemic has accelerated changes to healthcare delivery that were only expected to take place across the course of this decade. We need to consider the learning during this time from the higher education sector and NHS for the future of healthcare education, including for practice placement innovation and increased use of simulation. Regulation must continue to be agile as we come out of the pandemic and should not be a barrier for the future integration of technological developments in healthcare education.

9. We welcome new duties on regulators, including on co-operation, transparency, and impact assessment. However, these reforms will provide significant devolution of powers to individual regulators. This could lead to unnecessary variation and inconsistency in the rules and approaches taken by individual regulators. Regulators also need to be appropriately regulated themselves and these proposals do not provide adequate assurance on the supra-level regulation of healthcare professional regulators.

10. The Council respects and values the devolution of education and health policy across the UK. However, any changes to the healthcare professional regulatory framework, including the regulation of education providers. must be agreed at a UK level. This will ensure consistency across the UK and ongoing mobility of the UK healthcare professional workforce.

## Written response

### 1. Governance and Operating Framework

**Question 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.**

Yes. The healthcare higher education sector has positive and collaborative relationships with healthcare professional regulators. However, we welcome this new duty to collaborate, including with organisations concerned with the education and training of healthcare professionals.

We believe regulators should be required to work collaboratively with education providers to enable flexibility and innovation in education, increase student choice, and enhance career pathways. Effective partnership working with key stakeholders, statutory bodies, and other regulators will better enable regulators to deliver effective regulation.

More clarity is needed on the remit of professional regulators in relation to commissioning bodies, former commissioning bodies, and other statutory bodies. For example, healthcare professional regulation from the NMC and Health and Care Professions Council (HCPC) must take priority over higher education regulation, as the healthcare regulators rightly control entry to the professional register. Guidance and contractual and financial requirements from other bodies, which are not statutory regulators, such as Health Education England (HEE), Health Education and Improvement Wales (HEIW), and NHS Education for Scotland (NES) sometimes encroach into the regulatory space of healthcare professional regulators and result in unnecessary burden.

### Question 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.

Yes. In general, the healthcare professional regulators that we work with are transparent. However, we welcome the addition of a duty to be transparent. Greater transparency, and consistency, in decision making regarding the quality assurance of education providers would be welcome.

### Question 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

Yes. In general, the healthcare professional regulators that we work with do assess the impact of proposed changes to their rules, processes and systems. However, we welcome the addition of a duty to do this, including the impact these changes have on prospective health and care professionals. This duty should be expanded to organisations concerned with the education and training of healthcare professionals.

### Question 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.

Yes, in general. However, non-executive directors should be appointed based on merit and expertise and via a competitive selection process. We welcome plans to ensure UK-wide representation on boards. Thought should also be given to profession-specific input into boards, even though not every profession may be able to have a seat on a regulator's board.

### Question 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

N/A.

## Question 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.

N/A.

## Question 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.

Yes. However, healthcare professional regulators should continue to have education and standards committees, due to the importance of these matters across all aspects of a regulators' work. They allow space for experts to consider educational developments and raise the visibility of education at the regulator. We also note the importance of the Midwifery Panel at the NMC, which allows for specific focus on that profession.

## Question 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.

Strongly disagree. We do not believe that regulators should be able to charge for the initial assessment of a new application for approval of an education institution, programme or qualification. Furthermore, we do not believe that regulators should be able to charge education providers for ongoing monitoring and quality assurance activities. There are already substantial costs incurred by universities to continually monitor, quality assure, audit, record, report and comply with professional regulators.

### Education as a core regulatory function

The regulation of education and training is a key professional healthcare regulatory function[1]. Healthcare students undertake accredited programmes, which lead on to qualification and the ability to register as a professional in a chosen field. Regulated education provides assurance that individuals meet minimum entry requirements, are fit to practise, and enables them to join a professional family and embark on a career for the benefit of patients and service users. This is something that the professions, system, and the public can have confidence in.

