

Unite the Union Response to:

The Department of Health and Social Care (DHSC) consultation; '*Regulating health professionals, protecting the public*'

This response is submitted by Unite in Health. Unite one of the UK's largest trade unions with 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors.

Unite represents in excess of 100,000 health sector workers. This includes eight professional associations - British Veterinary Union (BVU), College of Health Care Chaplains (CHCC), Community Practitioners and Health Visitors' Association (CPHVA), Guild of Healthcare Pharmacists (GHP), Hospital Physicists Association (HPA), Doctors in Unite (formerly MPU), Mental Health Nurses Association (MNHA), Society of Sexual Health Advisors (SSHA).

Unite represents members in occupations such as nursing, allied health professions, healthcare science, applied psychology, counselling and psychotherapy, dental professions, audiology, optometry, building trades, estates, craft and maintenance, administration, ICT, support services and ambulance services.

1. Introduction

- 1.1 Unite welcomes the opportunity to respond to '*Regulating health professionals, protecting the public*'. Unite has members regulated with all nine healthcare regulators and as a member led organisation has used its ongoing routes to ascertain their views and these are incorporated into this response.
- 1.2 Unite is also the main trade union for non-medical specialists in public health. These specialists are not currently statutorily regulated – an intention to regulate them having been deferred until after these reforms. As public health is a medical specialty with a non-medical route of entry, we take this opportunity to state our belief that they should be regulated by the GMC.
- 1.3 The table below contains Unite's responses to the consultation questions. The consultation directed the respondent to either agree or disagree with each proposal. However, Unite has included a third option where we neither agree nor disagree and have provided an explanation for the reasons for this. Unite would suggest this is a useful option for future consultations.

	Q. no.	Consultation question	Agree/ Disagree	Additional comments	
Governance & Operating Framework	New duties	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.	Agree	
		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.	Agree	In Unite's experience of working with the regulators, those that hold open Council meetings that allow members of the public and stakeholders to ask questions on policy or standards appear more transparent. Indeed, this facilitates working collaboratively and enhances public protection. As regulators have a duty to protect the public, we would argue that without being transparent, regulators themselves are failing in this duty.
		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	Agree	Unite would suggest this duty should also apply to the Professional Standards Authority (PSA).
	Unitary Board	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.	Disagree	Unite members are extremely concerned about the removal of the requirement to have a registrant perspective on the Board. They consider that this will undermine trust in their regulator in terms of them having an understanding of the impact that changes to policy or standards have on their practice. From Unite's experience of working with the Nursing & Midwifery Council (NMC) and General Medical Council (GMC), their Councils have always reported how valuable the registrant members perspective and input is. Unite recognises that some regulators will still continue to have a registrant member, but if it is not mandatory, many will not. Indeed, Social Work England has been criticised by the profession for having only one member of the Board with a link to social work. Whilst we acknowledge the role of the registrant member is not to 'represent' the profession and that multi-professional regulators already do not have a registrant from each profession, it is the perspective that is important. Unite questions why this change is required as there has not been an issue to date. The Professional Standards Authority have stated that this completes the move away from 'self-regulation'. We disagree that having limited numbers of registrant Council members is self-regulation. As previously states, Unite believes there is no longer a case for registrants bearing sole responsibility for meeting the cost of professional regulation.
	Fees	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	Neither	It is suggested in the consultation document that removing this requirement could reduce the cost of regulation. The concept of fees being reduced would be much welcomed by Unite members, many of whom are increasingly struggling financially. However, Unite is concerned that removing the opportunity to scrutinise proposals may lead to less