The Council believes that education is not supplementary to the regulatory function of healthcare professional regulators, but at its core and a crucial first part in the FtP function of a healthcare regulator. It is critically important to regulators' prevention agendas. Education should not be regarded as an additional extra to be charged to fund regulatory activities. Instead, the Council recommends that non-charging for educational quality assurance be maintained by both the NMC and HCPC.

### The cost of healthcare higher education

[1] Professional Standards Authority, 2019, The standards of good regulation

Healthcare professional education is high-cost, resource intensive and relies on public subsidy to supplement student tuition fees. However, universities so far remain committed to continuing provision. This could be jeopardised if healthcare professional regulators started to charge for quality assurance activity.

In 2017, the Higher Education Funding Council for England (HEFCE), the forerunner to the Office for Students (OfS), commissioned KPMG to undertake a costing study of pre-registration nursing, midwifery and allied health education. This found that the mean unit cost of healthcare education is £9,669 per annum per student. The mean unit cost of nursing education across all four fields of nursing (adult, child, mental health and learning disability nursing) was £9,259 per annum per student. For allied health programmes, the mean unit cost can be significantly higher. For example, the mean unit cost for therapeutic radiography is £11,341 and for diagnostic radiography it is £11,309.[2] This cost is not covered by existing tuition fees. These costs will have only increased considering inflation and the pandemic.

In Wales, for example, the current commissioned price for some healthcare disciplines is inadequate, particularly for high-cost programmes in the allied health professions. This makes delivery unattractive to education providers. Charging for educational quality assurance could lead to a reduction in provision.

Healthcare faculties across the country are constantly investing in and modernising the way healthcare education is delivered, for instance via state-of-the-art simulation facilities, blending different teaching and learning methods, and expanding online and distance learning. Universities have also invested and continue to invest heavily in apprenticeship delivery, including the legal costs of creating new contracts with healthcare providers. Charging for regulatory quality assurance activity on top of this would have a detrimental effect on university budgets and take money away from investment in student resources. These are not costs that can or should be passed onto students.

## Existing regulatory cost and burden

Universities are already subject to charges for quality assurance across their provision, including for healthcare courses. The OfS, the higher education regulator in England, charges annual registration fees. Costs vary depending on student numbers but can be as high as £186,800 per annum.[3] These fees also increase year-on-year. The OfS can also charge for other activities.

The Quality Assurance Agency (QAA) charges universities for quality assurance across fours areas: an annual fee for all registered providers; a fee for registered providers requiring a degree awarding powers (DAPs) assessment; an assessment fee for a new provider; and an assessment fee for a registered provider. The maximum annual fee for all registered providers is: £14,244. Fees for registered providers requiring a degree awarding powers assessment vary. New providers can be charged up to £23,628 for a new DAPs test and up to £125,861 for monitoring and assessment. For those with full DAPs, costs can be

[2] Higher Education Funding Council for England, 2017, Costing study of pre-registration nursing, midwifery and allied health disciplines, p5

[3] https://www.officeforstudents.org.uk/media/b09ffe83-e235-4bd5-bb15-3209840e7489/ofs-registration-fees-guidance-2020-21.pdf,

as much as £55,367. Additional charges of up to £28,069 are charged depending on the number of days spent at a review and the number of reviewers. Further additional charges depending on whether the quality assurance visits are on site can be as much as £1,531. Assessment fees for new providers can be as much as £40,845. Assessment fees for a registered provider to assess whether the ongoing conditions are satisfied can cost as much as £37,432.[4]

The Office of the Independent Adjudicator, another regulator, charges institutions as much as £120,449 per annum.[5] Universities are already having to pay quality assurance charges, including for accommodation and expenses, for some allied health professional bodies in the fields regulated by the HCPC. This has led some to move away from professional body accreditation.

As more roles and routes into the professions have been developed there has been an increase in regulatory burden and cost as the number of regulatory bodies has increased. For example, in the apprenticeship space HEIs have had to invest in processes and personnel to monitor, evaluate and meet reporting and audit requirements for a range of bodies including the Institute for Apprenticeships and Technical Education (IfATE), the Education and Skills Funding Agency (ESFA), and Ofsted. This is a substantial cost to providers. As the regulatory burden of more players increases, these costs have risen.

The addition of extra charges to HEIs by healthcare professional regulators would be unduly duplicative and burdensome. It would add a further layer of system complexity, which would not benefit students or the public and therefore cannot be justified.

### Fitness to practise (FtP)

**Value for money is more likely to be found through reducing the cost of regulators' FtP processes than introducing fees for educational quality assurance.** For example, in 2019/20 the NMC spent £37.9 million on FtP (46% of its expenditure).[6] Not even 1% of its registrants are referred annually and only 10% of these referrals lead to a hearing. Similarly, FtP costs are a large expenditure item at the HCPC. In 2019/20, it spent £15.9 million on FtP (47% of its expenditure)[7] and only £740,000 on education. This is less than it paid in its levy to the Professional Standards Authority (PSA).

Charging education institutions for quality assurance activity in the context of the cost of education compared to FtP expenditure and other budgets at regulators would be inappropriate and ineffective. The Council welcomes data driven approaches to fitness to practise and educational quality assurance. This could reduce the regulatory burden and costs for both regulators and education providers, deal with fitness to practise issues upstream, and be a far more effective solution than introducing quality assurance changes. We note that the consultation states that regulators 'would not be permitted to charge for

[4] https://www.qaa.ac.uk/docs/qaa/news/statutory-charging-statement-dqb-19.pdf?sfvrsn=b47c581_26
[5] https://www.oiahe.org.uk/about-us/our-scheme/our-subscriptions/
[6] https://www.nmc.org.uk/globalassets/sitedocuments/annual_reports_and_accounts/2019-2020-annual-reports-and-accounts.pdf (p49)
[7] https://www.hcpc-uk.org/globalassets/about-us/insights-and-data/highlights/2019-2020/hcpc-year-in-highlights-2019-20.pdf (p10).

services in respect of fitness to practise functions.'[8] However, these clearly exert a huge financial pressure on regulators.

### Unintended consequences

Charging educational institutions for quality assurance activities may have profound unintended consequences. Institutions understandably look very closely at programme costs. This would therefore disincentivise the provision of new healthcare programmes and could threaten the viability of some existing courses. As some disciplines have only a very small number of providers and students, further risking the viability of the provision of vulnerable subjects could have significant negative effects on healthcare workforce sustainability and growth. This would be particularly problematic at a time of great system need, considering the pandemic and the UK Government's ambitious growth targets, which the higher education sector supports. Introducing charging for education could therefore also lead to a false economy with fewer future registrants and reduced income from individual registrant fees, which may negatively impact on the financial sustainability of some regulators.

Depending on the type of fees model used to charge institutions, this could act as a de facto cap on places for certain healthcare programmes. If HEIs were charged per student, then some would likely be forced to reduce the number of available places. In these circumstances this may have a negative impact on social mobility. It is well known that socio-economic background plays a key role in educational outcomes and influencing participation in higher education.[9] Despite the best efforts of the higher education sector and its work to widen participation, this could mean that the diversity of the healthcare student population decreases.

There is also a possible contradiction with charging for educational quality assurance and the PSA's model of right touch regulation. Charging may incentivise a move away from an open-ended approval process to undertaking greater monitoring by healthcare regulators to justify charging. This could unnecessarily increase regulatory burden due to financial imperative and not because of risk, student benefit, or public protection. Further the financial benefit that healthcare regulators may predict they will generate through fees may in fact be eaten up by increasing costs needed to service the needs of providers who will expect an improved service as they will now be paying regulatory customers.

## Question 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.

There may be a case for the delegation of certain functions from a regulator to another regulator or third party. However, we do not believe that the holding of a register or the setting of pre-registration education and training standards should be delegated to another regulator or a third party. These are central functions of any regulator. The only exception may be in relation to the future regulation of

[8] Department of Health and Social Care, 2021, Regulating healthcare professionals, protecting the public, p.19
[9] The Sutton Trust, 2017, The state of social mobility in the UK, p13

advance practice, where one healthcare professional regulator may regulate professionals who have those advanced knowledge, skills, and behaviours from a range of professional groups.