					<p>opportunity to argue against spiralling fee increases. Regulators such as the NMC have never reduced fees even when they have a large surplus, despite calls from Unite to do so. Consequently, Unite questions whether the positives described of using this approach would in fact be realised.</p> <p>Conversely, the requirement for the regulator to obtain Privy Council approval leads to a lengthy approval process which is not ideal in situations where there are concerns about the regulator being financially viable. Indeed, a positive is the ability to set long term plans.</p> <p>Unite considers it will depend on the nature of any consultation in terms of whether this is meaningful. Unite members point out that in previous fee consultations, even when the majority of respondents have opposed a fee increase, the regulator has none the less implemented it in full. An exception to this was the recent Health & Care Professions Council (HCPC) fee increase, where Unite members submitted a petition against the increase and were successful in achieving a 50% reduction.</p>
		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.	Neither	Setting out a longer term structure could bring certainty to registrants who in many cases are struggling financially after many years of well below inflation pay increases. However, if the regulator sets a plan to increase the fee over a period of time and this can then not be challenged, Unite would not be supportive and indeed would question how this provides the opportunity for fees to go down.
	Committees	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.	Neither	Our midwifery members point out that the NMC have a requirement for a statutory midwifery committee to ensure they remain focussed on the profession. They are concerned that the removal of this will result in the NMC losing a focus on midwifery in the same way as they did when there was no longer a requirement to have a health visiting committee. Whilst regulators may retain committees or establish new ones, not mandating carries risks that something will not happen.
	Charging for services	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.	Agree	<p>As the only source of funding for the regulators comes from registrant fees, it is not appropriate for registrants to fund the cost of for example, university quality and approvals processes. In particular as they are already paying university fees for their course. The income this generates may also lead to a reduction in regulatory fees.</p> <p>This question reinforces our belief that regulation should not be funded by individual registrants as the work done by regulators should benefit the country and therefore should be paid from from general taxation rather than an individual tax on the registrant themselves.</p>
	Power to delegate	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.	Disagree	Unite considers more clarity is required around what the new powers would allow the regulators to do, beyond their existing powers. As currently phrased the third party could be a for-profit commercial organisation. Unite therefore disagrees with this proposal.

	Data handling, sharing & collection	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.	Disagree	<p>Unite is extremely concerned about the proposal that the regulators will be required to share data with law enforcement bodies and government agencies. In particular as this has the potential for them to be used to enforce policies such as the government's anti-immigration (hostile environment) agenda, which could see regulators compelled to disclose a registrant's immigration status. Indeed, Unite questions whether this protects registrants' rights under General Data Protection Regulation (GDPR) as is stated as an essential aspect of the reforms.</p> <p>In terms of sharing data more widely with, for example, professional bodies, Unite has for some time been raising the fact that trade unions and professional bodies should have clear processes for raising concerns about issues in practice or within organisations. Trade unions and professional bodies are often the first to be alerted to when things are going wrong within an organisation. Unite officers have had occasions where they have shared intelligence but this has been one way, so whilst the regulator has taken details of the concern there has been no feedback on whether the concern was justified or addressed.</p> <p>Data on, for example, trends in fitness to practise referrals is valuable information that facilitates trade unions and professional bodies to do preventative work with their members.</p> <p>Further detail should be provided on the safeguards which would be in place regarding this type of data sharing. As a trade union our priority is to our members. Unite would not share information which would break their confidentiality or privacy.</p>
	Accountability	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.	Agree	As health and social care is devolved, this seems an appropriate requirement.
	Privy Council	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.	Agree	This would bring consistency.

Education & Training	Standards	13.	<p>Do you agree or disagree that all regulators should have the power to set:</p> <ul style="list-style-type: none"> • 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 or 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? <p>Please give a reason for your answer.</p>	Agree	
	Approvals, warnings & conditions	14.	<p>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.</p>	Agree	There does however need to be appropriate safeguards/checks and balances in place to ensure the system is fair and includes processes to appeal any decisions.
		15.	<p>Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.</p>	Agree	As above.
	Appeals	16.	<p>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.</p>	Agree	

		17.	<p>Do you agree that:</p> <ul style="list-style-type: none"> • 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? <p>Please provide a reason for your answer.</p>	Agree	It is important that organisations have the opportunity to appeal any decisions that will impact them negatively. We are unclear on why the suggestion has been given that appeals will be contingent on whether conditions have been set out or not. We believe that this element should also have the option of appeal, and this should be included in the appeals process set by the regulator, which should itself be consulted on.
	Variations in approval & standard powers	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	
		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.	Agree	
	Exam & assessment powers	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.	Agree	
	Delegation & method of assessment	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.	Agree	