Regulation should not be regularly subcontracted between regulators. We welcome the proposal that where delegation takes place, the ultimate responsibility for the function will remain the responsibility of the primary regulator. This should be the case if functions are delegated to either other regulators or third parties.

### Question 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.

Agree. Healthcare professional regulators should be able to require data from and share data with education providers, regulators (including health and care system regulators), the PSA, education and course commissioning bodies, professional bodies, bodies representing students and registrants; employers and contractors of services; law enforcement bodies; and government agencies including those in Northern Ireland, Scotland, and Wales where appropriate.

However, regulators should deploy outcome-focused and risk-based regulatory approaches. Data should, where appropriate, be shared between agencies to reduce the data burden on education providers.

### Question 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.

Yes. This would be helpful for transparency and better enable Parliament and elected politicians to scrutinise the work of these important bodies. It could also improve the visibility of regulators' work amongst the media and public.

### Question 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.

N/A.

## 2. Education and training

### Question 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.

The healthcare professional regulators that we mainly work with, the NMC and HCPC, already set standards in these areas. This includes standards for education, supervision and assessment, programmes and proficiencies.

The NMC sets a standards framework for nursing and midwifery education. This includes standards on learning culture, educational governance and quality, student empowerment, educators and assessors, and curricula and assessment. It also provides standards for student supervision and assessment, which regulate education in practice learning environments. This includes standards on effective practice learning, supervision of students, and assessment of students and confirmation of proficiency.

The NMC specifies programme standards for nursing, midwifery and nursing associate programmes in England. These standards include rules on selection, admission and progression, curriculum, practice learning, supervision and assessment, and the qualification to be awarded.

The NMC stipulates standards of proficiency for nurses, midwives and nursing associates in England. Universities must educate students to meet these competencies and graduates must be proficient in these standards to be signed off and to join the professional register. The regulator also sets standards for specialist community public health nurses, for specialist education and practice, and for prescribers. The NMC also requires registrants to abide with its Code. This 'presents the professional standards that nurses, midwives and nursing associates must uphold in order to be registered to practise in the UK'[10].

The HCPC sets standards of education and training. These include requirements around: entry qualifications; programme admissions; programme governance, management and leadership; programme design and delivery; practice-based learning; and assessment. It sets standards for prescribing programmes. These include requirements around admissions; programme governance, management and leadership; programme design and delivery; practice-based learning; and assessment. The regulator also publishes specific standards for education providers delivering training in orthoptists exemptions, podiatric surgery, and standards for standalone programmes in podiatrist prescription only medicine annotations.

The HCPC specifies standards of proficiency which graduates must meet in order to be able to join the relevant professional register.[11] Universities must deliver programmes able to do this to be validated and permitted to recruit learners. These standards can be generic or profession specific. They were reviewed in 2020[12] and we await clarification about the future content of these important regulations. The HCPC also stipulates standards of conduct, performance and ethics. Universities must educate students to meet these standards on an ongoing basis.

Agile standards

[10] https://www.nmc.org.uk/standards/code/
[11] https://www.hcpc-uk.org/standards/standards-of-proficiency/
[12] The Council's response to the 2020 consultation on the HCPC's standards of proficiency is here.

Regulators need to explore ways of ensuring their standards are agile and of updating standards of proficiency on an ongoing basis. As well as changes in response to the pandemic, the next decade will likely see a profound shift in patient and service user need and expectations, changes in the delivery of care, technological and digital innovation, and new regulatory models amongst other developments. New evidence and policy priorities will mean that service and education will have to change. Healthcare regulators must also adapt.

Standards must be kept up to date and be responsive to changes in policy, practice and evidence. More systematic ongoing engagement, including via annual monitoring, may be a more effective way to ensure that professional standards are as current as possible, rather than a 'big bang' approach to standards development every decade. This will require close and continuous engagement, as already happens to a certain extent, with partners in education, service and other key stakeholders.

We believe that the NMC and HCPC should approve providers once to deliver a range of routes. For example, the NMC should approve a provider to deliver programmes leading to midwifery registration. However, it is not necessary for it to separately approve programmes delivered via the university-based and the apprenticeship route. The standards and the outcomes that these programmes must meet are the same. Approval at this level does not add benefit to students or the public and is unduly burdensome.

### Increasing burden of education regulation

Healthcare higher education is in danger of burdensome and duplicative regulation from both healthcare professional and education regulators.[13] In recent years education regulation has become more complex with an increasing number of regulatory and quality bodies inspecting institutions. In England, a new higher education regulator, the OfS, has been established. Ofsted, the IfATE, and the ESFA now all engage in regulatory and quality interventions for healthcare apprenticeships.

Education regulators have increasing moved into the regulatory space of healthcare professional education. Too often higher education regulation impinges unnecessarily on healthcare professional regulation. Instead, regulation should be risk-based and outcome-focused.

There is a need to consider the role of education regulators in the space of healthcare professional education. For example, we do not believe that Ofsted should be regulating healthcare apprenticeships, which are already regulated by healthcare professional regulators. This should be regulated by the OfS in England if additional regulation is necessary.

This increased burden is not only seen in England. The Welsh Government recently put forward a draft Bill for consultation on a new regulator (the Commission for Tertiary Education and Research).[14] If this is established, it will likely significantly increase the burden on Welsh universities.

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13 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655794/Regulatory_Reform_Consultation_Document.pdf p30

14 https://gov.wales/draft-tertiary-education-and-research-bill

We are also concerned that the increasing number of regulators discourages sector development. This is particularly the case when regulators get involved in curricula matters. This limits innovation, threatens academic autonomy and interferes with local arrangements between education institutions and local healthcare providers.

## Learning from the pandemic

In response to the Covid-19 pandemic, the NMC introduced emergency and recovery standards and the HCPC established a temporary register for graduating healthcare students. The learning from this period is useful when considering future regulatory reform.

For instance, some students were deployed in paid placements to support service. Though many students were glad to be able to contribute to national efforts during this challenging time, members have reported that student deployment caused confusion for other students.

Full student status confers benefits in terms of a clear role and remit for individual students, continuing access to HEI support services and HEI responsibility for communications. Paid deployment also caused a range of additional operational issues including students experiencing contractual difficulties. Universities often had to step in to support students with contractual issues during the first wave in Spring 2020. We are concerned this would become more common in any ongoing paid deployment arrangements and that students would face increased difficulties, which could negatively impact on student progression and completion.

The Council's view is that supernumerary student status must be maintained across the full programme duration and in all practice settings for registered nursing and midwifery students. The HCPC's current Standards for Education and Training (SETs) should not be diluted. This will ensure that learning outcomes and programme hours are met in a timely manner and ensure progression to registration and entry to the workforce. Paid deployment and the removal of supernumerary status will not support student progression and could compromise patient safety.

The Covid-19 pandemic has revolutionised healthcare in the UK, with healthcare professionals 'treating half of patients in outpatients and primary care online.'[15] This has accelerated changes to models of care that were expected to take place across the course of the 2020s. It will be necessary for professional standards of proficiency to encompass a more dynamic understanding of digital literacy and innovation, service delivery, and communication and engagement with patients and service users. This would ensure they continue to be fit for purpose.

Universities introduced extensive use of online learning to conform with social distancing guidelines. Virtual patient consultations were a great way for vulnerable students to access practice settings. Immersive technologies have also enabled the development of simulated practice placements, which can

[15] https://www.gov.uk/government/speeches/the-future-of-healthcare

be used to rehearse and develop skills and behaviours. We welcome the NMC's new recovery standard to increase simulation by an additional 300 practice hours.[16]

Regulators, in partnership with educators, service and other stakeholders, should undertake work to understand how technological developments can be better integrated into theory and practice education. There is a need for updated definitions and guidance for new technologies in the context of regulated education. HEE is already undertaking work on technology-enhanced learning[17] and blended learning[18] and developing guidance to extend this methodology into other disciplines across health and medicine.