	CCTs	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.	Neither	Unite members point out that many individuals (e.g. refugees and asylum seekers) find it difficult to establish their professional training status and consider that this should be acknowledged. In addition, there is also expressed concern about institutional racism/colonialism in such adjudications.
	CPD & Revalidation	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	When budgets are stretched, the first thing to be cut back is the education and training budget. The presence of regulatory requirements around continuing professional development (CPD) or revalidation facilities discussions between registrants and employers. Unite is therefore of the view that unless minimum requirements are set by the regulator, registrants in many organisations will not receive any support from their employer. Nursing and midwifery revalidation was an extremely positive step for the professions as employers recognised that they needed to support their NMC registrants to meet the requirements.
Registration	Duty to hold single register	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.	Neither	It would depend on how a single register is set up and managed. When there are concerns about fitness to practise, there needs to be the ability to apply sanctions or remove a registrant from one part only. This is because they may be registered on two parts, for example; a registrant may be on the nursing and midwifery part of the NMC register. There may be concerns about competency that only apply to their midwifery practice which should not mean their nursing practice is also restricted.
		25.	Do you agree or disagree that all regulators should be required to publish the following information about their registrants: <ul style="list-style-type: none"> • 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.	Disagree	Unite would be extremely concerned about qualifications, registration and PIN numbers being visible. Registrants use their registration or PIN number to access their on line account. If this is readily available then Unite considers the risk of accounts being hacked is greater. In addition, Unite considers publication of this detailed information could increase the potential for people to pose as health care professionals. An example is the recent Covid-19 vaccination programme. This required organisations to quickly recruit a vaccinator work force in numbers they have never had to deal with. The registration/PIN number was used as important identification to streamline usual processes. If this information was available to all, it would lose its value. Unite also questions what value publishing the registration number/PIN would have to those accessing the register?

		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	Neither	Unite does not support the suggestion that a registrant could be removed from a register because they have not provided a piece of information. Not all information gathered by the regulator is necessary for them to undertake their regulatory function.
		27.	Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer	Agree	While the basic level of information published by regulators should be the same, regulators should be able to publish additional data as fits with their particular requirements. Data should be anonymised.
	Annotation	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	It is right that the regulator is able to add, amend or remove an annotation in order to protect the public as the register is not a record of qualifications gained. An example of this is the NMC register where once an annotation for prescribing is achieved and recorded, it remains even if the nurse or midwife is in a role where they no longer use it. Unite also agree that the power to annotate should be used in a way that is consistent with public protection and there is a need for a policy around the use of annotations which should be consulted on before implementation.
		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.	Neither	In terms of registration, an emergency power to register was an essential part of the response to the pandemic. Similar powers going forward would be useful but they should only be activated by notification from the Secretary of State (i.e. not available to regulators on a permanent basis).
	Protected title & registration offences	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?	Agree	We agree with the statement: 'Some of the protected titles in the regulators' legislation do not reflect current practice.' This includes a failure to protect the title: 'nurse'. We therefore support 'a review of protected titles to ensure that they are consistent with current practice'. This must include nurse and we believe the title nurse should be limited to those who are registered with professional regulators such as registered nurses and dental nurses. This would ensure the title nurse is treated in the same way as titles such as paramedic and physiotherapist, which are limited to those on professional registers.
		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.	Agree	There needs to robust supervision of the "protection of title"

	Registrar, deputy registrar & AR	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.	Agree	
	Registration processes	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.	Neither	Regulators may be best placed to specify their own detailed requirements for registration and there may indeed be advantages to them being able to update and adapt their registrations processes in response to developments without the requirement for Privy Council approval. However, this also raises concern about who will provide oversight to ensure the requirements, policies and processes are fair and equitable.
	GMCs registration processes	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.	Disagree	Any exercise of discretion must be done fairly and consistently and would be subject to legal challenge. Therefore, if this discretion was given to the regulator, they would need guidance/policy on how it would be exercised by the Registrar, effectively building a subset of criteria. It is unclear what the purpose of this discretion would be or what considerations would be relevant that weren't relevant to the registration criteria. This could cause uncertainty and potential unfairness to applicants.
		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.	Agree	
	Removal, suspension & readmission	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.	Disagree	Unite is unsure what would be added by a power to suspend outside of FtP and suggests this would need a considerable number of processes (akin to FtP) built around this to ensure fairness. Parallel processes could cause uncertainty.