Regulators need to continue engagement with this agenda to explore the possibilities in simulated practice and immersive technologies. Regulation should permit increased use of these technologies where they have evidence of high-quality learning outcomes and benefits for students. Increased flexibility in this area could reduce pressure on practice placements. Regulation must continue to be agile as we come out of the pandemic and should not be a barrier for the future integration of technological developments into healthcare education.

### Brexit Opportunities

We need to consider the opportunity that Brexit provides for reform to nursing and midwifery education. Any change to the EU Directive must of course assure public protection from both a regulatory and educational perspective. We must ensure that we do not modify courses in a way that compromises the quality of the education students receive. Post-Brexit we can develop a more fully competency-based rather than hours-based requirement within the continued context of degree-level programmes. There is also a strong case for the increased use of simulation to contribute to theory and placement learning.

The Council welcomes that the NMC has embarked on a review of minimum programme requirements and the future of the EU Directive.

### Advanced practice

The Council believes that there is a strong case for examining the regulation of advanced practice. The PSA has guidance that outlines whether a professional group should be regulated. This should be considered carefully before a decision is made on the regulation of advanced practitioners. This regulation should preferably be UK-wide.

If one healthcare professional regulator were to regulate advanced practitioners then it must be able to deploy a common approach across all professions, including for individuals who may come from professional backgrounds that are not normally regulated by it. For example, if the NMC were to regulate

[16] https://www.nmc.org.uk/news/news-and-updates/recovery-standard/
[17] https://www.hee.nhs.uk/our-work/technology-enhanced-learning
[18] Seven blended learning nursing degrees have already been commissioned in England. A report on this work is expected in 2021: https://www.hee.nhs.uk/our-work/blended-learning

advanced practitioners from the allied health professions. The Council looks forward to engaging with regulators on this question.

### Healthcare higher education sector

Healthcare professional regulators should rebalance their focus to see the healthcare higher education sector as central across all their workstreams. The sector could play a much more strategic role for regulators, not just in relation to quality assurance and standards development, but also through harnessing sector expertise to advise across all regulatory functions. Within academia there are experts on patient safety, risk modelling, digital innovation, AI, robotics, ethics, FtP, and public engagement. If effectively harnessed by regulators this would allow them to deliver more evidence-based and output-focused regulatory interventions and achieve their strategic intent.

## Question 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.

The regulators that regulate our members already have extensive powers in this area. We are not sure what benefit any additional powers will bring. We need to adopt a more outcome-focused and risk-based regulatory approach. When imposing any sanctions or withdrawing approval, regulators need to think about the disruption this may cause to learners. For example, there would need to be a teach-out clause to ensure students complete their learning. For providers in England, any regulation in this area must also have regard to OfS and other education regulators' rules.

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

The regulators that regulate our members already have extensive powers in this area. We are not sure what benefit any additional powers will bring. We need to adopt a more outcome-focused and risk-based regulatory approach.

We need more information about what factors would cause a regulator to issue warnings or impose conditions in the Government's proposals. We also need to understand more about the appeal processes for universities who are subject to warnings and conditions. Where regulators have concerns, providers are already subject to extensive review. For example, the NMC puts new providers and those where risks have been identified under enhanced scrutiny.[19]

## Question 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.

[19] https://www.nmc.org.uk/education/quality-assurance-of-education/how-we-monitor-education-institutions/enhanced-scrutiny/

Agree. However, this should be strengthened. Education providers should have the right to object to and appeal all decisions taken by healthcare professional regulators. This is central to a fair and open regulatory system. It would also allow opportunities for regulators to learn and take account of different opinions, including local views and contemporary evidence and practice.

There is unwarranted variation in the quality review process and the decisions taken by quality assurance teams acting on behalf of regulators. Our members report matters that have caused conditions to be applied to programmes in some institutions that have been welcomed by reviewers at other institutions. We do not believe that all quality reviewers are familiar with contemporaneous education pedagogy or clinical practice. This will only become more apparent considering the move to online, distance and blended learning and profound changes to clinical practice environments during the pandemic.