		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	Unite notes the requirement for regulators to work together to develop their rules so they are consistent across regulators.
	Appeals	38.	Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.		No further appealable decisions to add.
		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	
	Student & non-practising registers	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.	Agree	Registration is widely understood to mean people whose ongoing capability for safe and effective practice is assured by meeting regulatory requirements (e.g. revalidation). Student/non-practising registers risk reducing clarity for register users and undermining the role of the register as a record of people permitted to practise in the UK.
		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.	Agree	However, this may depend on how the single register operates in terms of whether the parts are standalone. For example, a registrant currently on the NMC register as a Specialist Community Public Health Nurse (SCPHN) has to also be on the register as a nurse or midwife as the SCPHN register is not standalone. However, they are practicing as a SCPHN and not a nurse. If this scenario is to continue, Unite would suggest a non-practising register would address this issue.
	International registration	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.	Agree	Unite considers this may facilitate the development of policies that enable asylum seeker and refugee health care professionals, who because by the nature of their situation may not be in possession of the correct documentation, to register.

Fitness to practise	3 stage process	43.	<p>Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering:</p> <ul style="list-style-type: none"> • 1: initial assessment • 2: case examiner stage • 3: fitness to practise panel stage? <p>Please give a reason for your answer.</p>	Neither	<p>This would support consistency and clarity across the regulators. Unite also supports the overall policy that more cases should be resolved without the need for a fitness to practise panel hearing and that the process should be less adversarial.</p> <p>The proposals describe the ‘initial assessment’ stage as being when the regulator considers whether the case is appropriate for them to take forward and equally if it is not. Unite would welcome this to ensure only appropriate cases are taken forward. However, if the case is appropriate to be taken forward then it requires a much more detailed fair investigation that looks at the full facts of what happened and why.</p> <p>In our experience unless the investigation is robust in looking into the facts of what happened, including context, rather than as in the HCPCs case, ceasing once there is sufficient information to prove the allegations, it leads to cases being taken forward unnecessarily. This increases the length and cost of the case and leads to unnecessary distress for all involved. Unite therefore suggests there needs to be an additional stage of investigation added before the case examiner stage. This will reduce the number of cases that go through the whole process but result in a ‘no case to answer’ decision.</p>
	Grounds for action	44.	<p>Do you agree or disagree that:</p> <ul style="list-style-type: none"> • 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? 	Disagree	<p>For consistency it would be helpful for regulators to have common grounds for impairment across their legislation. However, Unite does not agree that these should be limited to lack of competence or misconduct and that separate grounds for health should be removed.</p> <p>Unite questions why this is required as in our experience the regulators generally handle health cases well and with more compassion. It does not seem appropriate for a registrant to be removed from the register for lack of competence or misconduct when the cause is a health issue. Indeed, this is likely to compound their health issue.</p> <p>Furthermore, it should be explicit that a strike off sanction should not be permissible as a first resort under the new competence category, as currently applied by many regulators. Practice conditions / suspension would provide the necessary safeguards. Voluntary removal should also remain an option.</p> <p>Unite is also concerned that this could increase the risk of the Disclosure and Barring Service (DBS) stepping in if they consider a sanction too light or that the regulator is not acting quickly enough because it is considered lack of competence or misconduct when in fact it relates to a health issue. This is happening more frequently, with the DBS debarring registrants effectively ending their career without a fair and transparent process.</p> <p>Currently, there seems to be a clear common sense difference between professional skills and language difficulties. This distinction is worth retaining if only for the purposes of clarity for the registrant and the public.</p>