There is also an issue with the approval of AHP programmes which often take place in conjunction with professional bodies. Our members report that there can be divergent views between the professional regulator (the HCPC) and professional bodies where they may set contradictory conditions. Universities will need to be able to appeal against decisions on conditions by the statutory regulator in these circumstances.

### Question 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.

Agree that education and training providers should have the right to appeal approval decisions and that regulators should be required to set out grounds for appeal and appeals processes in rules. This is key to a transparent and fair process.

Strongly disagree that this appeal right should not apply when conditions are attached to an approval. Providers should have the right to appeal conditions attached to approval decisions. It is not a fair process without this right.

As stated above, there is unwarranted variation in the quality review process and the decisions taken by quality assurance teams acting on behalf of regulators. Providers need the right to appeal approvals with conditions, as a condition could be out of step with contemporary evidence and practice and local needs. It could also be so prohibitive that it would mean that the programme was de facto refused approval.

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

Agree. Healthcare professional regulators should retain existing approval and standard setting powers due to the bespoke nature of the regulation provided by the healthcare professional regulators.

### Question 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.

Strongly disagree. There is no need for either the NMC or HCPC to set or administer an entrance exam or other assessment for applications to join the register. This will not add to public protection. Universities are rightly robustly regulated and approved to deliver education and assess the knowledge, skills, and behaviours of learners to ascertain if they have the competency to join the relevant professional register. Students are assessed on an ongoing and summative basis. This current system continues to work effectively.

### Question 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.

Strongly agree. Please see the above answer to question 19.

### Question 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.

Yes. However, this needs to be outcome-focused and risk-based.

Programme reviewers need to have contemporary experience and make evidence-based decisions. There is unwarranted variation in the quality review process and the decisions taken by quality assurance teams acting on behalf of regulators. Our members report matters that have caused conditions to be applied to programmes in some institutions that have been welcomed by reviewers at other institutions. We do not believe that all quality reviewers are familiar with contemporaneous education pedagogy or clinical practice. This will only become more apparent considering the move to online, distance and blended learning and profound changes to clinical practice environments during the pandemic.

### Question 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.

N/A.

### Question 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.

Agree. This is an important part of ongoing professional competency. Consideration should be given to how experiences of educating students in practice settings can be more routinely used as a revalidation requirement to increase the potential pool of practice educators and maximise practice placement capacity.

## 3. Registration

### Question 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.

Yes. However, there is a need to think and the issue of dual registrations that can be annotated, annotations to registered status, and the prospect for evolving professional roles that may have aspects of different professions.

Special consideration will need to be given to the potential regulation of advanced practice. The Council believes that there is a strong case to examine the regulation of advanced practice. The PSA has guidance that outlines whether a professional group should be regulated. It may be that one healthcare professional regulator will need to act on behalf of other regulators to regulate advanced practitioners who come from a diverse range of professional backgrounds. A common approach should be deployed across all professions and across the UK.

### Question 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

Yes. However, there is a need to think about annotations to registered status. These might not necessarily need to require registrants to be placed in a separate part of the register, but this needs to be considered.

### Question 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.

Yes. However, data collection should be set at the appropriate level and risk based.

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

Yes, particularly if this would include knowing about registrant FtP outcomes.

### Question 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.

Agree. Annotation should be permitted where necessary for the purpose of public protection. However, not all post-registration experiences and qualifications should lead to annotation. Annotation must be meaningful and only where there is risk to the public. The PSA's right touch assurance methodology[20] could be used to understand if annotation is necessary.

Special consideration will need to be given to the potential regulation of advanced practice, which may be via annotation.

### Question 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.

Yes. However, consideration needs to be given to how these powers would be used. These emergency powers should not be used routinely and only used in a genuine emergency which should be defined by certain criteria under the direction of the UK Government. Students should not be used to routinely supplement the registrant workforce.

### Question 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?

N/A.

### Question 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.

N/A.

### Question 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.

N/A.

### Question 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.

Agree.