	Measures	45.	<p>Do you agree or disagree that:</p> <ul style="list-style-type: none"> • 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? <p>Please give a reason for your answers.</p>	Agree	<p>Giving Case Examiners a full suite of measures to reach final decisions is in keeping with the move towards reducing the adversarial nature of fitness to practise.</p> <p>It seem appropriate to automatically remove registrants convicted of offences incompatible with registration rather than going through another lengthy process that in some instances may cause more harm and distress to those involved. However, where appeals against such convictions are successful there needs to be a quick process of restoration.</p>
		46.	<p>Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.</p>	Agree	<p>Regulators should have powers to review a measure at any point before its expiry and should be able to set out in rules a clear process to follow when reviewing a measure. This power should be available to both case examiners and FtP panels. However, there needs to be clarity and consistency across the regulators in terms of how the measures are detailed in rules.</p>
	Notifications	47.	<p>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.</p>	Agree	<p>This is crucial as the lack of update is bound to be a cause of frustration and dissatisfaction to those who have lodged complaints.</p> <p>However, the complainant should only receive information that is reasonably necessary and at fixed points in the process to avoid vociferous referrers continually making requests to the regulator in order to influence the process or using the information to, in some way, intimidate the registrant. It is important that the regulator cannot be viewed as biased.</p>
	Initial assessment	48.	<p>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.</p>	Agree	<p>Unite has experience of many cases where it is clear there is no risk, for example, malicious referrals, or where any risk is being effectively managed by an employer. Consequently, there is no further action that the regulator could or should take.</p> <p>However, they have to follow the process, which in most cases is lengthy, simply because it has been referred to them. The regulators should therefore have a clear discretion to decide whether there is a basis for onward referral in the FtP process and have the power to decide, if appropriate, that there is no further action to be taken and close at this stage.</p> <p>Unite would like more information about the power to require information from a registrant. How would this be enforced? Thought should be given to the safeguards so that registrants are not required to provide evidence that might incriminate them. The rules here could be intimidatory.</p> <p>Unite notes the safeguard of excluding any requirement to provide reflective pieces but is concerned that the boundary between a reflective piece and a factual piece is not always clear cut.</p> <p>In addition, Unite would question who would finance any assessment required?</p>

		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.	Neither	Unite would be concerned about how regulators will ensure the process remains fair after so much time has elapsed. It is also important to remember that regulation is about public protection. Therefore, there should be a strong presumption that historic cases will not be opened unless there is a clear current public protection issue to prevent a relapse into regulation being punitive.
	Non-compliance	50.	Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as “adverse inferences”? Please give a reason for your answer.	Disagree	There are many reasons why a registrant may not provide information at a particular time. Unite therefore considers that a separate power is not appropriate and this would be better managed through robust adverse inference policies.
	Onward referral	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.	Agree	As above, Unite considers there should be an additional stage of investigation after the initial assessment and before referral to the Case Examiner. This is especially important as the Case Examiner should not be the investigator and decision maker.
	Automatic removal	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.	Agree	Unite is supportive of automatic removal and anything that brings efficiency in those cases where a serious offence has been committed and there is no basis for the person continuing to be on the register. Unite supports having a right of appeal in automatic removal cases where there is a factual change. However, it is important to take into account steps that might be needed to bring a person’s professional competence up-to-date if, for example, they have missed revalidation dates.
	Case examiner stage	53.	Do you agree or disagree with our proposals that case examiners should: <ul style="list-style-type: none"> • 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.	Agree	Many fitness to practice proceedings are lengthy and adversarial in nature. They are also highly stressful and can lead to endless pain and upset for all parties. However, Unite agrees with the PSAs concern about unrepresented registrants in terms of whether and how they will determine whether the outcome is appropriate. In terms of a time limit of 28 days being imposed, Unite considers that in many cases this is too short a time scale.

	Interim measures	54.	Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.	Agree	This is an area where there needs to be consistency among the regulators and Unite suggests guidance would be useful.
	Ftp panel stage	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.	Agree	Again consistency is paramount and it will be essential that the regulators work together.
	Registrant appeals	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	Agree	However, Unite suggests adding an internal right of appeal for registrants for Case Examiner decisions rather than relying solely on the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland remedy. Unite considers a Registrar review should suffice in the first instance, followed by a high court review if not resolved.
		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.	Neither	Unite considers a Registrar review would be in first instance, followed by the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland if not resolved
	Restoration	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.	Agree	
		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.	Agree	
		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.	Agree	