[20] https://www.professionalstandards.org.uk/publications/detail/right-touch-assurance-a-methodology-for-assessing-and-assuring-occupational-risk-of-harm

### Question 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.

Any discretionary powers to turn down an applicant for registration must be limited by certain established and public criteria to ensure a transparent process.

### Question 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.

N/A.

### Question 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.

Agree.

### Question 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.

Agree.

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

N/A.

### Question 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.

Agree.

### Question 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.

Disagree. The Council supports discretionary powers to establish student registers and the introduction of student registers at healthcare professional regulators. Student registers could be used to hold information about students, including if they have been removed from an education programme due to FtP issues or misconduct. Universities could use this information to consider if an applicant had been removed from another institution and for what reason. Universities cannot fully join up the data without the involvement of the regulator.

Education providers should still have autonomy regarding admissions. The data sharing implications of this approach will need to be conveyed to applicants.

Any register should not routinely be used for student deployment purposes, except in a national emergency as determined by the UK Government. Students are not members of the registered healthcare workforce. Their student status is critical to ensuring that they have adequate time and supervision to focus on their studies and to graduate and gain professional registration in a timely manner. Routine deployment of students, for example to administer flu vaccinations, would have negative impacts on student progression and completion.

More widely, there is a need for increased engagement with students to rebalance negative perceptions of regulators and the development of a just learning culture. Regulators should explore student engagement models, such as student ambassadors or a student 'council.' This could challenge misinformation and negative views about the role of regulators and have long term benefits. There is also a need to deepen understanding of the distinct experiences of students and different professional groupings, especially for smaller professions. This will better enable regulators to speak authoritatively about the context in which individuals learn and practice and play a more proactive role, where possible, in policy development. The higher education sector would be keen to be involved in this work, especially in relation to improving student wellbeing and experience.

### Question 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 do not see a critical need for a non-practising register outside of an emergency as determined by the UK Government. The system should be collectively focused on ensuring wherever possible registrants remain on the full register and are able to practise.

### Question 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.

International registration requirements should be maintained, but more flexibility on how international registrants are examined and assessed should be explored.

## 4. Fitness to practise

### Question 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.

N/A.

### Question 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 there should be more consistency on the 'heads of impairment' and the reasons why a registrant's practise could be seen to be impaired. However, we do not think this should be restricted to two newly defined areas of 'lack of competence' and 'misconduct.' We believe that there is benefit in continuing to have grounds for action on the basis of health and English language rather than including them in a wider 'lack of competence' category.

There is also a need for regulators to acknowledge the context of care and organisational as well as individual factors and learning.

Question 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.

Agree. This should support expediting cases in a more timely fashion, and enable individual and organisational learning.

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

N/A.

Question 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.

N/A.

Question 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.

N/A.

Question 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.

Agree. These restrictions should be removed. There should not be a time limit as historic actions could impact on contemporary practice.

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

N/A.

Question 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.

N/A.

Question 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.

N/A.

Question 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.

See answer to Q45 above.

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

N/A.

Question 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.

N/A.

Question 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.

N/A.

Question 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.

N/A.

Question 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.

N/A.

Question 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.

N/A.

Question 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.

N/A.

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.

N/A.

Question 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.

Disagree. The PSA should continue to have powers to refer decisions made by case examiners to courts. This should include accepted outcomes.

### Question 63: Do you agree or disagree with this proposed mechanism? Please provide any reasons for your answer.

N/A.

### Question 64: Do you have any further comments on our proposed model for fitness to practise? Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give a reason for your answer.

N/A.

### Question 65: In relation to PAs and AAs, do you agree or disagree that the GMC should be given a power to approve high level curricula and set and administer exams? Please give a reason for your answer.

N/A.

### Question 66: Do you agree or disagree with the transitional arrangements for PAs and AAs set out above? Please give a reason for your answer.

N/A.

### Question 67: Do you agree or disagree that PAs and AAs should be required to demonstrate that they remain fit to practise to maintain their registration? Please give a reason for your answer.

N/A.

### Question 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.

N/A.

### Question 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.

N/A.

### Question 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.

N/A.

## For more information contact:

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