Registrar review powers	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.	Agree	<p>The proposed model suggests that final case examiner decisions will be made public. The regulators will also have a duty to publish accepted outcomes that take effect through agreement or are imposed after a failure to respond (apart from those parts of a decision that involve confidential information like details of someone's health).</p> <p>Regulators (including the NMC and the GMC) have robust processes and experience of under taking reviews of case examiner decisions. The decisions are taken by internal staff who are independent from the main process. Unite is aware that there have been no successful judicial reviews in respect of these decisions since the power was introduced in 2015.</p>
	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.	Agree	<p>Unite suggests that the right for the PSA to appeal all case examiner decisions will lead to more and not less delays in the FtP process. It also seems to be counter to the intention of reducing the adversarial nature of current processes, and tackling perceptions of professional regulation as being overly legalistic and punitive.</p> <p>Unite does not consider that a separate right of appeal for the PSA against final case examiner decisions, accepted by the professional is proportionate, in view of:</p> <ul style="list-style-type: none"> ○ The risk to patient safety is low as the accepted outcome will in some way monitor or restrict the professional's practice for a period of time. This will then be reviewed before they return to unrestricted practice. ○ There will be a registrar review process that can address any issues with the decision ○ Such a process would lead to delay and a lack of finality that would increase stress on all parties.

	Other	63.	Do you have any further comments on our proposed model for fitness to practise?		<p>Unite considers there is a real opportunity to achieve consistency across all regulators specifically in relation to their Fitness to Practice (FtP) processes. However, the current proposals do not sufficiently identify key principles for inclusion in rules that could be adopted by all regulators. Whilst we note the intention for regulators to work more closely together, unless they are working with a key set of principles, inconsistency would still remain.</p> <p>Unite is in agreement with sister trade unions and professional bodies that the following key principles should be specified;</p> <ol style="list-style-type: none"> 1. Formal acknowledgement of the Human Rights Act, in particular that Article 6, rights to a fair trial, should be applied to disciplinary proceedings. 2. Inclusion of key case law principles: <ul style="list-style-type: none"> • That the standard of proof required for determination of facts is the civil standard. • Where facts are in dispute it is for the regulator to prove its case rather than on the registrant to provide prove. • That interim orders should only be made in cases where there is a real risk of significant harm to patients, colleagues or others and rarely on the basis of public interest alone. • That formal FtP processes should abide by civil court principles including with regards to detailed allegations, responses, and evidence admissibility, service and hearing procedures. 3. There should be a thorough and fair investigation. 4. That representation should be recognised and taken account of in processes, for example, that where there is a representative, communication in relation to FtP should in the first instance be with the representative.
Regulation of PAs and AAs		64.	Do you agree or disagree with the proposed approach to the regulation of PAs and AAs? Please give a reason for your answer.	Neither	The cost of regulation is the same regardless of the profession, in particular the cost of fitness to practise. In the same way as the NMC were clear that existing registrants would not subsidise the cost of the regulation of nursing associates, existing GMC registrants should not subsidise the cost of the regulation of AAs and PAs.
		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.	Disagree	<p>Unite considers it is the responsibility of the education provider to set and administer the exams.</p> <p>Although only peripherally relevant to this question, we would record our view that there should be a simplified route of progress to a medical qualification for other health professionals, fully recognising the skills and knowledge they have gained. Physician associate registration should be arranged with a view to such progress being a natural progression and it may be appropriate for other health professionals pursuing this route to register as physician associates as the first step.</p>
		66.	Do you agree or disagree with the transitional arrangements for PAs and AAs set out above? Please give a reason for your answer.	Agree	

	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.	Agree	The same regulatory requirements should apply to all those the GMC regulate.
Impact Assessment and EQIA	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.	Neither	Unite would need to see the baseline measures before being able to comment on, for example, whether these proposals will improve patient safety or lead to registrants being better supported through CPD, etc.
	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.	Neither	More explanation is required as it is unclear why the cost of registration, renewal and revalidation is met by the public sector? Do they meet the cost in the same way with other GMC registrants or is there an inequity?
	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? <ul style="list-style-type: none"> • Yes – positively • Yes - negatively • No • Don't know Please provide further information to support your answer. 	Don't know	Any impact will depend on the content of final proposals in terms of whether concerns highlighted during the consultation have been addressed. The evidence indicates that registrants who identify as BAME, males in some professions, and older registrants tend to be referred more frequently and receive harsher sanctions. Unite is unsure whether the proposals include measures that will change this.

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